



Freedom of Information Internal Review Decision

Internal Reviewer: David Attfield
Reference: RFI20100110 – IR2010005
Date: 8 March 2010

Original request and the BBC's decision:

The requestor asked that the BBC makes available the number of search warrants that were applied for and that were granted in the last year for the purpose of searching for television receiving equipment.

The BBC, in its initial response to this request, determined that the information sought fell within the 'law enforcement' exemptions set out in sections 31 (1) (a), (b), (d) and (g) and section 31 (2) (a) of the Freedom of information Act ("the Act") . This was because the BBC claimed that disclosure would, or would be likely to, prejudice:

1. The prevention or detection of crime (Section 31 (1) (a)),
2. The apprehension or prosecution of offenders (Section 31 (1) (b)),
3. The collection of the license fee (Section 31 (1) (d)),
4. The BBC's ability to discharge its functions of ascertaining whether any person has failed to comply with the law (Section 31 (1) (g) and Section 31 (2) (a)).

The requestor has now asked that there be a review of the BBC's decision to withhold the requested information.

Issues on review

1. Whether the Section 31 'law enforcement' exemption applies to the information sought by the requestor because one or more of the requirements set out in Section 31 (1) (a) to (g) is satisfied.
2. If the Section 31 exemption does apply, whether disclosure should nonetheless be given because there is an overriding public interest in disclosure.

Background

In undertaking this review, I have considered the provisions of the Act and the guidance issued by the Department for Constitutional Affairs and the Information Commissioner's Office. I have also considered information provided to me on a confidential basis by the BBC's Licence Fee Unit together with other publicly available information.

1. Did the BBC correctly apply the Section 31 (law enforcement) exemption in this case?

I have noted the guidance on the application of Section 31 issued by the Department for Constitutional Affairs which states that prejudicial disclosures can include information relating to strategies and tactics in seeking to prevent crime and that such disclosure has a high potential to undermine legitimate objectives carried out in the public interest. The guidance makes clear that this 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.

I have also noted guidance issued by the Information Commissioner's Office on the application of Section 31 and the ICO's Decision Notice of 19 May 2008 (Ref. FS50137475). Together, these make clear that the Section 31 exemption will apply where releasing information may well prejudice efforts to prevent crime. The Decision Notice of 19 May 2008 is closely analogous as it concerns a request for information regarding the use of TV detector vans. In that case, the Information Commissioner found that a change in the public's perception of the likelihood of being caught for licence fee evasion could well result in greater levels of evasion which would prejudice the prevention of crime.

I am mindful of the fact that the requestor is not seeking wide ranging information about detection and enforcement but has focussed the request on the number of search warrants applied for and granted. However, I have seen strong evidence that, whilst the licence fee enjoys considerable support, there is a body of the public who object to having to pay it and/or who seek to avoid paying it. There is a willingness amongst some of these people to share information about how to avoid payment and the risks of being caught for evasion, which includes online discussions about the detection and enforcement tactics deployed in order to collect the licence fee. Were specific information about the prevalence of detection and enforcement tactics to be disclosed, there is no doubt that this would help provide a clearer picture of TV Licensing's enforcement and detection practices which would be of assistance to anyone intending to attempt evasion.

Taking into account the factors and the guidance referred to above, I am satisfied that the information sought, if disclosed, is likely to influence the public's perception of detection tactics and is likely in turn to impact on public behaviour regarding the voluntary paying of the TV licence fee. Because of this, it is my view that disclosure of the information would be likely to prejudice the prevention or detection of crime; the apprehension or prosecution of offenders; and the ability of the BBC as the Licensing Authority to collect the licence fee.

It is also my view that disclosure of the information would prejudice the BBC in its role in determining whether individuals have failed to comply with the law in respect of the TV licence.

The information sought in the first request, therefore, is in my view exempt information under Section 31 (1) (a), (b) and (d) of the Act and under Section 31 (1) (g) and under Section 31 (2) (a).

2. Is there an overriding wider public interest in disclosure?

There are significant public interest factors in favour of disclosure of the information sought, which I identify as:

1. Ensuring that the BBC, in applying for search warrants, is exercising its Licensing Authority functions appropriately and proportionately.
2. Providing the public with a better understanding of the BBC's use of its statutory powers as the Licensing Authority relating to the collection of the license fee.
3. Allowing scrutiny of whether public funds are being appropriately applied towards ensuring compliance with TV licensing obligations.

However, in assessing the extent of this public interest, it is important to bear in mind the other means by which these public interests are to an extent fulfilled. I have in mind in particular the fact that search warrants are subject to strict requirements and are granted by a neutral third party (a magistrate in the case of England and Wales and a sheriff in Scotland) who considers the evidence and the public interest in each individual case. This helps ensure the appropriate exercise of powers to enter homes under a search warrant.

Whilst the magistrate or sheriff would not assess the underlying policy regarding the obtaining of search warrants, other information issued by the BBC ensures that the public has an understanding of the BBC's use of its statutory powers relating to the collection of the licence fee. This includes information on the BBC's policy on search warrants. Further, the public interest in ensuring that value for money is being obtained is to at least some extent satisfied by the National Audit Office which assesses and reports on the value for money of the BBC's collection and enforcement arrangements. Further, additional information relating to the cost of the TV licensing system is published by the BBC including in the BBC's annual report and in the TV licensing annual review. Thus the public is able to assess the whether the TV Licensing system is efficiently run and offers value for money.

In light of the roles performed by the courts and by the National Audit Office, and the information already published by the BBC, the following countervailing factors in my view outweigh the factors which support disclosure:

1. The importance of maintaining effective deterrence. This is a key aspect of TV licence enforcement. Without effective deterrence, the cost of TV licence collection and enforcement would undoubtedly increase which would not be in the interests of TV licence fee payers. I am satisfied that disclosure of the information sought (either on its own or combined with other information relating to detection and enforcement) would undermine this deterrence.

2. It is in the public interest that crimes are detected and, where appropriate, prosecuted. I am satisfied that disclosure of the information sought, in particular if combined with other information relating to detection and enforcement, is likely to influence the behaviour of a body of the public with regard to complying with their TV licence obligations and that this would prejudice the detection and prosecution of TV licence fee evaders.
3. There is a public interest in the BBC being able to collect all of the money it is entitled to by way of the licence fee so as to ensure that the BBC receives the full level of funds for its activities. The disclosure of the information sought, in particular if combined with other information relating to detection and enforcement, is likely to impact negatively on the amount of money that the BBC is able to collect.

Decision

I endorse the BBC's original decision that the information sought is exempt because its disclosure would, or would be likely to, prejudice the prevention or detection of crime; the apprehension or prosecution of offenders; and the ability of the BBC as the Licensing Authority to collect the licence fee. The information would also be likely to prejudice the BBC in its role in determining whether individuals have failed to comply with the law in respect of the TV licence. In all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.