

24th December 2008

Case Reference Number FS50215409

Dear S. 40

I am writing with regard to the complaint you have made to the Information Commissioner's Office (ICO) regarding the BBC.

On 18 November 2008 my colleague Rachael Cragg wrote to you asking you to confirm whether you had received the BBC's response of 17 November 2008.

You replied on the 23 November 2008 and explained that:

'The response from the BBC is entirely inadequate and, I believe, disingenuous. I shall be glad if you could kindly continue your investigation of my original complaint. As you will see from the attached, I have now sought an internal review of the BBC's application of section 43(2) of the Act to my request, which I can not believe is appropriate. I may be forced to bring this to you also in due course.'

I have now reviewed the paperwork on your case and concluded that rather than investigate your original complaint, this case should be closed under the ICO's robust case handling policy. (The robust case handling policy can be reviewed here: http://www.ico.gov.uk/upload/documents/library/freedom_of_information/forms/a_%20robust_%20approach_%20to_%20foi_%20complaint_%20cases001.pdf)

My reasoning for taking this decision is outlined in detail below. I should stress that if you remain dissatisfied with the outcome of the BBC's internal review which you requested on 23 November, you can still complain to the ICO and we will deal with this a separate valid complaint.

Before explaining why I have concluded that this case should be closed under the ICO's robust policy, I think it would be useful if I briefly set out the chronology of your correspondence with the BBC:

9 May 2008 – you submitted your initial request to the BBC.

6 June 2008 – the BBC provided you with a refusal notice citing section 12 of the FOI Act as a basis to refuse to provide the information you had requested because to do so would exceed the appropriate cost limit. The BBC provided you with advice and assistance in line with its duty under section 16 of the FOI Act so that you could submit a narrowed request which may be answered within the cost limit.

13 June 2008 – you submitted a refined request to the BBC.

11 July 2008 – the BBC again provided you with a refusal notice citing section 12 of the FOI Act as a basis to refuse this request. The BBC also explained that you could submit a refined request which may be able to answered within the cost limit. However, the BBC did note that the information which would fall within the scope of the refined request may well be exempt from disclosure by virtue of section 43(2) of the FOI Act.

14 July 2008 – you asked the BBC to conduct an internal review of its decision to refuse your request of 13 June 2008 on the basis of section 12.

28 August 2008 – the BBC provided you with the outcome of its internal review. This

review concluded that the BBC had incorrectly relied upon section 12 of the FOI Act as a basis to refuse your request and therefore the BBC would now consider again whether the information you requested should be disclosed.

24 September 2008 – having received no response from the BBC, you contacted the ICO.

17 November 2008 – following the ICO's intervention, the BBC provided you with a further response to your request of 13 June 2008 and explained that it considered the information you requested to be exempt from disclosure on basis of section 43(2) of the FOI Act.

23 November 2008 – you asked the BBC to conduct an internal review of its decision to withhold the information requested on the basis of section 43(2).

Therefore, it is my understanding that the basis of your original complaint submitted on 24 September to the ICO was essentially that the BBC, having provided you with the outcome of its internal review on 28 August, had not provided you with a timely response as to whether the information you requested should be disclosed under the FOI Act. As set out above, this response – i.e. the BBC's letter of 17 November - has now been provided to you. In essence then your original point of complaint has now been resolved.

Under the robust case handling policy, the ICO will not continue with cases where no useful purpose would be served if we were to proceed to issue a decision notice. In this case, such a notice would simply note that at internal review the BBC no longer sought to rely on section 12 of the FOI Act and concluded that it should reconsider this complaint; however, this reconsideration took a number of months.

Even if we issued such a decision notice there are no 'specified steps' under section 50(4) of the FOI Act that we could require the BBC to take. In other words, there is nothing that we could require the BBC to do. The issuing of a decision notice which dealt with your original complaint would therefore be an academic exercise.

I can assure you that although your case has now been closed, your complaint has been taken seriously and I have referred the BBC's handling of your request to the ICO's FOI Enforcement department who monitor public authorities' compliance with the FOI Act.

