



## Freedom of Information Internal Review Decision

**Internal Reviewer** Hugh Saxby, Head of Governance & Public Affairs, BBC Global News

**Reference** IR2009017 – review of RFI20090726

**Date:** 17 July 2009

**Original Request:** The original request received by the BBC was as follows:

*“Please publish a comma separated value export of the database table(s) pertaining all BBC expense claims for the 2008/2009 financial year. To the extent of complying with both the Freedom of Information Act 2000, and other legislation, the table(s) may be redacted only for the explicit purpose of complying with the law.”*

**BBC’s decision** The BBC did not provide all the information requested because it asserted that part of it was not covered by the Act, and to extract that part of the information which was covered would take more than two-and-a-half days. The request was therefore refused under section 12 of the Act.

The full text of the response is included as Appendix 1 at the end of this document.

**Issues on review:** **The requester’s argument**

The requester called for the reviewer to examine two key aspects of the BBC’s response:

1. That the response was late.
2. That the response did not provide the information requested.

The requester also alleged that the BBC’s estimate of the time taken to deal with his request was not in line with the Information Commissioner’s guidelines which will be covered under (2).

A copy of the requester’s request for internal review is provided as appendix 2, and sets out in detail the requester’s points in relation to his request for an internal review.

**I. Timing of the response**

The sequence of events was as follows:  
The original request was received on 12 May.

Section 10 of the Act states that a public authority must comply with section 1(1) promptly, and in any event not later than the twentieth working day after receipt. Section 1(1) is the requirement to inform the requester whether the information is held, and if so communicate it to him (unless an exemption applies). The BBC’s response was due therefore no later than 10 June 2009.

Although it was apparent by the deadline of 10 June 2009 that the request would be



refused by the BBC under the fees regulations, the BBC decided to delay sending its response until some information being prepared for a similar purpose about expenses was available, so that, in turn, this information could be provided to the requester.

The BBC sent an apology to the requester on 10 June, explaining that it hoped to send the response by 12 June, and would update the requester further if this was not possible.

At the same time as considering this request, the BBC was in the process of preparing a detailed public disclosure of the salaries and expenses of its senior staff. Unbeknown to the requester, the circumstances were that the original request was one of a group of similar requests for information about expenses that had been made to the BBC at about the same time.

It was in this context that a further apology was sent on 19 June, explaining that the BBC aimed to send the response by 26 June at the latest. The response was sent on 25 June.

The ICO guidance on time for compliance is as follows:

***10. What happens if a public authority does not respond within the time limit?***

Failure to respond within the time limit would be a breach of the Act. The Information Commissioner has a general duty under s47 of the Act to promote good practice. Should he become aware of a consistent failure to respond to requests within the time limit, he may issue an Enforcement Notice.

As a matter of courtesy, the BBC's Information Policy Compliance unit did provide progress updates to the requester on an expected response date. I also acknowledge the BBC's reasons for considering a late response. However the fact remains that, in the circumstances of the original request, the BBC did not respond within the time limit laid down by the Act and had therefore breached the Act.

**2. Provision of the information requested**

*Was the requested information in scope of the Act?*

Most of what the BBC does in the UK and around the world is publicly funded. This is why the BBC, as an organisation, is in scope of the Act. However information which is held by the BBC for purposes of "journalism, art or literature" is *not* covered by the Act, by virtue of the BBC's listing under Schedule 1 of the Act. The BBC explained this in its response that not all of the information requested was covered by the Act.

The reviewer therefore agrees with the BBC's position that expenditure which is directly linked to programme-making is not covered by the Act. This applies regardless of whether the expenditure was made directly from the BBC's financial central systems, or the cost was originally met by BBC members of staff, and then reclaimed via the expenses system.

The principle that information relating to "journalism, art or literature" lies outside the scope of the Act is significant for the BBC because, without this derogation, the BBC's ability to fulfil the public purposes laid out in the Royal Charter would be impaired, and explains why Parliament decided to include it in the Act.



