



Information Rights

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

Doug Paulley
request-346504-7c31590a@whatdotheyknow.com

1 December 2016

Dear Mr Paulley

Freedom of Information Act 2000 – RFI20161363

We are writing further to our interim response to you of 15 August 2016, and your original request of 18 July 2016 in which you have asked the BBC to provide the following information under the Freedom of Information Act 2000:

With regard to the information you accidentally released when you responded to this Freedom of Information request: https://www.whatdotheyknow.com/request/monthly_performance_pack_2 Please provide copies of all communications, internal, external and all reports and other recorded information relating to the breach of this information. I assume there has been some form of an investigation as to what happened and how, the impact of the release and potential mitigation against the impact of it, correspondence with third parties (perhaps Capita and WhatDoTheyKnow) and other such.

As the BBC explained in its interim response, it considers that the exemptions at section 31 (law enforcement), section 40 (personal information) and section 42 (legal professional privilege) apply to the information you have requested. Having reviewed the information in further detail, we also consider the exemption at section 43(2) applies to a limited amount of information. We have indicated on the attached disclosure documents where information has been withheld, unless the entire document is exempt. We have set out why each exemption applies below.

Section 31 (law enforcement)

The BBC has withheld a limited amount of information under sections 31(1) (a), (b), (d) and (g) and (2)(a) of the Act which relate to law enforcement. This information, relating to the enforcement of the licence fee, was not contained within the year end Service Review Packs which were provided by the BBC in response to the request you have referred to above.

In respect of section 31(1)(a) and (b), disclosure of the withheld information would, or would be likely to, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, and the collection of the licence fee. Section 31(d) is engaged because the BBC's duties in respect of

licence fee collection fall within the definition of the collection of any tax or duty or of any imposition of a similar nature. Finally, section 31(1)(g) with subsection 31(2)(a) is also engaged as disclosure of the information would be likely to prejudice the exercise by the BBC of its functions for the purpose of ascertaining whether any person has failed to comply with the law.

Public interest test

As section 31 is a qualified exemption, the BBC is required under section 2(2) of the Act to assess whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In favour of disclosing the information the BBC has considered the following factors:

- the general public interest in promoting transparency and improving accountability in respect of TV Licensing's operations;
- ensuring that the BBC is exercising its functions appropriately and proportionately; and
- ensuring that public funds are being appropriately applied, including that the TV Licensing system is being efficiently run and that value for money is being obtained.

In favour of maintaining the exemption, we considered the following factors:

- The BBC has a duty to enforce the television licensing system and it is essential that opportunities are not provided to potential or actual evaders to escape detection or prosecution. There is a strong public interest in ensuring that information which prejudices law enforcement is not disclosed.
- There is a strong public interest in the BBC being able to collect all the licence fee money to which it is entitled to enable the BBC to provide the public with services that encompass its public mission to inform, educate and entertain.
- 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 strategy.
- There is a strong public interest in ensuring the voluntary compliance with the licence fee regime. 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 who should not have to pay any more than is strictly necessary to ensure the compliance of those who deliberately evade paying the licence fee.

We have also considered the relevance of related information already in the public domain, which in this case includes the year end Service Review Packs for 2012/13, 2013/14 and 2014/15. Disclosure of this information led to the publication of blogs on websites which highlight and draw attention to information of potential use to those who wish to evade payment of the licence fee. Further disclosure of additional information would be likely to have a similar impact, and therefore strengthens the public interest arguments in maintaining the exemption.

An increase in the rate of licence fee evasion would lead to an increase in enforcement costs and may lead to more prosecutions. There is a strong public interest in ensuring that the BBC can keep enforcement costs to a minimum, because any increase in enforcement costs will lead to a decrease in the funds available for producing the BBC's content.

