



Freedom of Information Internal Review Decision

Internal Reviewer: David Attfield, Litigation Lawyer, BBC

Reference: RFI2008028

Date: 5 September 2008

Original request and the BBC's decision:

The requestor sought answers to the following questions:

1. *What is the typical rate of prosecution, both by number and as a proportion, of all cases pursued not initially resulting in purchase of a license? This includes prosecutions, those cases where a 'prosecution statement' is taken, and any cases dropped other than as a result of payment on threat of prosecution.*
2. *Regardless of the reasons for proceeding or otherwise with prosecution, what is the aggregate conviction rate for all cases, including those prosecuted, those for which a 'prosecution statement' is taken, cases dropped under the guise of 'commercial decision', cases involving use not subject to licensing (whether these are dropped or wrongfully pursued), or any case which did not result in payment prior to prosecution. This includes, but is not limited to, all cases where a mail-shot is sent out and no payment received prior to a direct threat of prosecution.*
3. *The number of cases for which the Authority held a properly executed authorisation for covert surveillance (i.e. surveillance carried out without the subject's knowledge) under the Regulation of Investigatory Powers Act 2000 - including meeting the requirements of naming of the subject and a signature from an officer empowered under ss. 30 – 32 of the Act.*

The BBC, in its initial response to these requests, determined that the information sought in requests 1 and 3 fell within the 'law enforcement' exemptions set out in sections 31 (1) (a), (b), (d) and (g) and section 31 (2) (a) of the Act. This was because the BBC claimed that disclosure would, or would be likely to, prejudice:

1. The prevention or detection of crime (Section 31 (1) (a)),
2. The apprehension or prosecution of offenders (Section 31 (1) (b)),
3. The collection of the license fee (Section 31 (1) (d)),
4. The BBC's ability to discharge its functions of ascertaining whether any person has failed to comply with the law (Section 31 (1) (g) and Section 31 (2) (a)).

With regard to the second request, the BBC considered the phrase 'aggregate conviction rate for all cases' to be unclear and invited the requestor to clarify what information is being sought. To date, I understand that no clarification has been provided.

The requestor has now asked that there be a review of the BBC's decision to withhold information under Section 31 of the Act. Accordingly, in this review I consider the BBC's responses to the first and third requests. No information has at present been withheld in response to the second request and I do not therefore consider the BBC's response to this request in this review.

Issues on review

1. Whether the Section 31 'law enforcement' exemption applies to the information sought in requests 1 or 3 above because one or more of the requirements set out in Section 31 (1) (a) to (g) is satisfied.
2. If the Section 31 exemption does apply, whether there is an overriding public interest in disclosure.

Background

In undertaking this review, I have considered the provisions of the Act and the guidance issued by the Department for Constitutional Affairs together with information provided to me on a confidential basis by the BBC's Licence Fee Unit.

1. Did the BBC correctly apply the Section 31 (law enforcement) exemption in this case?

I have noted the guidance on the application of Section 31 issued by the Department for Constitutional Affairs which states that prejudicial disclosures can include information relating to strategies and tactics in seeking to prevent crime and that such disclosure has a high potential to undermine legitimate objectives carried out in the public interest. The guidance makes clear that this section is not confined solely to the police but also to other public authorities, which would include the BBC in its capacity as the Licensing Authority.

I have also noted guidance issued by the Information Commissioner's Office on the application of Section 31 and the ICO's Decision Notice of 19 May 2008 (Ref. F550137475). Together, these make clear that the Section 31 exemption will apply where releasing information may well prejudice efforts to prevent crime by changing public perceptions regarding the detection of crime and enforcement of the law.

I have seen strong evidence that, whilst the licence fee enjoys considerable support, there is a body of the public who object to having to pay it and/or who seek to avoid paying it. There is a willingness amongst some of these people to share information about how to avoid payment, which includes online discussions about the detection and enforcement tactics deployed in order to collect the licence fee.