With regard the circumstances of this particular request, the consequence is that the BBC is required to separate information directly linked to programme-making from information *not* directly linked to programme-making.

#### *Definition of expenses*

In his request for an internal review, the requester asserts that the BBC's definition of expenses is "counterintuitive", indicating that he considers expenditure met via the BBC's central booking systems should also be defined as expenses.

It's good practice for publicly funded organisations like the BBC to centralise procurement. It ensures that the BBC's collective purchasing power is maximised and that value for money is delivered from all its suppliers. BBC staff with the appropriate spending authority are able to purchase a range of goods and services in order to fulfil the requirements of their roles. Individual purchasing transactions take place via a centrally run pan-BBC computer network within a policy framework where staff are subject to a range of controls. This way of working means that centralised purchasing on behalf of the BBC is at the keenest economic price yet individual transactions are able to be efficient and effective.

Combined with a range of other financial controls, this way of working operates strongly in public interest providing value for money and other advantages. An alternative, whereby members of BBC staff purchased everything they needed such as supplies, transport, resources and services out of their own pockets and then claimed back the money later would be uneconomic, inefficient and inherently risky way to spend public funds.

Within this overall context, there remain some circumstances where staff pay for things on behalf of the BBC out of their own pocket and claim these expenses back afterwards. The BBC has disclosed information about expenses for a number of years under FOI, and has always defined expenses as those costs met by members of staff and then reclaimed. This definition has not been queried before, and appears to be the plain English interpretation accepted by most people of the word expenses. Information about centrally booked items has previously been separately requested and disclosed.

In conclusion, the reviewer does not agree with the requester's rationale for broadening the widely accepted definition of "expenses". I also do not agree with the requester's assertion that the BBC's definition of expenses is "counterintuitive". I want to reassure you that purchasing by BBC staff on behalf of the BBC takes place in a sound internal control environment. The process operates in the public interest by ensuring that public funds are economically and efficiently spent in the furtherance of the BBC's public purposes and the interests of its stakeholders. For more information on how the BBC spends its money and for independent auditor's opinion, please refer to the BBC's Annual Report and Accounts – to be published later this month on [bbc.co.uk](http://bbc.co.uk).

*Was the BBC's estimate of the time taken to deal with his request in line with the Information Commissioner's guidelines?*

The requester cites the ICO guidance on redacting and extracting information, at [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/redactingandextractinginformation.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/redactingandextractinginformation.pdf)

This distinguishes between extracting information (i.e. retrieving relevant



information) and redacting information (i.e. editing or blanking out information which is considered to be exempt). The requester argues that the BBC has incorrectly taken into consideration the time to redact the requested information when applying the fees regulations to his request.

The BBC argues that its estimate of the time taken to deal with the request excludes the time taken to redact. Instead it reflects the considerable amount of time that would be required to extract the relevant information, which includes the time required to separate out the information which is covered by the Act (information about expenses not related to programme-making) from that which is *not* covered by the Act (information about expenses which is related to programme-making). In other words extracting, sorting and separating time was in the estimate but redacting time was not.

Because Schedule 1 derogations apply to only a very small number of public authorities, no specific guidance exists on the application of section 12 in this way. However, the requester's assertion regarding section 12 would apply in this way if the BBC were asked to extract one particular type of information from a large database containing that type of information, but also many other types.

I agree with the requester that in circumstances where the information could be extracted by simple manipulation of the database fields, then it is unlikely that it would take more than two-and-a-half days, and therefore the request ought not be refused under section 12.

However, if the extraction could only be done manually, and the database related to all staff in the BBC which employs thousands of people, it is very likely that, as in this case, it would take more than two-and-a-half days.

I am satisfied that it is the latter and therefore the BBC's estimate of the time taken to deal with the request was reasonable, and I agree with the BBC's decision to refuse the request on these grounds.