We also note that the BBC has the following safeguards and oversight in place to ensure it is effectively operating the licensing regime in an open and transparent manner:

- The substantial amount of information which the BBC publishes about TV Licensing's operations in its Annual Report and Accounts; on TV Licensing's website (www.tvlicensing.co.uk); in TV Licensing's Annual Review publications (www.tvlicensing.co.uk/about/our-performance-AB6); and in the National Audit Office's annual Licence Fee Settlement Statement released at the end of each financial year.
- The BBC Trust is specifically tasked under Article 24(2)(m) of the BBC Charter with ensuring that the arrangements for the collection of the Licence Fee are efficient, appropriate and proportionate.
- The Government recently published an independent review, led by David Perry QC, which looked at the current sanctions in place for failure to hold a TV licence and concluded that the current system is appropriate and fair, and represents value for money for licence fee payers.
- TV Licensing's functions are subject to external review through reports of the Comptroller and Auditor General to the House of Commons and directions given by the Treasury.
- The BBC is required to satisfy the 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 at www.nao.org.uk.
- 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 2015/16. This demonstrates that the TV Licensing system is being efficiently run.

Having considered all the relevant circumstances in this case, we are satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Section 40 (personal information)

Section 40(1)

A very limited amount of information relating to you has been withheld under section 40(1). If you would like to request access to any information the BBC holds about you under the Data Protection Act 1998 you can make a subject access request. Please note if you would like to do so, we will require photocopies of two pieces of identification and a cheque or postal order payable to the British Broadcasting Corporation for £10.00 (cash is not accepted). We also require you to make any subject access request directly to the BBC rather than through the Whatdotheyknow website. Please note that some of this material is likely to be protected by legal professional privilege.

We are withholding information in regards to BBC members of staff under section 40(2). Under this section, personal information about identifiable living individuals is exempt if disclosure to a third party would breach one or more principles in the Data Protection Act 1998. The BBC individuals concerned are relatively junior members of staff who do not hold responsibility for major policy decisions or the expenditure of public funds and would not expect their personal data to be disclosed to a third party. To do so would be unfair and therefore disclosure would breach the first data protection principle (fair and lawful processing). In addition, direct contact details of BBC and Capita staff have been redacted as we do not consider it to be fair to release these when there are alternative ways of contacting these organisations.

Section 42 (legal professional privilege)

The exemption at section 42(1) protects communications between lawyers and their clients for the purposes of obtaining legal advice, or documents created by or for lawyers to use in preparing a case for actual or prospective litigation. It can cover communications between lawyers and third parties so long as they are made for the purposes of the litigation.

Public interest test

As section 42(1) is a qualified exemption, the BBC is required under section 2(2) of the Act to assess whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

In favour of disclosure, we recognise that there is a public interest in the public being able to understand how the BBC uses licence payers' money, and to hold the BBC accountable for its conduct and decisions. However, there is also a strong public interest in maintaining the principle of legal professional privilege and in safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice. The Information Tribunal recognised this in *Bellamy v Information Commissioner* (EA/2005/0023; 4 April 2006), where it said: "there is a strong element of public interest inbuilt into the privilege itself. At least equally strong countervailing considerations would need to be adduced to override that inbuilt public interest". Looking at the particular circumstances of this case, the withheld information does not impact on a large number of people, and additional weight in favour of the maintaining the exemption can be added because the correspondence and advice was so recent at the date of the request.

In light of the above, the BBC considers that the public interest in withholding the information outweighs the public interest in disclosing the information you have requested.

Section 43(2) (commercial interests)

Section 43(2) exempts information from disclosure if to do so would, or would be likely to, prejudice the commercial interests of any person. In this case we have withheld information that would prejudice the commercial interests of a third party media organisation, and the journalist working for that organisation. Disclosure would reveal the journalist's specific lines of enquiry and therefore the particular nature of that organisation's proposed article (unpublished at the date of the request). This information would be of potential usefulness to competitors, and would be likely to have a detrimental impact on that organisation's ability (and the ability of that journalist) to profit from publication.

Public interest test

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. In favour of disclosure, we recognised that there is always a public interest in transparency and this includes providing a full picture about how the BBC deals with enquiries from the commercial media about its activities.

On the other hand, in considering factors that might weigh in favour of the public interest in maintaining the exemption, we took into account the strong public interest in allowing the commercial media to gather, edit and publish news without any external interference. Public disclosure of a work in progress would be an invasion of this important journalistic space.

We are therefore satisfied that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

We would like to apologise for the delay in our response and for any inconvenience this has caused.

Appeal Rights

If you are not satisfied that we have 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 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, Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate) or see www.ico.org.uk.

Yours sincerely

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