



Information Policy & Compliance

bbc.co.uk/foi

Ganesh Sittampalam

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2 June 2008

Dear Mr Sittampalam

Freedom of Information request – RFI20080551

Thank you for your request of 25th May 2008 under the Freedom of Information Act 2000 seeking the following information:

- *Please provide any available breakdowns of the "Marketing, press and publicity £45.4m" figure from your 2006/7 annual accounts.*

The BBC will not be providing you with the information you requested as we consider that it is not covered by the Freedom of Information Act 2000 ("the Act"); further, even if the information were covered by the Act, it would be exempt from disclosure under section 43(2) of the Act because to do so would prejudice the commercial interests of the BBC.

Scope of the Act

The BBC and the other public service broadcasters are covered by the Act only in respect of information held for purposes "other than those of journalism, art or literature" (see Schedule I, Part VI of the Act). This means that the BBC is not obliged to supply information held for the purposes of creating output or which is closely associated with such creative activities. The BBC considers that this includes information about the costs involved in creating its output, including the cost to the BBC of producing trails.¹

Recent decision of the Information Commissioner

The BBC notes the recent decision notices of the Information Commissioner (ref. FS50067416). In these decisions, the Commissioner considered that the costs involved in the production of

¹ For more information about how the Act applies to the BBC please see www.bbc.co.uk/foi Please note that this guidance is not intended to be a comprehensive legal interpretation of how the Act applies to the BBC.



programmes did fall within the scope of the Act. However, the Commissioner has accepted that some cost information is exempt under section 43(2) of the Act as its disclosure would be likely to prejudice the commercial interests of the BBC and of third parties.

The BBC's approach to this case

The BBC does not agree with the Commissioner's decision on the scope of the Act and reserves its position on the matter. However, the BBC considers that in the event of a similar finding by the Commissioner in this case, the information you have requested would also be exempt under the Act under section 43(2) because disclosure would be likely to prejudice the commercial interests of the BBC, in the following way.

By way of background, the Marketing, press and publicity £45.4m figure covers the cost of marketing production across all platforms - tv / radio / web; off air spend; agency fees; listings descriptions and distributions; press and publicity activities. The BBC engages different companies to work with them in these areas and therefore disclosure of the cost of these different areas of activity would reveal valuable pricing information not only to our suppliers' potential and existing customers, but also to their competitors (for both non-BBC and BBC work). As a result, they could be forced to raise their prices for BBC work, which would compromise the BBC's ability to achieve value for money for licence fee payers.

Releasing the cost of these activities publicly could also lead to a ratchet effect among potential future suppliers of marketing services and concepts to the BBC. Since these companies will know that a minimum level of funds was paid for a particular type of marketing service, they would have an incentive to only bid beyond that level, whereas they may previously have accepted a fee below that level.

Disclosure risks a considerable cost increase in the future and would result in the BBC facing a choice between allocating additional monies for marketing functions and losing funding to other important programming areas, or spending less on marketing and failing to engage its target audiences.

Consideration of the public interest

As section 43 is a qualified exemption, the BBC has considered the public interest factors in this case in accordance with section 2(2) of the Act: 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, the BBC recognises that there is a public interest in the following:

- There is a clear public interest in ensuring that the BBC is able to provide quality programming and value for money in respect of its use of the licence fee. Both these objectives will be threatened if information relating to the cost of trails is disclosed, for the reasons set out above; and
- Furthering the public's understanding of and participation in public debate on a topic. However, in order for the information to be of value to the public, it would be necessary

to have access to information about the costs of other broadcasts who commission similar content. The majority of the broadcasting industry is not subject to the Act and therefore information about their content is not subject to disclosure under the Act.

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 has robust controls on the way public money is spent which are already evident. There are a broad range of oversight mechanisms, internal and external, including the oversight of the BBC Trust, the Executive Board, Ofcom and the fair trading regime and competition law in general. High level information on expenditure is provided in the Annual Report, however detail beyond this threatens to pose considerable harm to the BBC's commercial interests, without offering a proportionate benefit to the public;

I am 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

The BBC does not offer an internal review when the information requested is not covered by the Act. However, if you are not satisfied with our response, you do have the right to 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 www.informationcommissioner.gov.uk

In the event of a finding by the Information Commissioner that the Act does apply in this case, should you then wish, the BBC is prepared to undertake an internal review of our decision on the application of section 43 (commercial prejudice) to the information you have requested.

Yours sincerely,

Susannah Penk
MC&A Business Manager