**Other points raised by the requester** The original request asked for detailed expenses records for all the BBC's 22,000+ employees. Instead, the BBC provided the website address where the expenses details of 50 of its senior managers had been published recently.

With regard to the BBC's response, the question arises whether any further scope existed for the BBC to work with the requester to narrow down the request so that it could respond within the Act's fees regulations. For example would it be possible to provide expenses details for a cross section of staff? i.e. more than 50 senior staff.

I have concluded that in such circumstances the request would still have been properly refused because the time taken to process the request would very likely be more than two-and-a-half days. This conclusion is supported by the fact that manual intervention would be required to extract, sort and separate the information. In addition, some information relating to "talent" is classed as personal data and would not be disclosed as it would be unfair and a breach of section 40(2). (as noted in the original reply (RFI20090726 – see appendix 1). Time would be required to separate this information from the rest.

## **Conclusion**

The request was one of a group of requests made to the BBC at about the same time asking for expenses information. The BBC's response to the specific request under review was beyond the time limit laid down by the Act. Therefore the BBC



had breached the Act.

Purchasing of goods and services by BBC staff using centralised procurement and purchasing systems is good practice and an effective way to conduct corporate business. It is normal for centrally transacted purchasing not to be defined as employee “expenses”. I do not therefore agree with the requester’s assertion that the BBC’s definition of expenses is “counterintuitive”.

When considering the request, the BBC would be required to separate expense claim information held for the purposes of “journalism, art or literature” from that which was not. I agree with the BBC’s original response that the time taken to extract, sort and separate information would exceed two-and-a-half days.

I have determined that there is no simple or quick way to manipulate expenses data in order to separate information linked directly to programme-making from information not directly linked to programme-making. The database holding the requested information was created to meet the financial needs of the BBC and does not require this type of function.



## **Appendix I – Final Response provided to original request – RFI20090695**

### **Freedom of Information Act request – RFI20090695**

Thank you for your request for information under the Freedom of Information Act 2000 (“the Act”) received on 12 May 2009 seeking:

*“a comma separated value export of the database table(s) pertaining all BBC expense claims for the 2008/2009 financial year.”*

Under section 1(1) of the Act, I can confirm that the BBC does hold the information you have requested. As the BBC employs in excess of 22,000 people, an export of the entire database would run into hundreds of thousands of entries. We would need to go through the report to remove any information which is not covered by the Act – i.e. information the BBC holds for the purpose of “journalism, art or literature” (see Schedule 1, Part VI of the Act).

Therefore, I estimate that to deal with your request would take more than two and a half days; under section 12 of the Act, we are allowed to refuse to handle the request if it would exceed the appropriate limit. The appropriate limit has been set by the Regulations (SI 2004/3244) as being £450 (equivalent to two and a half days work, at an hourly rate of £25).

However, in response to a different Freedom of Information request (RFI20090644), we have released the expenses of the top 50 earners in the BBC for the 2008/09 financial year. I am attaching a copy of this information, which I hope you will find helpful.

### **Selection of the top 50**

In identifying the top 50, the BBC has followed recent decisions of the Information Commissioner (including some relating to BBC personnel). The top 50 staff are those who meet the two-part test applied by the ICO in the BBC decisions: namely whether the individuals have significant responsibility for the expenditure of public funds and/or the creation of public policy. This includes such persons as those on the Executive Board of the BBC, with the remainder at the level of Controller, Head of Department or Director.

Individuals engaged by the BBC as talent have not been included in this list. This is also in line with a recent decision notice of the ICO where the Commissioner decided that unlike senior BBC employees, such as those listed in the appendix, the roles undertaken by “talent” did not relate to the performance of a public function involving the spending of public money and/or the taking of influential policy decisions. Consequently, individuals in those cases had a reasonable expectation that their personal data would not be disclosed and it would be unfair and a breach of section 40(2) of the Act to do so. We have therefore excluded any talent information from this list.