The information sought in the first request is clearly likely to influence the public's perception of prosecution tactics and is likely, accordingly, to impact on public behaviour regarding the voluntary paying of the TV licence fee. Because of this, it is my view that disclosure of the information would be likely to prejudice the prevention or detection of crime; the apprehension or prosecution of offenders; and the ability of the BBC as the Licensing Authority to collect the licence fee. It is also my view that disclosure of the information would prejudice the BBC in its role in determining whether individuals have failed to comply with the law in respect of the TV licence. Therefore, the information sought in the first request is exempt information under Section 31 (1) (a), (b) and (d) of the Act and under Section 31 (1) (g) and Section 31 (2) (a).

With regard to the third request, I am satisfied in light of the above guidance and the ICO's Decision Notice of 19 May 2008 that disclosure of the information sought would influence the public's perception of enforcement methods and tactics and is likely, accordingly, to influence public behaviour regarding the voluntary paying of the TV licence fee. Because of this, it is my view that disclosure of the information would be likely to prejudice the prevention or detection of crime; the apprehension or prosecution of offenders; and the ability of the BBC as the Licensing Authority to collect the licence fee. It is also my view that disclosure of the information would prejudice the BBC in its role in determining whether individuals have failed to comply with the law in respect of the TV licence. Therefore, the information sought in the third request is exempt information under Section 31 (1) (a), (b) and (d) of the Act and under Section 31 (1) (g) and Section 31 (2) (a).

2. Is there an overriding wider public interest in disclosure?

There are significant public interest factors in favour of disclosure of the information sought in requests 1 and 3, which I identify as:

1. Ensuring that the BBC is exercising its Licensing Authority functions appropriately and proportionately, in particular that people are not unfairly subjected to detection.
2. Ensuring that public funds are being appropriately applied in that:
 - a) the TV licensing system is being efficiently run; and
 - b) value for money is being obtained.
3. Providing the public with a better understanding of the BBC's use of its statutory powers as the Licensing Authority relating to the collection of the license fee.

However, in assessing the extent of this public interest, it is important to bear in mind the other means by which these public interests are to an extent fulfilled. I have in mind in particular the role of the Office of Surveillance Commissioners, being the independent regulator which monitors the BBC's compliance with legislation regarding detection. Further, the public interest in ensuring that value for money is being obtained is to at least some extent satisfied by the National Audit Office which assesses and reports on the value for money of the BBC's collection and enforcement arrangements. Further, additional information relating to the cost of the TV licensing system is published by the BBC including in the BBC's annual report and in the TV licensing annual review. Other information issued by the BBC also ensures that the public has an understanding of the BBC's use of its statutory powers relating to the collection of the licence fee.

In the context of the roles performed by these bodies and the information already published by the BBC, there are in my view stronger countervailing factors against disclosure:

1. The importance of maintaining effective deterrence which is a key aspect of TV licence enforcement. Without effective deterrence, the cost of TV licence collection and enforcement would undoubtedly increase which would not be in the interests of TV licence fee payers. I am satisfied that disclosure of the information sought in requests 1 and 3 (either on its own or combined with other information relating to detection and enforcement) would undermine this deterrence.
2. It is in the public interest that crimes are detected and, where appropriate, prosecuted. I am satisfied that disclosure of the information sought in requests 1 and

3, in particular if continued with other information relating to detection and enforcement, is likely to influence the behaviour of a body of the public with regard to complying with their TV licence obligations and that this would prejudice the detection and prosecution of TV licence fee evaders.

3. There is a public interest in the BBC being able to collect all of the money it is entitled to by way of the licence fee so as to ensure that the BBC receives the full level of funds for its activities. The disclosure of the information sought, in particular if continued with other information relating to detection and enforcement, is likely to impact negatively on the amount of money that the BBC is able to collect.

Decision

I endorse the BBC's original decision that the information sought in requests 1 and 3 is exempt information because its disclosure would, or would be likely to, prejudice the prevention or detection of crime; the apprehension or prosecution of offenders; and the ability of the BBC as the Licensing Authority to collect the licence fee. The information would also be likely to prejudice the BBC in its role in determining whether individuals have failed to comply with the law in respect of the TV licence. In all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.