I would like to stress that should you be dissatisfied with the outcome of the BBC's internal review of the decision to rely on section 43(2) of the FOI Act you can of course complain to the ICO and we will treat this as a separate complaint. Given the BBC's delays in handling your initial request and your previous contact with the ICO, if you contact the ICO again following the outcome of the internal review we will prioritise your complaint.

Yours sincerely

Jonathan Slee
Senior Complaints Officer

Louise Wright

From: S. 40
Sent: 31 December 2008 10:11
To: FOI Enquiries
Subject: RE: Requests RFI20080647 & RFI20081170, Internal Review IR2008026

Dear Mr Pickard,

Unfortunately the Information Commissioner does not appear to agree that you have undertaken a review of your last decision (which was made on entirely different grounds from the earlier decisions) and can not, therefore, take up my appeal against this decision.

The case will only be closed when you provide the requested information rather than refuse to provide information that has not been requested.

S. 40

-----Original Message-----

From: FOI Enquiries [mailto:FOIEnquiries@bbc.co.uk]
Sent: 30 December 2008 16:12
To: S. 40
Subject: RE: Requests RFI20080647 & RFI20081170, Internal Review IR2008026

Dear S. 40

Thank you for your emails, repeated below. Please accept my apologies for the delay in replying to you.

To clarify, we responded to your original Freedom of Information request (RFI20080647) on 11 July and subsequently undertook an internal review at your request which was sent to you on 28 August. Furthermore, Pipa Doubtfire wrote to you on 17 November to further clarify our previous responses. We therefore consider this case is now closed. Should you disagree, you have the right to appeal to the Information Commissioner. Details are as follows: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, telephone 01625 545 700 or see <http://www.ico.gov.uk/>

Yours sincerely

Mr S. Pickard
Information and Compliance Manager

From: S. 40
Sent: 13 December 2008 16:05
To: FOI Enquiries
Subject: FW: Requests RFI20080647 & RFI20081170, Internal Review IR2008026

I received no acknowledgement of this e-mail. I trust that the review requested is underway but would be glad of your confirmation of this. You will note that I requested a prompt decision.

S. 40

-----Original Message-----

From: S. 40
Sent: 23 November 2008 18:01
To: 'FOI Enquiries'

Subject: Requests RFI20080647 & RFI20081170, Internal Review IR2008026

Ms Fern Kersey

Adviser

Information Policy and Compliance

BBC Freedom of Information

Room 2252

BBC White City

201 Wood Lane

London W12 7TS

24 November 2008

Dear Madam,

I request an internal review of the decision contained in Ms Doubtfire's letter reference the above and dated 17 November, 2008.

To assist the reviewer, perhaps I may outline why I seek this review.

I do not understand why I received this much belated reply from someone with the title "Head of Revenue Management" since my initial requests do not relate in any way at all to the revenues of the BBC or their management. This has been clearly stated in every request for information that I have made and I resent both the implication on p5 (the reference to section 14(2) of the Freedom of Information Act) of this quite unnecessarily long and complex letter that my requests are in any way vexatious and to this further effort to obfuscate and delay.

My concern is a very simple one. I wish to understand how the BBC incentivises Capita Business Systems Limited ('Capita') to intimidate those without both a television licence and a television receiver into buying television licences.

We know that the BBC operates to the lowest of ethical standards, exemplified recently by the BBC Trust report on the Andrew Sachs affair. This involved aggressive behaviour to just one elderly gentleman. Capita behave in a similarly coarse and aggressive manner to countless of our population who commit the offence, in the eyes of the BBC, of not owning a television. Such people are threatened that they will be confronted in their homes and interviewed under caution, with the implied threat that their homes will be searched, even though no legal powers in this respect exist. Many are undoubtedly elderly and infirm. I am sure that 'S. 40' was not the first or the only such person to be intimidated into buying a licence without legal cause. Several such cases have been recorded on the Isle of Man.

