Freedom of Information
Internal Review Decision

Internal Reviewer	Lawyer – Information Rights
Reference	RFI20210164 / IR2021047
Date	30 June 2021

By an e-mail dated 26 April 2021 the requester asked for an internal review of the BBC's reply (dated 12 March) to a request under the Freedom of Information Act 2000 ("the Act") dated 25 January seeking information about the cancellation of the Licence Fee Unit's customer management system project.

The BBC's original decision

The BBC confirmed that it holds information within the scope of the request, but considered that disclosing it would be likely to prejudice the commercial interests of the BBC and third parties, and that the public interest favoured withholding it. It therefore decided that the information was exempt from disclosure under section 43(2) of the Act.

Internal review

The request for an internal review asked—

> *As part of this internal review then I would like you to:*
> *- Review your decision to withhold details of the total cost to the BBC of the LFU customer management system up to its cancellation in December.*
> *- Provide me with a copy (a .PDF file is acceptable) copy of the "through piece of work" review, as requested and not specifically denied.*

An internal review is a fresh decision on the request. This review will consider the following issues:

- Whether the costs of the project can be disclosed;
- Whether the costs incurred for external resources in the review of the project can be disclosed;
- Whether the Report of the review can be disclosed, or whether it is exempt under section 36 of the FOI Act (prejudice to the effective conduct of public affairs) or section 43 of the Act (prejudice to commercial interests), including in both cases whether the public interest balance lies in favour of maintaining the exemption or disclosing the Report.

With respect to the first two issues, the BBC has decided on internal review that the costs information can be disclosed. The third issue was considered by the BBC's Chairman as the 'Qualified Person' under the FOI Act. He has decided that section 36 of the FOI Act applies to the Report, and that the public interest balance favours maintaining the exemption.

The relevant law and BBC's detailed reasoning with respect to each issue is set out below.

Cost of the Project

I have first looked at the request for the total cost of the project. I can confirm that the figure of £7m was discussed in the public domain by the BBC before the request was made, and was not challenged by the NAO, in the TV Licence Fee Trust Statement for 2019 – 2020: see page 8—

> ***Technology Refresh***
> *In 2019/20, work started on replacement of the TV Licensing Campaign Management System (CMS) and Data Management System (DMS, together "CMS Modernisation"). However, progress on the programme stalled because of the need for key resources to support the programme of changes for the new over 75 policy which took priority. Due to delays and increased costs the BBC decided to cancel the CMS Modernisation programme at a cost of £7m and work is now underway to extend the life of the existing systems.*
> (Tim Davie CBE, Director-General)

In his statutory report to the House of Commons on the Trust Statement, the Comptroller and Auditor General commented—

> *3.7 In December 2019, nine months after the BBC had signed contracts with suppliers to deliver the new systems, it became apparent to the BBC that the programme's delivery had become significantly impacted by a number of factors, which had resulted in unacceptable delays and increased implementation costs. These factors included the need for the BBC to devote resources to implementing the over-75s policy. To minimise incurring additional expenditure, the BBC made the decision to cancel the project at an early stage and to identify where spend to date could be repurposed. Of the £11 million expenditure already incurred, the BBC repurposed £4 million with the remaining £7 million expensed in the 2019-20 BBC Group accounts. The BBC anticipates it will incur additional expenditure of between £3 million and £5 million on ensuring that existing systems will continue until the end of 2023. It is likely that we will examine how this work in extending the life of these systems is progressing as part of next year's Section 2 report.*

The BBC's statement and the Comptroller and Auditor General's report can be found at: https://www.tvlicensing.co.uk/ss/Satellite?blobcol=urldata&blobheadername1=content-type&blobheadervalue1=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1370006603553&ssbinary=true

While a public authority has no legal obligation to provide to a requester information that is already in the public domain, I consider it would have been good practice for the BBC to have assisted the requester by directing them to these sources when it replied to the request.

However, the figure of £7 million and the other sums referred to in the *Trust Statement* set out above were subject to a rounding exercise. The actual sum before rounding amounts to £7,188,017.

Cost of the review

I next considered the request (item (2) of the original request) for information as to the cost of the BBC's review of the project. The review was conducted by BBC subject-matter experts, supported by external resource. As the BBC does not calculate the cost of using internal resource for specific work it does not hold information relating to the cost of the internal resource.

In its original decision the BBC withheld the cost of the external resource on the basis that it would prejudice the commercial interests of the third party provider of the resource and the BBC. I have decided to overturn this decision. In response to this part of your request I can therefore confirm that the total costs of the external resource amounted to £68,240 based on the provision of a total of 42 days of resource.

Request for the Report

Last, I have considered the request for the Report itself. The BBC withheld the Report under section 43 of the FOI Act. I am satisfied that the BBC had adequate justification for concluding that its disclosure would risk harming the commercial interests of the BBC and third parties, and that the public interest favoured withholding the Report.

As part of my review, however, I considered the additional ground that disclosure of the Report might risk harming the BBC's decision-making processes, so that section 36(2) (prejudice to the effective conduct of public affairs) potentially applied as well.

Under section 36, information will be exempt from disclosure if the BBC's Qualified Person reasonably forms the opinion that disclosure would, or would be likely to, inhibit the free and frank provision of advice or the free and frank exchange of views, or otherwise prejudice the effective conduct of public affairs. The public interest in withholding the information must also outweigh the public interest in disclosing it.

The Chairman, as Qualified Person, decided that disclosure of the Report would engage—

(a) section 36(2)(b)(i) (inhibiting free and frank advice) because it would be likely to have a "chilling effect" on future advice, in that it would be likely to inhibit anyone conducting a similar review in the future from expressing themselves freely and frankly, and that the BBC needs a "safe space" in which to make criticisms or raise concerns in order to improve itself, to the detriment of the management of the BBC; and

(b) section 36(2)(c) (other prejudice to the conduct of public affairs) because it would be likely to mean that a future report would require additional internal "sign-off" and might thereby be watered down or slowed down, which would be detrimental to taking remedial action swiftly e.g. to save money; and would be likely to attract commentary from the media and other external parties, forcing the BBC to divert resources to dealing with the media and other external parties.

He also concluded that the public interest in maintaining the exemptions and withholding the information outweighs the public interest in disclosure. He recognised the strong public interest in promoting the transparency and accountability of the BBC but against this considered that there is an intrinsic public interest in maintaining the exemption to protect good decision-making; that it is not in the public interest to inhibit the BBC from undertaking candid reviews of its own performance; and that the benefits to the public of the disclosure of the Report itself are limited because the BBC has already been open about the cancellation of the project, e.g. in the 2019 – 2020 Annual Report and Accounts, and the TV Licence Fee Trust Statement for 2019 – 2020, and this has been reported on publicly by the NAO.

The BBC is therefore withholding the Report under section 36 of the FOI Act. In addition, as set out above, section 43 of the FOI Act is also applicable to withhold the Report from disclosure.

Further appeal

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 or see https://ico.org.uk/.

Yours sincerely,

Information Rights
BBC Legal