[IE] Broadcasting Authority Is Not Required to Release Investigation Documents under FOI Law

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The Information Commissioner has issued its decision on whether the Broadcasting Authority of Ireland (BAI) is required under freedom of information law to release certain documents compiled during its investigation into a public broadcaster's current-affairs programme. The Commissioner held that the BAI was justified in refusing access to interview notes with journalists and written submissions from the public broadcaster RTÉ.

On 4 May 2012, the BAI published a determination on RTÉ's television programme "Prime Time Investigates - A Mission to Prey", which had included allegations that an Irish priest had abused a teenage girl in Africa in the 1980s, that she had borne his child, and that he subsequently abandoned her and the child. The BAI found violations of section 39 of the Broadcasting Act 2009, including that the broadcast of seriously defamatory allegations was unfair and that the means employed in making the programme encroached upon the individual's privacy. The BAI imposed a financial sanctions of EUR 200 000 on RTÉ (see IRIS 2012-7/27).

A member of the public made a request to the BAI under the Freedom of Information Acts 1997-2003 to have access to the BAI's records relating to its investigation into the "Prime Time Investigates" programme. The BAI granted access to some documents, but refused access to other documents, including interview notes with journalists and written submissions from RTÉ. The applicant subsequently made an application to the Information Commissioner, which has the statutory power to review decisions to refuse access to records under freedom of information law (see IRIS 1997-10/13).

The Information Commissioner agreed to review whether the refusal to release the interview notes with journalists and written submissions was justified. The applicant argued that there was a "strong public interest" in addressing certain "unanswered" questions, "particularly in light of the large amount of money that RTÉ is believed to have paid out in settlement of the defamation". The BAI argued that "disclosure of the requested records would be likely to cause significant prejudice to its future investigations, because the journalists and other employees of RTÉ cooperated and assisted with the investigation, including revealing source material, upon the basis that such information would remain confidential".

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Under section 21 of the Freedom of Information Act 1997, a public body may refuse access to records if it is reasonably expected that access will "prejudice the effectiveness of tests, examinations, investigations, inquiries or audits conducted by or on behalf of the public body concerned or the procedures or methods employed for the conduct thereof". But access to such records should be granted where "the public interest would, on balance be better served by granting" access.

The Information Commissioner considered the arguments and concluded that "further openness with respect to the making and broadcasting of the programme could not be achieved without violating the journalistic privilege recognised by the courts, breaching trust, prejudicing the procedures and methods employed by the BAI in carrying out investigations and related inquires under the Broadcasting Act, and further invading the privacy of certain third parties in a manner that would be entirely unwarranted". Thus, the "public interest" would not be served by granting access, and the BAI had been justified in refusing access.

The Information Commissioner's decision was issued under the Freedom of Information Acts 1997-2003, and while these Acts have now been replaced by the Freedom of Information Act 2014 (see IRIS 2015-1/25), the decision is still of significance for broadcasters under the 2014 Act, as the Commissioner's role remains.

Office of the Information Commission, "Mr. X and the Broadcasting Authority of Ireland", 17 November 2014

http://www.oic.gov.ie/en/Decisions/Decisions/Mr-X-and-The-Broadcasting-Authority-of-Ireland.html

Broadcasting Authority of Ireland, "Investigation Pursuant to Section 53 of the Broadcasting Act 2009 - In Respect of the Programme 'Prime Times Investigates - Mission to Prey' Broadcast on 23 May 2011", 29 February 2012

http://www.bai.ie/wordpress/wp-content/uploads/20120404_S53Report_vFin_SO.pdf

Broadcasting Authority of Ireland, "Statement of Findings Issued Pursuant to Section 55(2) of the Broadcasting Act 2009", 4 May 2012

http://www.bai.ie/wordpress/wp-content/uploads/20120504_StatementofFindings_vFINAL_SO.pdf

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