[GB] BBC Wins Access to Information Case

IRIS 2007-6:1/19

David Goldberg
deeJgee Research/Consultancy

Under Part VI of the Freedom of Information Act (Other Public Bodies And Offices: General)(2000) the British Broadcasting Corporation (and other public service broadcasters) constitutes a public authority, which may be required to disclose information it holds to anyone requesting that information. However, the law qualifies the extent of its application to the BBC. There is a “derogation”: it only applies to the “The British Broadcasting Corporation, in respect of information held for purposes other than those of journalism, art or literature”.

In November 2004, an internal report was written by Malcolm Balen (the “Balen Report”) analysing the BBC’s coverage of the Middle East. The BBC refused to disclose this report and a lawyer, Steven Sugar, has been pursuing this matter.

Initially, the Information Commissioner decided in favour of the BBC. Then the Information Tribunal decided that the information should be disclosed. Most recently, the BBC’s position was upheld by the High Court.

The judge said that where the BBC and the Information Commissioner both agreed that the information fell outside the scope of the law, the Information Tribunal does not have jurisdiction to review the matter. The explanation is that “when the Commissioner upholds a derogation, it is not a formal “decision notice” within the meaning of the FOI Act”. He seemed perturbed by the situation stating that it was "most odd" and "potentially inconvenient in its consequence" and that there were “powerful reasons in favour of there being a right of appeal to the tribunal in circumstances such as the present".

Mr Sugar’s legal recourse was to seek judicial review of the Commissioner’s decision. However, his application was turned down by the same judge in that hearing, who found that the Commissioner had acted lawfully and rationally. Mr Sugar is now hoping that the BBC Trust will release the report.

BBC v Steven Sugar, 27 April 2007, in the High Court of Justice Queen’s Bench Division Administrative Court on Appeal from the Information tribunal

http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2007/905.html

© European Audiovisual Observatory (Council of Europe) 2026

Sugar v the Information Commissioner

http://www.informationtribunal.gov.uk/Files/ourDecisions/Mr%20S%20Sugar%20v%20Information%20Commissioner%20Decision%20on%20Derogation%20(29%20August%202006)v7307.pdf

"The BBC v Steven Sugar: The Balen Report", article of 27 March 2007

http://www.bbc.co.uk/blogs/opensecrets/2007/03/the_bbc_v_steven_sugar_the_bal.html

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026