### **Information about Expenses**



For the purposes of this FOI request, please note that “expenses” are those costs incurred personally by BBC staff and subsequently re-claimed through the BBC’s expenses system in accordance with the staff expenses policy. It is important to note that the BBC also operates a central booking system for arranging travel and transport for staff, including accommodation, flights, and taxis. This system involves using a small number of preferred suppliers in order to help maximize value for money to the BBC. Where bookings are made using this system all costs are settled directly by the BBC, without staff being required to incur any expenses individually. These costs are not therefore re-claimed by way of expenses.

You should be aware the BBC does not give any employee an “expense account”. Only costs that fall within the BBC’s expenses policy can be reclaimed and all are checked and authorised by a more senior figure or a member of the BBC Finance community.

From time to time senior managers are asked to personally meet the costs of items that the BBC does not regard as personal expenses. These could include, for example, the payment of a facility fee for a location, or paying a venue at the end of a departmental meeting or away-day off BBC premises. This is usually necessary where immediate payment is required and the BBC accounts system cannot be used. In many of these circumstances, BBC policy is for the most senior member of staff to settle the account, and the most convenient way of the BBC recompensing the manager for this expenditure is through the expenses system. For clarification, the differentiation on this point is made as follows: if the member of staff was present at an event and signed off as the most senior person present then it is shown in the column entitled "Incurred by myself". When the member of staff did not attend an event, but was signing off the expenditure as authorised by themselves, for example a departmental away-day at which they were not present, then these would be put into a second column entitled "Incurred by Department".

The BBC is a global organisation and senior leaders across all major organisations inevitably incur some expenses. Whilst expenses are common across all major organisations, the BBC has a rigorous expenses policy and we are careful to ensure value for money.

As well as the information contained in this release under the Freedom of Information Act, you may be interested to know that the BBC is committed to a programme of increasing transparency and accountability, particularly in relation to how it spends public money. We recently announced that the salaries and detailed expenses of the members of the BBC Direction Group would be regularly published from the autumn of this year, in line with the policy adopted by the BBC Trust. Further, from today, the 25<sup>th</sup> of June, the BBC will be publishing detailed expenses of the Executive Board for the past five financial years. The BBC is actively exploring how this might be significantly extended to give the public further detailed information, including greater disclosure of senior executives’ pay and expenses, and more detailed information on how the BBC spends the licence fee, including areas such as total talent costs, taxis, flights etc. We will be announcing how we intend to do this in the near future.

**Information published today on [bbc.co.uk](http://bbc.co.uk)**



The BBC has received a large number of requests from journalists and members of the public for expenses information and we recognise the significant public interest in this area. For this reason, we have decided to make an exception from our standard processes and immediately publish the information contained in this and other expenses related enquiries on the BBC FOI website, so that information released is available to all.

### **Appeal rights**

You may request an internal review of our decision that your request exceeds the appropriate limit. You can either email [xxx@xxx.xx.xx](mailto:xxx@xxx.xx.xx) or write to BBC Information Policy & Compliance, Room 2252, BBC White City, 201 Wood Lane, London, W12 7TS. If you are not satisfied with the result of the internal review you then have the right to seek a further review from the Information Commissioner. Please see <http://www.ico.gov.uk> or contact the Information Commissioner's Office, Wycliffe House, Water lane, Wilmslow, Cheshire, SK9 5AF, telephone 01625 545700 for details.

*[The disclosure document, expenses for the top 50 earning BBC staff, is not attached here, but can be accessed online at [http://www.bbc.co.uk/foi/publication\\_scheme/classes/disclosure\\_logs/finance.shtml](http://www.bbc.co.uk/foi/publication_scheme/classes/disclosure_logs/finance.shtml) ]*



## Appendix 2 – Request for internal review

Please pass this on to the person who conducts Freedom of Information reviews.

