



## Freedom of Information Internal Review Decision

**Internal Reviewer:** Kate Leece, Head Of Legal & Business Affairs - TV RBA New Media

**Reference:** Internal Review IR2008014

**Date:** 17 June 2008

### Original Request:

“how much the public-service side of the BBC has spent on paid-for adverts on Web Search Engines (e.g. Google Adwords) in 2007.”

### The requester wrote in his request for internal review:

*“I request an Internal Review of your rejection of my request, ref RF120080201, for non-programme related spend in 2007 on paid-for adverts on web search engines (including, but not restricted to Google).”*

### Issues on review:

The review concerns the application of the exemption under section 43 (2) (Commercial Prejudice) of the FOIA and specifically whether the disclosure of the requested information would be likely to prejudice the commercial position of the BBC and/or its media buying agency MPG.

If the conclusion is that prejudice would, or would be likely to be caused, the review should consider whether the public interest in disclosure outweighs the public interest in maintaining the exemption and withholding the information.

### Review:

The relevant exemption under the FOI Act is as follows:

### Section 43 of the FOIA:

#### 43 Commercial interests

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).



**(3)** The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

I have reviewed the Information Commissioner's Office (ICO) Freedom of Information Act Awareness Guidance No 5 (Commercial Interests) on the use of this exemption:

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_5\\_v3\\_07\\_03\\_08.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_5_v3_07_03_08.pdf)

This states that '*a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods and services*'. The Guidance note recognises that a public authority will hold a wide range of information relating to the procurement process for the supply of goods and services, including information about its own position as purchaser, as well as that of third party suppliers who bid for work. It also recognises that the release of information about the cost of goods and services can prejudice both a public authority's position as purchaser, and a third party's position as the supplier of those services, in the commercial marketplace.

In this case, the media buying industry is highly competitive and the release of pricing information could prejudice the bargaining position of the BBC when next seeking media buying services. Likewise release could prejudice the supplier's position when submitting competitive tenders to other purchasers in the future. Release of such information could also damage the confidence that customers, suppliers and investors have in the company, and have an adverse impact on its revenue.

In order to determine whether the disclosure of information would prejudice a commercial interest, a public authority should in accordance with the Secretary of State's Code of Practice, consult with the parties likely to be effected by the disclosure. I can confirm that the BBC did consult with its media buying agency, MPG, on this request and that MPG expressed concern that disclosure of this information by the BBC would be damaging to their commercial interests.

I have therefore concluded that disclosure of the requested information would, or would be likely to prejudice the commercial interests of the BBC and/or MPG, and that section 43 (2) should apply in this instance. I recognise that this is a qualified exemption and that the public interest test therefore applies.

This was taken into account in the original response and I support the arguments for and against disclosure as set out below:



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

- That there is transparency in the accountability of the BBC for public funds
- That the BBC is using public money effectively, and that the BBC is getting value for money when purchasing goods and services

On the other hand, in considering factors that might weigh in favour of the public interest in withholding, the BBC 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.
- 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.

To this I would add that

- There is a public interest in ensuring that companies are able to compete fairly and that there is competition for public sector contracts. Companies may be discouraged from entering competitions run by public authorities if it resulted in disclosure of their pricing.

Taking the above arguments into account, I confirm that I agree with the view taken that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

**Decision:**

Following this review, I agree that the application of the exemption under Section 43 (2) of the FOIA (Commercial Prejudice) should be applied in this case, and that in the circumstances set out above, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.