



Information Policy & Compliance
bbc.co.uk/foi bbc.co.uk/privacy

Dominik Schade
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31 July 2017

Dear Mr Schade,

Freedom of Information Request - RF120170968

Thank you for your request under the Freedom of Information Act 2000 (the Act) dated 3 July, seeking the following information:

'Please provide me with the following information electronically about Ken MacQuarrie's investigation into the Jeremy Clarkson punching incident:

- *The composition of the inquiry panel*
- *The letter(s) sent to witnesses*
- *Transcripts or notes of hearings*
- *The report*

Section 40(2)

We are withholding information relating to the Jeremy Clarkson investigation under section 40(2) (personal information) of the Act. Under section 40(2) of the Act, 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 individuals concerned would not expect their personal data to be disclosed to a third party. To do so would be unfair; therefore, disclosure would breach the First Data Protection Principle (fair and lawful processing).

Section 42

In addition, we are withholding some information where we consider it is exempt from disclosure under section 42 of the Act as legal professional privilege (LPP) applies.

The information which has been withheld under section 42 comprises of legal advice and documents created by the BBC Legal Department for the purposes of providing legal advice.

This exemption protects communications between lawyers and their clients for the purposes of obtaining legal advice, or documents created by or for lawyers for the purposes of litigation.

As section 42 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.

There is a public interest in demonstrating the way in which the BBC considers and responds to requests for information under the Act. 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; this in turn is fundamental to the administration of justice.

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”. Further guidance from the Ministry of Justice also states that “given the very substantial public interest in maintaining the confidentiality of LPP (legal professional privilege) material, it is likely to be only in exceptional circumstances that it will give way to the public interest in disclosure.”

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.

However, you may be interested in the following statement that the BBC Director General Tony Hall made with regards to his decision not to renew the contract of Jeremy Clarkson:

<http://www.bbc.co.uk/mediacentre/statements/jeremy-clarkson-dg-statement> and a summary of the investigation of the report conducted by Mr McQuarrie:

<http://downloads.bbc.co.uk/mediacentre/investigation-summary.pdf>

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 <http://www.ico.gov.uk/>.

Yours sincerely

Information Rights

