



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

C W Davies

By email to: request-138281-7344f2de@whatdotheyknow.com

24 January 2013

Dear Mr/Ms Davies,

Freedom of Information request – RFI20121307

Thank you for your request to the BBC of 13 November 2012, seeking the following information under the Freedom of Information (FOI) Act 2000:

“Today in the News, the full list of attendees at the CMEP Seminar on 26 January 2006 has been revealed, which has all along been in the public domain, but no longer on the relevant website.

<http://omnologos.com/full-list-of-participants-to-the-bbc-cmep-seminar-on-26-january-2006/>

As such, could you please confirm whether this list is correct, and a breakdown of costs the BBC has incurred in attempting to protect this list.

Further to this, could you please provide all communications with the Information Commissioner in relation to this case.”

Background

The seminar was conducted under the Chatham House Rule to enable free and frank discussion, something that is necessary for our independent journalism. Some information regarding this event was posted on a website in 2007 without the permission of the BBC, and later taken down. It has recently become apparent that this information is still available on an internet archive. However, this does not impact on the decision of the Information Tribunal nor the reason the BBC defended its decision not to disclose the material sought under the FOI Act.

I have addressed each of your questions in turn below.

1. Could you please confirm whether this list is correct, and a breakdown of costs the BBC has incurred in attempting to protect this list.

As explained above, the BBC considers that the information on attendance at the seminar is excluded from the Act because it is held for the purposes of 'journalism, art or literature.' The BBC is therefore not obliged to provide this information to you and will not be doing so on this occasion. Part VI of Schedule 1 to FOIA provides that information held by the BBC and the other public service broadcasters is only covered by the Act if it is held for 'purposes *other than* those of journalism, art or literature'. The BBC is not required to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities.¹

With regard to cost, I can confirm that, in total, £18,655 plus VAT of £4,091 was spent on external legal fees. However, the majority of Freedom of Information work is carried out in-house within the BBC. The Information Policy and Compliance team, which deals with many aspects of FOI, does not charge out for its work and we therefore do not hold information relating to the cost of in-house work.

2. Further to this, could you please provide all communications with the Information Commissioner in relation to this case.

Please find enclosed 5 documents that fall within the scope of your request. The names of third parties and BBC employees have been redacted under section 40(2) (personal information) of the Act. Personal information about identifiable living individuals is exempt under the FOI Act, as explained above.

For completeness, I have included a link to the Information Tribunal Decision:

http://www.informationtribunal.gov.uk/DBFiles/Decision/i373/20121108_Decision_EA20120118.pdf

We are withholding further documents under section 42 (legal privilege) of the FOI Act, specifically litigation privilege, as the main purpose of its creation was for lawyers to use in preparing and conducting the case.

¹ For more information about how the Act applies to the BBC please see the enclosure which follows this letter. Please note that this guidance is not intended to be a comprehensive legal interpretation of how the Act applies to the BBC.

As section 42 is a qualified exemption, the BBC has considered the public interest in disclosing the legal advice against the public interest in maintaining the exemption. In favour of disclosure, I consider that there is a public interest in the BBC being accountable for the decisions it makes and that releasing the information would help ensure that the public understands why the BBC took a particular course of action.

On the other hand, the following factors are in favour of maintaining the exemption and withholding the information. There is a strong public interest in maintaining the principle of legal professional privilege: safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice, which in turn is fundamental to the administration of justice. The 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”.

The seeking of legal advice and the gathering of evidence by all persons so that they can order their affairs in a lawful manner is strongly in the public interest. If litigation privilege was not upheld, it could lead to individuals involved in cases not providing a full and frank disclosure of all the information they hold, thereby reducing the quality of decision making. It is in the public interest for lawyers to be able to present their case in full from an informed position.

Further guidance from the Department of Constitutional Affairs also states “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.

I hope that this information satisfies your request.

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, telephone 01625 545 700 or see <http://www.ico.gov.uk/>

Yours sincerely,

James Leaton Gray

Head - BBC Information Policy and Compliance

