



Information Policy & Compliance
bbc.co.uk/foi

Ray Corrigan
Via email: request-74209-950772a7@whatdotheyknow.com

20th January 2012

Dear Mr Corrigan,

I refer to the BBC's response to your request for an internal review of our handling of your request reference RF120111060. The internal reviewer recommended that we disclose the BBC's draft submission to Ofcom on HD Content Management, subject to the redaction of any information exempt under an alternative section of the Act.

We initially advised you that we would provide this document to you, following consideration of further exemptions, by 25th November 2011. Unfortunately we were unable to meet this date and we apologise for any inconvenience caused by this delay.

We have now completed our review of the document and it is our view that some of the information contained within it is exempt from disclosure under section 43(2) of the Act as disclosure would be likely to prejudice the commercial interests of the BBC and the third party rights holder referred to in the document by providing insight into the detail of the contractual arrangements between them. This would have a detrimental effect on their negotiating position with other broadcasters.

For example, disclosure would be likely to:

- weaken trust in the BBC as a commercial partner by revealing the BBC's assessment of what would happen to a particular commercial arrangement;
- weaken both parties positions in a competitive environment by revealing market-sensitive information or information of potential usefulness to other broadcasters or competitors in future rights negotiations; and
- harm the ability of the BBC to obtain Broadcast Rights in the future from other rights holders.

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 the BBC's commercial activities are conducted in an open and honest way
- furthering the understanding of the need for the BBC to implement content protection on its HD content and consequently the implications would be should the BBC not protect certain content. To this end, the public interest is served by the disclosure of the remainder of the paper to you. Disclosure of the name of the rights holder and specific programme names adds little to the public's understanding of the argument advanced by the BBC in the draft submission

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

- that trust in the BBC is not undermined by the disclose of its assessment of what would happen to a particular commercial arrangement
- that it is in the public interest if 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 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.

You will note that we have not included the annexes to the advice as these fall outside the remit of your request as they are not in themselves legal advice. We should make you aware that these may be subject to exemptions under the Act in any event. Further, the document at Annex 2 is not covered by FOIA as it is directly related to our content and is therefore held for the purpose of Art, Journalism or Literature.¹

We hope you find this information useful.

Yours sincerely,

Rachael Ward
Adviser, Information Policy & Compliance

¹ Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by the Act if it is held for 'purposes other than those of journalism, art or literature'. The BBC is not required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities.