



Information Policy & Compliance  
[bbc.co.uk/foi](http://bbc.co.uk/foi)

Mr Ray Corrigan

Sent by email to: [request-74209-950772a7@whatdotheyknow.com](mailto:request-74209-950772a7@whatdotheyknow.com)

8<sup>th</sup> July 2011

Dear Mr Corrigan,

## **Freedom of Information Act 2000 – RFI20110637**

Thank you for your request under the Freedom of Information Act (the Act) received by email on 6<sup>th</sup> June 2011, asking for:

*“full and complete copies of all the BBC communications with Ofcom relating to the Ofcom consultation 'Content management on the HD Freeview platform'”*

*In particular could you send me:*

*(a) A full copy, including the redacted sections noted on page 1 and 7, of the 'BBC response to Ofcom consultation of 22 January 2010'*

*(b) A copy of the BBC submission to Ofcom of 8 December 2009 on this same matter”*

The following table lists the documents being disclosed in this response. In the table the names of people referred to are as follows:

- Alix: Dr Alix Pryde, Controller BBC Distribution (now Director, BBC Distribution)
- Graham: Graham Plumb, Acting Controller BBC Distribution (during absence of Alix)
- James: James Jackson, Head of Broadcast Infrastructure, BBC Distribution
- Ofcom: Usually refers to David Harrison, Strategy & Market Developments, Ofcom, but refer to the individual documents for where this differs.



INVESTOR IN PEOPLE

Doc Ref	Date and time	From	To	Subject
A3	04 Sep 2009 14:33	Alix	Ofcom	Email chain regarding Ofcom's publication of BBC letter regarding Mux B licence amendment
A4b	04 Sep 2009 14:33	Alix	Ofcom	Attachment to above doc ref A3. Includes BBC letter of 27 Aug 2009
A2	14 Sep 2009 13:08	Alix	Ofcom	Email chain advising BBC of progress of Mux B licence amendment
J13	24 Nov 2009 14:01	Ofcom	James	Email chain setting up conference call. There are no records about the call itself.
J12a	26 Nov 2009 10:35	Ofcom	Graham	Email chain regarding interim content management provisions, pending the consultation. I have not been able to locate the document "Letter to David Harrison.pdf" mentioned in this email
J12b	26 Nov 2009 10:35	Ofcom	Graham	Attachment to above doc ref J12a (response from Ofcom)
J11	07 Dec 2009 09:18	Ofcom	James	Email chain regarding BBC's response to Ofcom letter of 9th November. I have been unable to locate a copy of the 9th November letter.
J3a	08 Dec 2009 18:51	James	Ofcom	Email giving BBC's response to Ofcom letter of 9th November. Note that the final version of attachments contained herein are published in the Ofcom consultation to which you refer on the page labelled as page 49 (page 52 of the pdf file) here: <a href="http://stakeholders.ofcom.org.uk/binaries/consultations/content_mngt/summary/condoc.pdf">http://stakeholders.ofcom.org.uk/binaries/consultations/content_mngt/summary/condoc.pdf</a>
J3b	08 Dec 2009 18:51	James	Ofcom	Attachment to above doc ref J3a. Covering letter. The third attachment to the email is identical to this first one. This is the document you refer to in part (b) of your enquiry
J3c	08 Dec 2009 18:51	James	Ofcom	2nd Attachment to above doc ref J3a. Response to Ofcom letter of 9th November
J2a	16 Dec 2009 19:42	James	Ofcom	Email giving slight modifications to document J3b
J2b	16 Dec 2009 19:42	James	Ofcom	Attachment to above doc ref J2a. This is a marked-up version showing the changes.
J2c	16 Dec 2009 19:42	James	Ofcom	2nd Attachment to above doc ref J2a. This is the clean version without mark-up
J2d	16 Dec 2009 19:42	James	Ofcom	3rd Attachment to above doc ref J2a. This is a redacted version of doc ref J2c. Note that it was the un-redacted version which ultimately made it into the Ofcom consultation. The only redaction is the text "\$100" in section 2.1. At the time it was thought that the total manufacturing cost of HD PVR devices might be commercially sensitive, given that no manufacturer had released such a machine to market at that time.
J1a	22 Dec 2009 16:20	James	Ofcom	Email giving more slight modifications to document J3b
J1b	22 Dec 2009 16:20	James	Ofcom	Attachment to above doc ref J1a. This is a marked-up version showing the changes.
J1c	22 Dec 2009 16:20	James	Ofcom	2nd Attachment to above doc ref J1a. This is the clean version without mark-up
J1d	22 Dec 2009 16:20	James	Ofcom	3rd Attachment to above doc ref J1a. See same comments on redaction as per document ref J2d.
G1	22 Jan 2010 13:45	Graham	Ofcom	Email advising Ofcom of BBC blog on subject of HD content management
G2	01 Feb 2010 15:58	Graham	Ofcom	Email chain setting up meeting to discuss progress of consultation
J18	01 Apr 2010 20:21	James	Ofcom	Email of BBC's response to consultation, and Ofcom acknowledgement thereof.
J10b	01 Apr 2010 20:21	James	Ofcom	Attachment to above doc ref J18. Cover sheet for consultation response
J10c	01 Apr 2010 20:21	James	Ofcom	2nd attachment to above doc ref J18. This document is the un-redacted version of the BBC's response to the consultation. Some sections of this document continue to be redacted under section 43(2) of the Act although we are now able to release some of the information that was previously redacted. See explanation in FOI response letter. This is the document you refer to in part (a) of your enquiry
J9a	08 Apr 2010 18:37	James	Ofcom	Email giving the redacted public version of the BBC's response to the consultation
J9b	08 Apr 2010 18:37	James	Ofcom	Attachment to above doc ref J9a
J17	19 Apr 2010 15:16	Ofcom	James	Email seeking clarification on content BBC would not be able to show in HD without content management, in response to doc ref J18 above.
J8a	30 Apr 2010 18:44	James	Ofcom	Email response to doc ref J17 above.
J8b	30 Apr 2010 18:44	James	Ofcom	Attachment to above doc ref J8a. Some sections of this document have been redacted under section 43(2) of the Act. See explanation in FOI letter.
J6	10 Sep 2010 11:15	James	Ofcom	Email seeking Mux B licence amendment confirmation
A1a	10 Sep 2010 11:35	Ofcom	Alix	Email enclosing Mux B licence amendment
A1b	10 Sep 2010 11:35	Ofcom	Alix	Attachment to above doc ref A1a
J5	10 Sep 2010 17:43	James	Ofcom	Email thanking Ofcom for doc ref A1a above.

