



Information Policy & Compliance  
[bbc.co.uk/foi](http://bbc.co.uk/foi)

Paul Swift

Via email: [xxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxxxxxxx.xxx](mailto:xxxxxxxxxxxxxxxxxxxxxx@xxxxxxxxxxxxxxxx.xxx)

12<sup>th</sup> February 2009

Dear Mr Swift

### **Request for Information – RFI20090296**

Thank you for your request of February 10th 2009 under the Freedom of Information Act 2000 seeking the following information:

*How much did it cost to fly the contestants to Argentina for the programme 'Total Wipeout', how many went and did they take any members of their Family Also, why wasn't it done in this country*

The BBC will not be providing you with the information you requested as we consider that it is not covered by the Freedom of Information Act 2000 (“the Act”). Further, even if the information was covered by the Act, the information in question I would be exempt from disclosure under section 43(2) of the Act because to do so would prejudice the commercial interests of the BBC.

### **Scope of the Act**

The BBC and the other public service broadcasters are covered by the Act only in respect of information held for purposes “other than those of journalism, art or literature” (see Schedule 1, Part VI of the Act). This means that the BBC is not obliged to supply information held for the purposes of creating output or which is closely associated with such creative activities. The BBC considers that this includes information about the costs involved in creating its output, including fees paid to independent production companies.<sup>1</sup>

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<sup>1</sup> For more information about how the Act applies to the BBC please see [www.bbc.co.uk/foi](http://www.bbc.co.uk/foi) Please note that this guidance is not intended to be a comprehensive legal interpretation of how the Act applies to the BBC.



### Recent decision of the Information Commissioner

The BBC notes the recent decision notice of the Information Commissioner (ref. FS500133791): in that case the Commissioner considered that the cost to the BBC of an independent production did fall within the scope of the Act. However, in that case, the information was exempt from disclosure under section 43(2) of the Act as its disclosure would have been commercially prejudicial.

### The BBC's approach to this case

The BBC does not agree with the Commissioner's decision on the scope of the Act and reserves its position on the matter; however, the BBC considers that in the event of a similar finding by the Commissioner in this case, the information you have requested would also be exempt under the Act under section 43(2) because disclosure would be likely to prejudice the commercial interests of the BBC, in the following ways:

- (a) First, disclosing the fee paid by the BBC will have the effect of providing the BBC's competitors with valuable pricing information about the value of rights to these types of programmes. This disclosure of information could have the effect of distorting the market for independently produced programmes, increasing the likelihood of the BBC's competitors coordinating their bids against the BBC for those programmes.
- (b) Secondly, disclosure of information on programme fees may result in a ratchet effect among bids from independent production companies themselves. Since these companies will know that a minimum level of funds was paid for a particular type of programme, they would have an incentive to coordinate their prices and only accept bids beyond that level, whereas they may previously have accepted a fee below that level.
- (c) Thirdly, disclosing the fee paid to independent production companies by the BBC is likely to discourage these companies from contracting with the BBC vis-à-vis its commercial rivals, due to the increased risk of publicity regarding their deals. Since the BBC is one of a small group of broadcasters that is subject to the disclosure obligations of FOIA, the cost-benefit of contracting with the BBC vis-à-vis a commercial broadcaster that is not subject to those obligations weighs heavier on the cost side.

The effects described above are likely to cause grave prejudice of the BBC; they would be likely to result in a choice between losing programmes and suffering a drop in the quality of our programming; or increasing spending in order to retain programmes and thereby suffering a drop in value for money to the licence payer.

We note here that disclosure would also be likely to prejudice the commercial interests of Endemol.

### Consideration of the public interest

As section 43 is a qualified exemption, the BBC has considered the public interest factors in this case in accordance with section 2(2) of the Act: specifically, 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, the BBC recognises that there is a public interest in the following:

- That there should be transparency in the accountability of the BBC for public funds and that the BBC demonstrates that it is using public money effectively and obtaining value for money when purchasing goods and services. To this end, the BBC notes that this public interest is served by a broad range of oversight mechanisms, internal and external, including the oversight of the BBC Trust, the Executive Board, Ofcom and the fair trading regime and competition law in general. High level information on expenditure is provided in the Annual Report, however detail beyond this threatens to pose considerable harm to the BBC's commercial interests, without offering a proportionate benefit to the public;
- That the BBC's relations and negotiations with the independent production sector are conducted in an open and honest way; and
- That the independent production sector is well-placed to respond to opportunities with the BBC.

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

- That the BBC is able to provide quality programming and value for money in respect of its use of the licence fee. The BBC's ability to do this is dependent upon maintaining a strong bargaining position vis-à-vis suppliers during contractual negotiations, which may be seriously undermined by releasing information of the type requested here;
- That companies continue to provide the BBC with commercially sensitive information, so that the BBC is able to make robust decisions regarding its purchases of independent productions, including ensuring that the BBC obtains the best value for money from each transaction; and
- That the competitive position of companies 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.

I am satisfied, in terms of section 2 of the Act, that in all the circumstances of this case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. In this regard, I note that there is little public interest in the disclosure of this information in the absence of comparable information relating to commercial broadcasters, as it is only then that a member of the public would be able to take a fully informed view of whether the BBC is contracting with the independent sector on a competitive basis. Since this information is not publicly available and is never likely to be, information relating to the BBC is of little use out of context.

Thus, the BBC believes that the public interest is best served by allowing the BBC to continue to compete on an equal basis with, the rest of the market, so that normal market forces may take effect to the benefit of the general public.

### **Appeal Rights**

The BBC does not offer an internal review when the information requested is not covered by the Act. However, if you are not satisfied with our response, you do have the right to 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 [www.informationcommissioner.gov.uk](http://www.informationcommissioner.gov.uk) In the event of a finding by the Information Commissioner that the Act does apply in this case, should you then wish, the BBC is prepared to undertake an internal review of our decision on the application of section 43 (commercial prejudice) to the information you have requested.

Yours sincerely

Beverley Salt  
Business Information Manager, BBC Vision