If the intimidation of a celebrity such as Mr Sachs was an outrage, how much more malevolent to threaten and alarm many hundreds, if not thousands, of our population who have committed no misdemeanour but merely do not use a television set.

Ms Doubtfire has written several very repetitive pages that seek to suggest that I wish to have details of the contractual arrangements between the BBC and Capita. It is clear from her letter that the relationship between the two entities is a very close one and they do not wish that relationship to be in any way challenged or compromised. The appropriateness of statements such as "Capita would not be able to offer the BBC the same, low prices that it does currently.." and "if Capita was no longer able to offer the BBC the same low prices that it currently does," could be questioned. They sound more like extracts from Capita's promotional material than an objective response to my simple request; proper response to which would not "reveal valuable information on pricing structures, business structures and operations to the competitors of Capita." whom, it seems, the BBC wish to protect at all costs. I have requested one simple piece of information and, far from making every effort "to provide transparency and accountability in respect of television licensing functions", Ms Doubtfire in fact seeks to create an imbroglio and the impression that answering me frankly might bring down the Corporation. This is disingenuous and arrant nonsense!

The BBC have claimed previously that their agreements with Capita run to many thousands of pages such that a competent operator of a modern photocopier could not copy them in 15 to 20 hours. Now Ms Doubtfire seeks to claim that this immense archive is so commercially important and valuable that not the smallest part should not be made available to the public who finance the BBC. This can not possibly be what was envisaged by Parliament when the Freedom of Information Act was approved. Of course it must be of over-riding importance that we can scrutinise how the BBC spends public funds and I reiterate; I have always said that I have no interest in the commercial transactions, only the principles behind one tiny component of their agreement(s) with a single contractor.

The BBC's delay and prevarication over my request has impeded my discussions with my MP and with the head of the Communications Commission of the Isle of Man Government (now retired and replaced) regarding the appropriateness of Capita's behaviour. It has also denied me the information necessary to adequately respond to the BBC Trust's public consultation and review of how the licence fee is collected. Typically the BBC has always over-run its own declared timescales for each and every request for information that I have made. I believe this pattern of delay is not coincidental and I request a prompt review of this most recent and most perverse decision.

Yours faithfully,

S. 43

-----Original Message-----

From: FOI Enquiries [mailto:FOIEnquiries@bbc.co.uk]

Sent: 17 November 2008 17:25

To: S. 43

Subject: RFI20080647 Final, post IR response

<<RFI20080647 Final, post IR response.pdf>>

Dear S. 43

Please find attached the follow up response arising from your Internal

Review decision.

Yours sincerely

Fern Kersey

Adviser, Information Policy and Compliance

BBC Freedom of Information

Room 2252

BBC White City

201 Wood Lane

London W12 7TS, UK

Website: www.bbc.co.uk/foi/

Email: <mailto:foi@bbc.co.uk>

Tel: 020 8008 2883

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Louise Wright

From: S. 40
Sent: 31 December 2008 10:52
To: FOI Enquiries
Subject: RE: Requests RFI20080647 & RFI20081170, Internal Review IR2008026

Mr Pickard,

Further to my earlier communication, after contact from the Information Commissioner's Office, I note that your message below refers only to matters up to Ms Doubtfire's communication of 17 November (although you attach later correspondence). For the sake of clarity, I accept that, after two reviews which largely or wholly found in my favour, we have now exhausted the claim that the BBC can not copy the number of pages required to provide the requested information within 2½ days.

You will recall that after 7 months of prevarication and delay, and following the internal reviews, you entirely changed the reason for withholding the requested information from an inability to photocopy so many pages to a claim that this information is protected under S43. The really rather ludicrous suggestion that it is in the public interest to withhold this information from the public is the one I now seek to challenge and was the basis of my communication dated 24 November, which you attach.

Because you so dramatically changed your position, this is a completely different request for internal review of an entirely different decision. If you continue to ignore this request, I will ask the Information Commissioner to take the matter up. I have also requested my MP to make a similar request in his name.

