[GB] Supreme Court Decides that Freedom of Information Act has Only Limited Application to the BBC

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The UK Supreme Court has now determined the final appeal in the “Sugar” case relating to the application of the Freedom of Information Act to the BBC (see IRIS 2010-3/25 and IRIS 2009-4/15).

The BBC is listed as an organisation covered by the Freedom of Information Act that provides public rights of access to official information, but on in relation to information held “for purposes other than those of journalism, art or literature.” In 2005 Mr Sugar had applied under the Act for disclosure of the Balen Report, an internal management report relating to the question of whether BBC coverage of the Israeli-Palestine conflict was not impartial. The BBC refused the request on the ground that it held the information for the purposes of journalism. Mr Sugar appealed to the Information Tribunal, arguing that even if the information is held only partly for purposes other than those of journalism, it is covered by the Freedom of Information Act and should be made available. The BBC argued that if information is in part held for purposes of journalism it is not covered by the Act, even if it is also held for purposes other than journalism. The Tribunal decided that the test was whether the predominant purpose of holding the information was for reasons other than those of journalism, and that once the report had been placed before the BBC Journalism Board it was held for purposes other than journalism. Appeals to the High Court and Court of Appeal and Court of Appeal were unsuccessful, the latter holding that any information held for the purposes of journalism is exempt from disclosure, regardless of the predominant purpose for holding it.

The Supreme Court rejected Mr Sugar’s appeal. The majority of the Court considered that if the information is held only partly for the purposes of journalism, it is exempt from disclosure, whilst a further judge held that it was predominantly for purposes of journalism and so not covered by the Act. The Court’s decision was based on the powerful public interest that broadcasters should be free to gather, edit and publish news and comment on current affairs without the inhibition of an obligation to make public disclosure of their work. This would be defeated if the coexistence of non-journalistic purposes resulted in loss of immunity. The Court also considered that there was no contravention of Article 10 of the European Convention on Human Rights as it did not create a general right to freedom of information, and, even if it did so, a State could still legislate to protect information held for the purposes of journalism.

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Sugar (Deceased) v. British Broadcasting Corporation [2012] UKSC 4, 15 February 2012

http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2010_0145_Judgment.pdf

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