



Information Policy & Compliance

bbc.co.uk/foi bbc.co.uk/privacy

Michael Richards

Via email: request-190228-40d7ebb5@whatdotheyknow.com

03 April 2014

Dear Mr Richards

Request for Information – RFI20131947

Thank you for your request of 21st December 2013 under the Freedom of Information Act 2000 ('the Act') seeking the following information. Please accept our apologies for the delay in responding to you.

"Please could you provide me with a copy of the contract between the BBC/TV Licensing and Capita Business Services Ltd.

If you consider that the contract contains information exempt from disclosure under, for example, the following sections of the Freedom of Information Act 2000:

Section 30 – investigations

Section 31 – prejudice to law enforcement

Section 40(2) – data protection

Section 43 – trade secrets and prejudice to commercial interests

I would disagree with this assertion. Television licence fee payers fund Capita's fees and any other remuneration under the contract. Furthermore, citizens up and down the UK without a TV Licence are liable to receive threatening letters and home visits by Capita staff. It is extremely important that we know the terms under which TV Licensing's main contractor is operating as it affects all of us."

Please note that "TV Licensing" is a trade mark used by companies contracted by the BBC to administer the collection of television licence fees and enforcement of the television licensing system. The majority of the administration of TV Licensing is contracted to Capita Business Services Ltd ('Capita'). Over-the counter services are provided by PayPoint plc ('PayPoint') in the UK, and by the Post Office in the Isle of Man and Channel Islands. Marketing and printing services are contracted to Proximity London Ltd. Media services are contracted to Mediaedge:CIA International Limited ("MEC"). The BBC is a public authority in respect of its television licensing functions and retains overall responsibility.

I attach the Terms and Conditions and Schedules comprising the contract between the BBC and Capita. With the exception of Schedule 5, these documents incorporate all changes made by any contractual

variations executed after the contract was signed and up to the date of your request. Please note that under our duty to advise and assist you under section 16 of the Act, we are providing you with the most up to date version of Schedule 5 (version 6) which reflects a contractual variation that was executed after your request was received.

Please note that certain parts of the contract have been redacted. This is because we consider that the information contained therein to be exempt from disclosure under the following sections of the Act. Each instance of redaction has been annotated to indicate which exemption has been applied.

Section 43 – Commercial interests

Various parts of the contract have been redacted under section 43(2) of the Act, which states that information will be exempt under the Act if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). The BBC is of the view that the release of the information would be prejudicial to either its own commercial interests, or those of Capita and/or its subcontractors, or both; because to do so would reveal details of Capita's and/or its subcontractors' price components and reimbursement arrangements which were the subject of significant negotiation. The release of the information would reveal valuable information about our contractor's pricing methodologies to its competitors, while they would not be in possession of the same information regarding their competitors. Disclosing this would reveal market sensitive information that would therefore be likely to assist such competitors in future negotiations in the area of business process outsourcing.

I am satisfied in terms of section 2(2) of the Act that in all the circumstances of the case, the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. I have provided further explanation of my consideration of the public interest test in the section 'Why information has been withheld' below.

Section 44 – Prohibitions on Disclosure

Schedule 17 of the contract has been withheld under section 44 of the Act, which covers information which is prohibited from disclosure under other legislation. Under section 44(1)(a), information is exempt if its disclosure by the public authority holding it is prohibited by or under any enactment. We consider that the information to which section 44(1)(a) applies is covered by this absolute exemption because its disclosure is prohibited by Regulation 43(1) of the Public Contracts Regulations 2006.

Regulation 43 provides:

"(1) Subject to the provisions of these Regulations, a contracting authority shall not disclose information forwarded to it by an economic operator which the economic operator has reasonably designated as confidential.

(2) In this regulation, confidential information includes technical or trade secrets and the confidential aspects of tenders."

We consider that the relevant information falls within this Regulation because it was forwarded to the public authority (the BBC) by the tenderer (Capita) and was reasonably designated by the tenderer as being confidential.

We also consider that section 43(1) applies to elements of Schedule 17 and we would therefore also seek to withhold information under this exemption.

Section 31 – Law enforcement

Some information in Schedule 2 has also been withheld under section 31, which relates to law enforcement; specifically, because disclosure would, or would be likely to, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, the collection of the licence fee and the BBC's ability to discharge its public functions in respect of such matters. This is because the redacted segment contains information which could be useful to people attempting to evade the licence fee. Again, the use of this exemption must be qualified, and accordingly, the justification for its use here is dealt with under '*Why information has been withheld*' below.

