



Information Policy & Compliance

bbc.co.uk/foi

Mr John Walker

Via e-mail: request-13835-1b6b7eca@whatdotheyknow.com

24 July 2009

Dear Mr Walker,

Freedom of Information Request - RFI20090936

Thank you for your request under the Freedom of Information Act 2000 ("the Act") received on 28 June 2009, seeking the following information:

Without giving names, please supply details of the pay and expenses for 2008 for an average BBC TV news reader.

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 sections 40 (personal data) and 43(2) of the Act because to do so would prejudice the commercial interests of the BBC.

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 information relating to payments made to talent.¹

¹ For more information about how the Act applies to the BBC please see 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 view of the Information Commissioner in recent decisions regarding production cost information, being that the Commissioner considers that this information does fall within the scope of the Act. However, in a recent decision on talent costs, which pertained to payments made to individuals, the Commissioner concluded that the information was exempt from disclosure under section 40(2) of the Act as its disclosure would be a breach of the Data Protection Act.²

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 (personal data) and 43(2) (prejudice to commercial interests).

Section 40

We have withheld some information under section 40 (personal data) of the Act, where individuals can be identified in relation to what they are paid. These individuals would not expect this information to be made public and that expectation is a reasonable one - they are not responsible for large amounts of public money, nor do they have policy or managerial responsibilities at the BBC - and therefore to do so would be unfair and a breach of the Data Protection Act.

Section 43(2)

We have withheld aggregate talent cost information under section 43(2) of the Act as disclosure would prejudice the commercial interests of the BBC. This is likely to have four prejudicial effects on the BBC. Firstly, disclosing would provide the BBC's competitors with valuable pricing information about the cost of engaging these individuals. The BBC would not receive equivalent information as the vast majority of the BBC's competitors are not subject to the Act and disclosure would give them a competitive advantage and increase the likelihood of the BBC's being outbid for talent.

Secondly, disclosing information about the cost of talent is likely to impact negatively upon the BBC's bargaining position in negotiations for talent as it is likely to result in a ratchet effect among bids from talent itself. Since talent will know that a minimum level of funds is available, there will be an incentive to bid up to that level when previously it may have bid below it.

Thirdly, disclosing the cost of talent to the BBC is likely to discourage talent from contracting with the BBC vis-à-vis its commercial rivals, due to the increased risk of publicity regarding their earnings. Again, since the BBC is one of a small group of broadcasters that is subject to the disclosure obligations of FOIA, the cost-benefit of contracting with the BBC vis-à-vis a commercial broadcaster that is not subject to those obligations weighs heavier on the cost side.

² FS50070465

The effects described above are likely to cause grave prejudice of the BBC; they would be likely to result in a choice between losing programmes and suffering a drop in the quality of our programming; or increasing spending in order to retain programmes and thereby suffering a drop in value for money to the licence payer.

Consideration of the public interest

As section 43 is a qualified exemption, the BBC has considered the public interest factors in this case in accordance with section 2(2) of the Act: specifically, whether in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

There is a clear public interest in ensuring that the BBC is able to provide quality programming and value for money in respect of its use of the licence fee. Both these objectives will be threatened if a presumption is created in favour of the general disclosure of information relating to talent costs, for the reasons set out above.

Against this, there is little public interest in the disclosure of talent cost information as this information only enables the public to take an informed view of whether the BBC is contracting with talent on a competitive basis if it is in possession of talent cost information relating to commercial broadcasters. Since this information is not publicly available, information relating to the BBC is of little use.

In any event, the general public interest in the transparency and accountability of the BBC in respect of its use of the licence fee is served by a broad range of oversight mechanisms, internal and external. These include the oversight of the BBC Trust, whose recent review into this issue demonstrated that the BBC was not distorting the market for talent, the Executive Board, the responsibilities of which include conducting the BBC's operational affairs in a manner best designed to ensure value for money (Article 38(1)(h) of the Charter), Ofcom and the fair trading regime and competition law in general. Indeed, in the interests of transparency and accountability, certain limited information on expenditure is provided in the Annual Report. Detail beyond this threatens to pose considerable harm to the BBC's commercial interests, without offering a proportionate benefit to the public.

We are satisfied, in terms of section 2 of the Act, that in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Thus, the BBC believes that the public interest is best served by allowing the BBC to continue to compete on an equal basis with, the rest of the market, so that normal market forces may take effect to the benefit of the general public.

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 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 43 (commercial prejudice) to the information you have requested.

Yours sincerely

Mary Geoghegan
BBC People