S. 40

-----Original Message-----

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Sent: 30 December 2008 16:12
To: S. 40
Subject: RE: Requests RFI20080647 & RFI20081170, Internal Review IR2008026

Dear S. 40

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To clarify, we responded to your original Freedom of Information request (RFI20080647) on 11 July and subsequently undertook an internal review at your request which was sent to you on 28 August. Furthermore, Pipa Doubtfire wrote to you on 17 November to further clarify our previous responses. We therefore consider this case is now closed. Should you disagree, you have the right to appeal to the Information Commissioner. Details are as follows: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, telephone 01625 545 700 or see <http://www.ico.gov.uk/>

Yours sincerely

Mr S. Pickard
Information and Compliance Manager

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12/10/2009

S. 40

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From: S. 40

Sent: 23 November 2008 18:01

To: 'FOI Enquiries'

Subject: Requests RFI20080647 & RFI20081170, Internal Review IR2008026

Ms Fern Kersey

Adviser

Information Policy and Compliance

BBC Freedom of Information

Room 2252

BBC White City

201 Wood Lane

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Yours faithfully,

• S. 40

-----Original Message-----

From: FOI Enquiries [<mailto:FOIEnquiries@bbc.co.uk>]

Sent: 17 November 2008 17:25

To: S. 40

Subject: RFI20080647 Final, post IR response

<<RFI20080647 Final, post IR response.pdf>>

Dear **S.40**

Please find attached the follow up response arising from your Internal Review decision.

Yours sincerely

Fern Kersey

Adviser, Information Policy and Compliance

BBC Freedom of Information

Room 2252

BBC White City

201 Wood Lane

London W12 7TS, UK

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**Released by the BBC under
the Freedom of Information Act 2000**

Louise Wright

From: FOI Enquiries
Sent: 17 November 2008 17:25
To: S. 40
Subject: RFI20080647 Final, post IR response
Attachments: RFI20080647 Final, post IR response.pdf



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Dear S. 40

Please find attached the follow up response arising from your Internal Review decision.

Yours sincerely

Fern Kersey
Adviser, Information Policy and Compliance

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Fax: 020 8008 2398

Released by the BBC under the Freedom of Information Act 2000



Information Policy & Compliance
bbc.co.uk/foi

S. 40.

17 November 2008

Dear S. 40

Re: Freedom of Information request RF120080647, Internal Review IR2008026 and Freedom of Information request RF120081170

I write further to your request for information under the Freedom of Information Act of 13 June 2008 (ref RF120080647), in which you stated the following:

I am very disturbed by the aggressive and threatening behaviour of Capita Business Services Limited and, possibly, others trading as "TV Licensing". I believe their thuggish methods are designed to increase revenues for the BBC by intimidating those who have no legal requirement to purchase a television licence into purchasing one. I therefore wish to identify components of the agreements to which I referred previously that may motivate Capita etc to behave as they do, so that I may raise this issue at an appropriate political level. I therefore require to understand the mechanism(s) whereby the BBC remunerates Capita.

... I can not understand that there can be so many agreements with this company in a three year period that copying and despatching those agreements would take 2.5 days, or anything like. I therefore suggest that, in the first instance at least, you copy to me your agreements with Capita. . .

This request was made in response to your previous request (ref RF120080495) for details of all current agreements, contracts and arrangements between the BBC and Capita Business Services Limited or any and all other organisations, companies or contractors contracted by the BBC and using the generic trading name "TV Licensing". The BBC refused this earlier request under section 12 (fees regulations), as to comply would have taken more than 2.5 days.

The BBC responded to you on 11 July 2008, explaining that your request was exempt from disclosure under section 12 of the Act. We also informed you at that time that other exemptions, in particular section 43 (commercial prejudice), might apply to your request. You subsequently requested an Internal Review (ref IR2008026) of our response.

