



Information Policy & Compliance

bbc.co.uk/foi

T. Nathan

xxxxxxxxxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxxxxxxxxx.xxm

August 22nd, 2008

Dear T. Nathan

Freedom of Information request – RFI20080818

Thank you for your request of July 27th under the Freedom of Information Act 2000 seeking the following information about the BBC Ceefax service:

- (1) A breakdown of the annual cost of providing the Ceefax Service for each year from 1997 to 2007.*
- 2) The proportion of total spending on Ceefax last year in relation to total spending allocated by the BBC to cater for the deaf and hard of hearing.*

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 43(2) of the Act because to do so would prejudice the commercial interests of the BBC.

Outside the scope of the Act, I can confirm that the BBC does not hold records in a way that would allow it to pinpoint spending specifically on catering for deaf and hard of hearing people.

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 the cost to the BBC of producing a programme, or, in this case, text content broadcast via Ceefax.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 recent decision notices of the Information Commissioner (ref. FS50067416). In that decision, the Commissioner considered that the cost to the BBC of producing an in-house programme did fall within the scope of the Act. However, in that case, the information was exempt from disclosure under section 43(2) of the Act as its disclosure would be likely to prejudice the commercial interests of the BBC.

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 43(2) because disclosure would be likely to prejudice the commercial interests of the BBC, in the following way.

Disclosure of this information may result in a ratchet effect among bids from independent production companies ("indies") for licence deals in respect of similar content. This could lead to the position that indies will know that a minimum level of funds are available for a particular type of content, and they will have an incentive to bid beyond that level. This will prejudice the commercial interests of the BBC, in that it will be forced to increase what it pays indies for those licence deals, or face losing the deals.

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.

In favour of disclosure, the BBC recognises that there is a public interest in the following:

- 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 in-house programming, for the reasons set out above; and
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- Furthering the public's understanding of and participation in public debate on a topic. However, in order for the information to be of value to the public, it would be necessary to have access to information about the costs of other broadcasts who commission similar content. The majority of the broadcasting industry is not subject to the Act and therefore information about their content is not subject to disclosure under the Act.

On the other hand, in considering factors that might weigh in favour of the public interest in withholding, we took into account:

- That the BBC has robust controls on the way public money is spent which are already evident. There are a broad range of oversight mechanisms, internal and external, including the oversight of the BBC Trust, the Executive Board, Ofcom and the fair trading regime and competition law in general. High level information on expenditure is provided in the Annual Report, however detail beyond this threatens to pose considerable harm to the BBC's commercial interests, without offering a proportionate benefit to the public;
- That the BBC is able to provide quality programming and value for money in respect of its use of the licence fee. The BBC's ability to do this is dependent upon maintaining a strong bargaining position vis-à-vis suppliers during contractual negotiations, which may be seriously undermined by releasing information of the type requested here;

I am 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,

Stephanie Harris
Head of Editorial Compliance, BBC News