Please note that nothing should be read into the fact that the document reference numbering system used above is missing some numbers. In compiling this response a number of duplicate emails were received from different sources, and also some emails were located which contained only part of an email chain that was included in its entirety elsewhere in a different email. All of these duplicate emails and duplicate partial email chains were removed from this response after I had allocated them a reference number, hence the missing numbers, but no information has been removed in this process.

Most of the emails contain personal contact details (email addresses and phone numbers) of the people involved, and these contact details have been redacted.

### **Redactions in Document ref J10c**

This is the document you refer to in part (a) of your enquiry. Due to the passage of time, some parts of this document which were previously redacted have now been released. However, we continue to withhold part of paragraph 1.4, all of both paragraphs labelled 1.5 (a numbering error in the document means that there are two adjacent paragraphs labelled 1.5), and part of paragraph 1.6. These paragraphs refer to details regarding the negotiation of broadcasting rights from content providers and are being withheld under section 43(2) of the Act as disclosure would be likely to prejudice the commercial interests of the BBC by revealing the tactics used in the negotiation of Broadcast Rights when seeking to obtain content for broadcast from third parties, which would in turn have an adverse impact on the BBC's negotiating position and a corresponding detriment either in the quality and scope of the Rights so obtained, or in the increased costs of procuring those Rights.

For example, disclosure would be likely to:

- prejudice the negotiating position of the BBC in ongoing contractual Rights negotiations;
- weaken the BBC's bargaining position with Rights holders;
- weaken the BBC's position in a competitive environment by revealing market-sensitive information or information of potential usefulness to competitors seeking to purchase the same Broadcast Rights; and
- harm the ability of the BBC to obtain Broadcast Rights in the future.

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 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; and
- that the BBC's commercial activities (including the procurement process) 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 the BBC maintains a strong bargaining position vis-à-vis Rights holders during contractual negotiations in order to ensure that the licence fee is spent effectively;
- That the BBC's negotiating position in ongoing contractual negotiations is not prejudiced;
- That the BBC's position in a competitive environment is not weakened by revealing market-sensitive information or information of potential usefulness to competitors; and
- That the ability of the BBC to obtain Broadcast Rights in the future is not harmed either in the scope and extent of those Rights obtained or in the cost of those Rights.

I am therefore satisfied, in terms of section 2 of the Act, that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

We are also continuing to withhold the section following Paragraph 3.4 under section 43 of the Act (commercial prejudice). 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 line with section 17(4) of the Act, we will not explain further the application of this exemption or the public interest test in this case, as to do so would reveal information which would itself be exempt. However, I can confirm that I am satisfied, in terms of section 2 of the Act, that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Redactions in Document ref J8b**

This document was part of a response to Ofcom who were seeking further details regarding the content referred to in paragraph 1.2 of the BBC's response to the consultation (document ref J10c). Part of this document has been redacted under section 43 of the Act (commercial prejudice). The information redacted is of exactly the same nature as that redacted in paragraphs 1.4 to 1.6 of document ref J10c and so the exact same public interest test applies here as that outlined above in respect of the negotiation of Broadcast Rights.

### **Appeal Rights**

You may request an internal review of our decision that your request exceeds the appropriate limit. Please contact us at the address above, 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/>

Yours sincerely,

Steve Gutteridge  
**BBC Distribution**