The Internal Review (a copy of the findings for which was sent to you on 28 August 2008) concluded that the BBC's response should not have taken so long to send and that the fees limit was not correctly applied in this instance. The Reviewer advised that the BBC should revisit the original request in order to give you a more satisfactory response. This letter sets out the results of this process.

Firstly, I must apologise for the delay in responding to the recommendations in the Internal Review. This was due to the complex nature of your query. However, even with this in mind you should have received this communication more swiftly. You have quite rightly contacted the Information Commissioner's Office regarding this matter and I have copied this letter to them. I have also, as a result of your case, implemented a new procedure with immediate effect in order to ensure that such a delay does not happen again. I would like to reassure you that we make every effort to provide transparency and accountability in respect of our television licensing functions and welcome Freedom of Information requests such as yours.

Turning now to the substance of your request, as you know, the BBC is in regular liaison with Capita every day concerning their responsibility to administer, monitor, enforce and police the television licensing system. In theory, every aspect of this liaison could be considered as an *agreement* relating to their TV Licensing responsibilities. However, having further reviewed the information you requested, namely "*your agreements with Capita*", we have interpreted your question as referring to the main contract between the BBC and Capita Business Services Limited for the management of the enforcement, collection and administration of the licence fee.

We can confirm in terms of section 1(1) of the Act that the BBC does hold the information you requested. However, we are withholding this information under s43(2) of the Act as its release would be likely to prejudice the commercial interests of Capita and, in turn, the BBC.

In this case, it is our view that disclosure of the information requested would reveal valuable information on pricing structures, business structures and operations to the competitors of Capita. It is therefore likely to place Capita at a disadvantage when competing for work, specifically in the context of the reprocurement of the contract for the management of the enforcement, collection and administration of the licence fee which is due to take place in 2012. The service delivery market is a very competitive one and Capita competes with a large number of other agencies for contracts. The release of this information would allow Capita's competitors to ascertain with some certainty the amount Capita was likely to bid for this contract, while Capita would not be in possession of the same information regarding its competitors. The release of the requested information would therefore be likely assist Capita's competitors in outbidding them in order to re-secure this contract.

Disclosure of this information would also be likely to place Capita at a disadvantage when negotiating with existing and potential clients for other, non-BBC work, as Capita has a large client base and information about the details of BBC contracts is not widely known. It would be greatly beneficial to Capita's clients to learn the prices charged by Capita to the BBC for particular services, since they may then try to use this as a bargaining tool.

If either of the above impacts occur, Capita would not be able to offer the BBC the same, low prices that it does currently, which would compromise the BBC's ability to achieve value for money for licence fee payers.

It is also the BBC's position that the disclosure of the requested information would be likely to prejudice the commercial interests of the BBC. This is because if Capita was no longer able to offer the BBC the same low prices that it currently does, the BBC would be left facing a choice between spending less on this contract and failing to appropriately enforce, collect and administer the licence fee or allocating additional monies for this contract and losing funding to other important areas such as programming.

Disclosure of the requested information could also lead to a ratchet effect among potential future suppliers of these services to the BBC. As stated above, the current contract with Capita runs until 2012 and the BBC anticipates that re-tendering for the supply of these services will commence in late 2010. Capita is not guaranteed the contract in 2012 and will compete alongside other bidders who are likely to be the other major service providers already referred to above. Since suppliers will assume that a minimum level of funds is available for particular services, they will have an incentive to price their bid beyond that level. Disclosure would therefore prejudice the BBC's ability to secure the best possible terms with potential suppliers of these services in the future.

The result is likely to be to the grave prejudice of the BBC, leading to the BBC either being unable to attract bids from the widest possible range of suppliers and suffering an attendant drop in the quality of its enforcement, collection and administration of the licence fee or increasing its payments to suppliers and suffering an attendant drop in value for money to the licence payer.

