



Information Policy & Compliance  
[bbc.co.uk/foi](http://bbc.co.uk/foi)

John Walker

Via email: [request-12821-7xxxxxxx@xxxxxxxxxxxxxxxxxxx](mailto:request-12821-7xxxxxxx@xxxxxxxxxxxxxxxxxxx)

17 June 2009

Dear Mr Walker,

### **Freedom of Information request – RFI20090826**

Thank you for your request of 4 June under the Freedom of Information Act 2000 seeking the following information:

*“Please supply details of the pay and expenses for 2008 for the following BBC presenters:*

*Jonathan Ross Terry Wogan Jools Holland Eamonn Holmes John Pienaar”*

The BBC will not be providing you with the information you requested as we consider that it is not covered by the Freedom of Information Act 2000 (“the Act”); further, even if the information was covered by the Act, it would be exempt from disclosure under section 40(2) of the Act because disclosure would breach the first Data Protection principle.

#### Scope of the Act

The BBC and the other public service broadcasters are covered by the Act only in respect of information held for purposes “other than those of journalism, art or literature” (see Schedule I, Part VI of the Act). This means that the BBC is not obliged to supply information held for the purposes of creating output or which is closely associated with such creative activities. The BBC considers that this includes information about the costs involved in creating its output, including fees paid to talent and any expenses incurred by them.<sup>1</sup>

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<sup>1</sup> For more information about how the Act applies to the BBC please see [www.bbc.co.uk/foi](http://www.bbc.co.uk/foi) Please note that this guidance is not intended to be a comprehensive legal interpretation of how the Act applies to the BBC.



### Recent decision of the Information Commissioner

The BBC notes the recent decision notice of the Information Commissioner (ref. FS50085710): in that case the Commissioner considered that payments (including expenses) made to talent did fall within the scope of the Act. However, the Commissioner decided that the information was exempt from disclosure under section 40(2) of the Act as he felt that the payment information constituted personal data and that its disclosure would breach the first data protection principle in the Data Protection Act, being 'fair and lawful processing'. The Commissioner considered that the individuals in that case had a reasonable expectation that their personal data would not be disclosed and it would therefore be unfair to do so.

### The BBC's approach to this case

The BBC does not agree with the Commissioner's decision on the scope of the Act and reserves its position on the matter; however, the BBC considers that in the event of a similar finding by the Commissioner in this case, the information you have requested would also be exempt under the Act under section 40(2) as the information constitutes personal data and disclosure would breach the First Principle (fair and lawful processing). Furthermore, the expenses claimed by these individuals do not relate to the performance of a public function which involves spending public money or taking influential policy decisions. The individuals involved would not expect the type of information requested to be disclosed to third parties, and therefore to do so would be unfair.

You may be interested in the Information Commissioner's Office guidance on the disclosure of information about salaries here:

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/practical\\_application/salaries\\_v1.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/salaries_v1.pdf)

### **Appeal Rights**

The BBC does not offer an internal review when the information requested is not covered by the Act. However, if you are not satisfied with our response, you do have the right to appeal to the Information Commissioner. The contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, telephone 01625 545 700 or see [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk) In the event of a finding by the Information Commissioner that the Act does apply in this case, should you then wish, the BBC is prepared to undertake an internal review of our decision on the application of section 40 (personal information) to the information you have requested.

Yours sincerely

Rachael Ward  
Adviser, Information Policy & Compliance