



Freedom of Information Internal Review Decision

Internal Reviewer Polly Ralph - Advisor, Data Protection

Reference IR20009037

Date: 12 October 2009

Original Request: *“Please tell me how much (BBC licence payers) money has been spent by the BBC in the past 5 years on electronic TV detection equipment.*

By this I mean only the cost of electronic tv detection equipment, not the vans that the equipment may be installed into, or other such general items, nor do I want included in the total any installation costs, or running costs etc - just the cost of the equipment.”

Issues on review The requester did not specify why he believed that section 31 of the FOI Act had been incorrectly applied.

Therefore, this is a general review of the decision to withhold from the requester the amount spent on electronic TV detection devices over the past five years, under Section 31 of the FOI Act

I have conducted an independent review of the BBC’s decision to withhold the sum spent on electronic TV detection devices over the past five years. As part of this review, I have considered the initial decision, information provided to me about enforcement of the licensing system, as well as guidance on the application of Section 31 of the FOI Act.

The Decision to withhold under Section 31 (Law Enforcement)

By response dated 25 September 2009, the BBC withheld the requested information under sub-sections 31(1) (a), (b), (d) and (g) of the FOI Act. These sub-sections allow the BBC to withhold information where disclosure would, or would be likely to, prejudice the prevention or detection of crime.



The text of the relevant sections is as follows:

“S31 (1) Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) The prevention or detection of crime,*
- (b) The apprehension or prosecution of offenders,*
- (d) The assessment or collection of any tax or duty or of any imposition of a similar nature,*
- (g) The exercise by any public authority of its functions for any of the purposes specified in subsection (2);*

I have considered whether the BBC was correct in its application of these sub-sections.

Guidance issued by the Ministry of Justice on the application of section 31 states that the section is not confined solely to the police but also to other public authorities, which would include the BBC in its capacity as the Licensing Authority.

The BBC has a statutory responsibility for the collection of the licence fee. TV Licensing administers the collection of the licence fee and the enforcement of the licensing system on the BBC's behalf. It is a criminal offence to install and use television receiving equipment to watch or record television services without a valid television licence. Electronic devices are used to detect licence evaders.

In terms of section 31(1) (a) (b) (d) and (g) above, I agree with the position that releasing the requested information into the public domain would make it possible for individuals who wish to evade the licence fee to more easily escape detection and prosecution.

The BBC's decision did not provide details as to *how* the information, if disclosed, could assist individuals wishing to evade the licence fee. This was because providing such details would undermine the BBC's purposes in withholding the information at issue.

However, having considered the information provided to me on a confidential basis in the context of this review, I agree that releasing the information would prejudice the prevention or detection of licence fee evasion. It would be likely to lead to an increase in the number of criminal offences committed, and would prejudice the BBC's ability to collect the licence fee. As a consequence of this, there would be a reduction in the amount of money available to the BBC to carry out its core functions i.e. producing and broadcasting television and radio programmes.

Taking all of this into account, I consider that the application of the section 31 exemption was correct.



Public Interest Test:

Section 2 (2) of the FOI Act requires the BBC to weigh up whether public interest in disclosing the information outweighs the public interest in maintaining the exemption and withholding the information.

In relation to this request, the BBC's decision was that the public interest in withholding the information outweighed the public interest in releasing it. I am therefore required to review the public interest arguments for and against disclosure.

The public interest factors in favour of disclosure are as follows:

- I. Ensuring that public funds are being appropriately applied, and specifically that:
 - a. The TV Licensing system is being efficient run; and
 - b. That value for money is being obtained.

I agree that these public interest concerns are already being served by the means set out in the BBC's decision letter. Most notable is the fact that the BBC is required to satisfy the National Audit Office as to the value for money of the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements.

I also agree that there are strong countervailing public interest factors against disclosure. In particular, releasing the information would have a prejudicial effect on the BBC's ability to prevent and detect licence fee evaders. It is in the public interest that there is an effective deterrent to licence fee evasion.

I am satisfied that the analysis in relation to the public interest factors was correct.

Decision

Following this review, I believe that it is appropriate that the BBC should withhold requested information, on the basis that the disclosure would, or would be likely to, lead to an increase in evasion rates and would therefore prejudice the prevention or detection of licence fee evasion. Overall I believe that greater public interest is served by the BBC being able to reduce evasion as effectively as possible, than by disclosing the information you have requested.

I therefore uphold the decision not to release the information requested.



Appeal Rights

If you are not satisfied with the internal review, you can 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 use www.ico.gov.uk