

Opinion of the BBC's 'qualified person' under Section 36 of the Freedom of Information Act (2000)

Qualified person	Rona Fairhead, Chairman, BBC Trust
Reference	RFI20141319
Date	18 December 2014
Relevant subsections	Section 36(2)(b)(ii), section 36(2)(c)

Background and documents

The requestor has asked the BBC for all information contained in any correspondence between BBC staff and the Dame Janet Smith Review team that relates to the scheduled publication date of the Review findings. The requestor volunteered the fact that they are seeking to establish whether senior BBC staff members exerted any pressure on members of the Dame Janet Smith team to delay publication of the review findings. I agree that it is vitally important that the BBC is able to show the public that it is not putting undue pressure on the Review team and that Dame Janet and her team have the ability to conduct the Review impartially and independently, as intended.

Much of the requested information has already been disclosed to the requestor and, in addition to this, updates have been posted at regular intervals on the Review's website. I note that these demonstrate that, contrary to the requestor's concern, it was the Review, not the BBC, suggesting that the Report should be delayed. There were two reasons for this: the need to interview more witnesses and to avoid the possibility of adversely affecting the fairness of the trials of Stuart Hall and Dave Lee Travis.

The BBC wishes to withhold the remainder of the requested information under section 36.

Section 36

I agree that section 36 applies in this case, for the following reasons:

- I. I accept that disclosure would be likely to inhibit the free and frank exchange of views [s36(2)(b)(ii)] between the BBC and the Review team. If the information were to be disclosed at this stage, BBC staff and members of the Review team would be

likely to feel inhibited in future in discussing the sensitive issues that arise in the context of the Review and exploring options for resolving them in a full and open way.

2. I believe that disclosure would be likely to prejudice the effective conduct of public affairs [s36(2)(c)], in this case the conduct of the independent review currently being undertaken by Dame Janet Smith and her team for the BBC. It would have a negative impact on the ability of both the BBC and the Review team to debate live issues and reach decisions which would in turn undermine the “safe space” the Review requires to complete its work free from external interference and distraction. Prejudice would also be likely to arise as resources would need to be diverted from the ongoing work on finalising various aspects of the Review to managing the effects of disclosure.

Application of the public interest test

Section 2 of the Act requires a balance to be struck between the reasons for withholding the information under section 36 and the public interest in disclosure. This means that, unless that the public interest in maintaining the exemption outweighs the public interest in disclosure, the information must be disclosed.

I have carefully considered the public interest arguments in favour and against disclosure of the information, which include.

In favour of disclosure:

- There is a public interest in members of the public being able to understand the relationship between the BBC and Dame Janet Smith's Review, and in particular to be in a position to judge whether it is sufficiently independent from the Corporation and able to work without interference from the BBC, and whether the BBC is really committed to there being a full investigation of the culture and practices of the BBC in the years when Savile worked there.

The requester is interested in that relationship and in particular in knowing whether or not the BBC has put pressure on the Review to delay its report. In fact the information shows has been no such pressure; but while the information at issue here might in theory add to

proving that that is the case, the connection is remote and its contribution to such proof is small, so the public interest in disclosing it is in fact correspondingly small.

For withholding:

- There is a strong public interest in ensuring that the Review is as robust and comprehensive as possible. Disclosure would be likely to damage the ability of the BBC and the Review team to discuss all relevant factors as freely and as frankly as the circumstances require and thoroughly explore options for dealing with them.

My opinion

I have considered the application of section 36 and have weighed up the competing public interest arguments. I believe that the balance of the public interest lies in favour of withholding these documents. In my view, the public interest in demonstrating that the Review is acting independently of the BBC and that the BBC is not putting unwarranted pressure on the Review to delay delivery of the Report has largely been served by the information already made available to the requestor. The reasons for the delay have been explained and I believe that disclosure of a greater level of detail adds comparatively little to the public's understanding of these reasons, while posing a real risk to the free and frank discussion necessary in these circumstances, which is likely to undermine the operation of the Review.

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Rona Fairhead, Chairman, BBC Trust

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