As section 43 is a qualified exemption, the BBC is required by section 2(2) of the Act to consider the public interest factors in this case. Specifically, we looked at 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, we recognised that there is a public interest in the following:

- that the BBC is using public money effectively.
- that the BBC is getting value for money in respect of its use of the licence fee when purchasing goods and services.
- that there is a high standard of debate around the licence fee collection, currently being generated in response to the BBC Trust's open consultation (available at http://www.bbc.co.uk/bbctrust/consult/open_consultations/tv_licence.html). This can be facilitated by placing as much information as possible into the public domain.

However, it is the BBC's contention that these objectives will be threatened if the contract with Capita is disclosed (see above). 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, both internal and external. These include the oversight of the BBC Trust (responsible for commissioning value for money investigations into specific areas of BBC activity (Article 24(2)(i) of the Charter)) and the Executive Board (responsible for conducting the BBC's operational affairs in a manner best designed to ensure value for money (Article 38(1)(h) of the Charter)). These mechanisms also include Ofcom, the fair

trading regime and competition law in general. Indeed, in the interests of transparency and accountability, certain limited information on expenditure is already provided in the BBC's *Annual Report and Accounts* and the *TV Licensing Annual Review* (available at http://www.tvlicensing.co.uk/pdfs/AnnualReview_en2008.pdf?r_exit_link=d_pdf_download). For example, information on collection costs can be found on page 6 of the *TV Licensing Annual Review*. It is the BBC's contention that the release of detail beyond this threatens to pose considerable harm to the BBC's commercial interests, without offering a proportionate benefit to the public.

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 maintains a strong bargaining position vis-à-vis suppliers during contractual negotiations in order to ensure that the licence fee is spent effectively.
- that the competitive position of companies in their particular market is not disadvantaged by doing business with the BBC. It would not be in the public interest to disclose sensitive information about a particular company if that information would be likely to be used by competitors to gain a competitive advantage.

In this instance, the public interest is served by ensuring that the commercial interests of the contracts with the BBC's TV Licensing partners are protected.

There is hence a greater public interest in ensuring the effective collection of the licence fee than in disclosing the information you have sought. We are therefore satisfied, in terms of section 2 of the Act, that in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest (outlined above) in disclosing the information.

Freedom of Information request RFI20081170

You recently submitted a further request to the BBC dated 31 October 2008 seeking information about TV Licensing. This request is also being dealt with under the Freedom of Information Act 2000 ("the Act"). In your latest request you asked the following:

Capita Business Services Limited operates under the name "TV Licensing" to administer the collection of television licence fees and monitor, enforce and police the television licensing system. Kindly provide details of any clauses or other components of any agreements, contracts and arrangements currently in force between the BBC and Capita Business Services Limited, its associates and subsidiaries, that allude to, or seek to define, any incentive arrangement relating to the collection of fees for television licences for the benefit of Capita Business Services Limited. The financial components of any such arrangements may be commercially confidential and are not required. I seek to establish only the underlying principles.

The BBC considers that this request is very similar to your previous request RFI20080647, which asked for *your agreements with Capita*. As outlined above, we are withholding this information under s43 of the Act as disclosure under the Act would, or would be likely to, prejudice the commercial interests of Capita and the BBC.

The BBC considers that there is no more information that can be provided to you without prejudicing the commercial interests of any person. Therefore, the BBC is considers that the response above satisfies your request. Under section 14(2) of the Act, we are not obliged to respond to a substantially similar request made by the same requestor.

Appeal rights

If you are not satisfied with this response – specifically on this occasion the BBC's application of section 43(2) to the information - you have the right to an internal review by a BBC senior manager or legal adviser. Please contact us at the address provided, explaining what you would like us to review and including your reference number. 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 see <http://www.ico.gov.uk/> . As noted above, we understand you have made a complaint to the ICO and we are therefore copying the Information Commissioner's Office in on this response.

Once again, I would like to apologise for the delay in sending you this response. However, I hope you have found it helpful.

Yours sincerely,



Pipa Doubtfire
Head of Revenue Management
BBC

Cc: Information Commissioner's Office, Wycliffe House, Water Lane,
Wilmslow, Cheshire, SK9 5AF

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