Section 40 – Personal Information

Finally, on a small number of occasions, section 40(2) has been cited. Signatures of individuals comprise the redactions made under section 40(2) and these have been removed because we consider that the risk to the individuals concerned of fraud (i.e. identity theft) that might result from the publication of their signatures would make such disclosure unfair. In these instances therefore we have withheld personal information because its disclosure would breach the first principle of the Data Protection Act 1998, which requires data to be processed fairly.

Why information has been withheld

As sections 43 and 31 are qualified exemptions, I am required by section 2(2) of the Act to assess whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The following factors are in favour of disclosure:

1. that the BBC is using public money effectively; and
2. that public funds are being appropriately applied, and specifically that:
 - a. the TV Licensing system is being efficiently run; and
 - b. value for money is being obtained.

Section 43

It is the BBC's contention that given its commercial sensitivity, these objectives will be threatened if the information requested is disclosed. I consider that the above public interest factors in favour of disclosure are served by the following:

1. The fact that the BBC is subject to a broad range of internal mechanisms, including oversight by the BBC Trust (responsible for commissioning value for money investigations into specific areas of BBC activity (Article 24(2) (i) of the Charter) and the Executive Board (responsible for conducting the

BBC's operational affairs in a manner best designed to ensure value for money (Article 38(1) (h) of the Charter).

2. The BBC is required to comply with Ofcom regulations, the fair trading regime and competition law in general.
3. In the interests of transparency and accountability, certain limited information on expenditure is already provided in the BBC's Annual Report and Accounts and the TV Licensing Annual Review.

In addition, the following factors are in favour of withholding the information:

1. That Capita's risk appetite and pricing structure, and details pertaining to that of its subcontractors, is commercially sensitive information that is not generally known and is the source of a trading advantage.
2. 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.
3. That the competitive position of companies, and/or their sub-contractors, 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.
4. That releasing the pricing approach of contractors and/or their sub-contractors which underpins commercial transactions would be likely to adversely affect the BBC's negotiating position in future contractual negotiations with suppliers of this type of service. This would compromise the BBC's ability to achieve value for money for licence fee payers.

In this instance, I consider that the public interest is served by ensuring that the such commercially sensitive information is protected. I am therefore satisfied, in terms of section 2(2) of the Act, that in all the circumstances of the case, the public interest in withholding the information outweighs the public interest (outlined above) in disclosing the information.

Section 31

I consider that the above public interest factors in favour of disclosure are served by the following:

1. The BBC is required to satisfy the National Audit Office ('NAO') as to the value for money of the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. NAO's most recent audit is published on the NAO website at www.nao.org.uk.
2. The BBC has reduced the cost of collection from 6.2% of the total licence fee collected in 1991/2, when it took over this responsibility from the Home Office, to 3% for the financial year 12/13. This demonstrates that the TV Licensing system is being efficiently run. This and further related information is available in the BBC's annual report (see www.bbc.co.uk).

In addition, the following factors are in favour of withholding the information:

1. The BBC has a duty to enforce the television licensing system and it is essential that evasion is kept to a minimum.
2. Part of keeping evasion to a minimum is maintaining uncertainty as to TV Licensing's enforcement practices. This uncertainty contributes to the deterrent effect which is an important part of TV Licensing's enforcement strategy¹.
3. Without an effective deterrent to licence fee evasion, evasion would invariably increase. This would be to the detriment of the honest majority of people who are properly licensed and to the overall amount of revenue available to the BBC.
4. An increase in the rate of licence fee evasion would lead to an increase in enforcement costs and may lead to more prosecutions.
5. An increase in enforcement costs would lead to a decrease in the available funds to be put towards producing the BBC's content.

In this instance, the public interest is served by maintaining an effective deterrent to licence fee evasion and thus in turn protecting the BBC's revenue stream and keeping prosecutions to a minimum.

There is hence a greater public interest in ensuring the effective collection of the licence fee than in disclosing the information you have sought. 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 (outlined above) 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

Rupinder Panesar

Freedom of Information Advisor, TV Licensing Management Team

¹ The Information Commissioner acknowledged in his Decision Notice [FS50476136](#) that there is a very strong public interest in the BBC being able to enforce the television licensing system and in not disclosing information which could impede the deterrent effect.

