



Information Policy & Compliance
bbc.co.uk/foi

Tom Adams,
Via email: request-41767-a1725827@whatdotheyknow.com

16 August 2010

Dear Mr Adams,

Request for Information – RFI20100948

Thank you for your request of 12th August 2010 under the Freedom of Information Act 2000 seeking the following information:

- 1. All correspondence with Dave Johnson in relation to beebPlayer, an Android application for accessing iPlayer content.*
- 2. All correspondence with any other parties in relation to beebPlayer.*
- 3. All internal correspondence relating to beebPlayer.*

We have not met the 20 working day deadline for this response and we would like to offer our apologies for this delay.

BeebPlayer is an application developed by a third party and is not an authorised BBC application. Additional information can be found in the recent BBC Internet blog at this link:

http://www.bbc.co.uk/blogs/bbcinternet/2010/07/round_up_tuesday_6_june_2010.html

A further blog about our decisions regarding the BBC's mobile service can be found here:

http://www.bbc.co.uk/blogs/bbcinternet/2010/07/bbc_iplayer_on_android_update.html

I shall now respond to each of your questions in turn.



Question 1:

We can confirm under Section 1(1) of the Act that the BBC holds correspondence with the developer of the 'beebPlayer' software. However, under section 40(2) of the Act we are withholding this information because it constitutes personal information. Personal information about living individuals is exempt under the Freedom of Information Act if disclosure to a third party would breach one or more principles of the Data Protection Act 1998. As individuals do not expect private correspondence between themselves and the BBC about their own enterprises to be disclosed, to do so would be unfair; therefore, disclosure would breach the First Data Protection Principle, fairness.

Question 2:

In accordance with section 1(1) of the Act, we confirm that the BBC holds two emails with third parties which refer to beebPlayer. However, we will not be providing you with this information as we consider it to be exempt under section 43(2)(commercial interests) of the Act. This is because disclosure would be likely to prejudice the commercial interests of the BBC and those third parties by disclosing information that would be likely to:

- damage the BBC's business reputation or the confidence that customers, suppliers or investors may have in it;
- weaken the BBC's bargaining position with suppliers of goods and services;
- have a detrimental impact on the potential commercial revenue of the third parties in the wider market;
- weaken the BBC's and the third parties positions in a competitive environment by revealing market sensitive information or information of potential usefulness to competitors;
- harm the ability of the BBC to obtain goods and services in the future;
- harm the ability of the third parties to provide goods and services in the future.

As section 43 is a qualified exemption, in accordance with section 2(2) of the Act, we have considered the public interest factors in this case. 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, we recognised 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;
- that the BBC's commercial activities are conducted in an open and honest way.

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

- that companies provide the BBC with commercially sensitive information, so that the BBC is able to make robust decisions regarding its suppliers of goods and services, including ensuring that the BBC obtains the best value for money from each transaction;
- 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.

We are 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.

Question 3:

We can also confirm under Section 1(1) of the Act that the BBC holds information relating to internal communications about beebPlayer on the Android platform.

We can confirm that one email exchange on 6th July 2010 between two members of staff in the BBC's Future, Media & Technology (FM&T) division contained the following information which we consider to be relevant to your request and subject to disclosure:

- In an email sent from a member of staff in FM&T Legal & Business Affairs to FM&T online editorial staff at 14:12:

"FYI – we've received an FOI request about BeebPlayer."

- In an email sent at 14:26 from a member of FM&T online editorial staff to a member of staff in FM&T Legal & Business Affairs:

"The bulk of comments on Beebplayer on the Internet Blog are here:

http://www.bbc.co.uk/blogs/bbcinternet/2010/06/bbc_iplayer_on_mobile_a_new_ve.html

However we are withholding the remainder of this email and the remainder of internal correspondence held relevant to this part of your request under section 42 of the Act, which relates to legal professional privilege ("LPP").

LPP covers among other things confidential communications between lawyers and their clients for the purpose of seeking and obtaining legal advice, or communications between lawyers and third parties which come into existence after litigation is contemplated and are made for the dominant purpose of such litigation.

As section 42 is a qualified exemption, in accordance with section 2(2) of the Act, we have considered the public interest factors in this case. 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 releasing the information, we recognised that there is a public interest in the following:

- that there is transparency in the accountability of the BBC for public funds;
- that releasing the information would contribute to the public debate on the issue.
- that there is a public interest in understanding how the BBC manages its platforms and services.

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

- The seeking of legal advice by all persons in order to enable them to order their affairs in a lawful manner is strongly in the public interest. That public interest is perhaps at its strongest where the client seeking and receiving legal advice is a public body or quasi-public body whose decisions have the potential to affect large numbers of people. In order for the seeking of advice to take place and for the advice given to be valuable, it is crucial that the seeking and giving of such advice be carried out with absolute candour. This requires that clients be secure in the knowledge that the information that passes between them and their lawyers in the course of seeking and giving legal advice will be free from scrutiny by outsiders. As the Information Tribunal recognised in *Bellamy v Information Commissioner EA/2005/0023*:

“There is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest.”

We are 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.

Appeal Rights

If you are not satisfied that the BBC has complied with the Act in responding to your request you have the right to an internal review by a BBC senior manager or legal adviser. Please contact us at the address above, explaining what you would like us to review under the Act 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/>

Kind regards

Louise Wright
Advisor, Information Policy & Compliance