I am surprised, disappointed and dissatisfied and hence writing to request an internal review of British Broadcasting Corporation's handling of my FOI request 'Expenses'. I trust that now you have taken time to comply with the FOI act 2000 earlier than 29th June. that you will find it appropriate that you conduct an internal review into this matter in preparation for the pending ICO review. I am complaining for the following reasons:

I requested information - I have not received a proper response.

I received information - It was not within 20 working days.

I received an estimate of the expense of dealing with the request and the estimate was not in line with the guidelines on such matters.

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/redact\\_in\\_gand\\_extracting\\_information.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/redact_in_gand_extracting_information.pdf)

The information was not what I requested - I requested "a comma separated value export of the database table(s) pertaining all BBC expense claims for the 2008/2009 financial year." this is NOT by any stretch of the imagination what I have received which is a redacted aggregation of the highest 50 paid BBC executives representing maybe 1% of the information requested for 0.22% of BBC employees. I requested information on ALL 22,000 BBC employees, I expected/invited them to redact information which tied any expenses to schedule 1 part 4 i.e. "journalism, art or literature" and to redact information "relating to personal information" as per the data protection act" and would like to point out that at no time did I request information pertaining to what the BBC routinely alleges is "talent" or request only information which pertains to the top 50 remunerated employees nor did I request any information relating to employees in a personally identifiable manner, for this reason I cannot understand why the BBC thinks centrally booked transport/accommodation should have been redacted from the disclosure since centrally booked transport/accommodation does by definition not relate to "journalism, art or literature" nor "talent". I find it quite funny that the BBC has chosen to define expenses in such a narrow and counterintuitive manner. I would have thought that to book a Taxi/plane/hovercraft to go from A to B is an expense no matter how it is ultimately paid for, and the manner in which the expense is financed be that via an "expense account" a "more senior figure or a member of the BBC Finance community" or simply a "self verified statement" I truthfully care not the manner in which the expense was financed (because at the root of all these claims the financier is always the license/tax payer) simply the size and nature of the claim, along with any other information you are willing to release. I requested only the expenses not

necessarily the "Claimant" or even the "Title" and the information related only to the expenses which the vast majority of BBC employees incur (who may or may not be personally identifiable) in their day to day business. I did not in any way or at any time request that the data be grouped or aggregated in any way, and certainly not such as for the purposes of categorisation into "hospitality" "Milage" "travel" or "facility fees" the BBC seems to have either completely misunderstood my request or altered and misinterpreted it for its own goals. I expressly and explicitly did not request any information pertaining to "talent" or

"journalism, art or literature" and hence I am quite taken aback that the BBC seem to have used this as grounds to dismiss my request. I am well aware of the BBC expenses policy, the freedom of information act and also the data protection act, hence why I requested ALL expense claims and not just those of a handful of personally identifiable senior management which meet the two part test.



in order to provide a fair and balanced picture of where expenses are actually incurred and for what purposes I request all the expenses not just those which are personally identifiable. as per the ICO

([http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/redactingandextractinginformation.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/redactingandextractinginformation.pdf)) the BBC is incorrect in its assertion that releasing this information would take more than two and a half days work, since the redaction is not covered by section 12 because "A public authority is not permitted to take into account any time likely to be spent: in considering exemptions that may apply to the information requested; and in redacting exempt material". In any case a trivial alteration to the extraction procedure (an alteration in your SQL statement) could at a keystroke remove the information in the "Claimant" or "Title" columns and also assuming you have a table containing a list of everyone you claim is "talent" the personally identifiable nature of this information could easily be redacted and simply referred to as a "TALENT" expense, it is false and disingenuous to present a case that this could not have been done in the generous quantity of working day you have had to comply with this request.

I am interested that the BBC is committed to a program of increasing transparency, but when this request has been met by such opacity. I frankly dont care what the BBC direction group has incurred in expenses in total terms I imagine it is mostly inconsequential I want the 21,950 (99.7%) other employee expenses itemised row by row which were illicitly redacted from my request. I do not see how (RFI20090644) has any bearing on my request since its scope and depth is so limited.