

**Freedom of Information
Internal Review decision**

Internal Reviewer	Legal Advisor – Information Rights, BBC Legal
Reference	RFI20190441/ IR2019045
Date	22 October 2019

Requested information

On 06 March 2019 the applicant, Mr Gregory, via www.whatdotheyknow.com, made a request for information under the Freedom of Information Act 2000 (“the FOIA”):

“Please furnish me with a copy of the Monthly Performance Pack for each month since Feb 2017”

The BBC’s TV Licensing Management Team responded on 13 August 2019 with the following information:

Please note that “TV Licensing” is a trade mark used by companies contracted by the BBC to administer the collection of television licence fees and enforcement of the television licensing system. The majority of the administration of TV Licensing is contracted to Capita Business Services Ltd (‘Capita’). Over-the-counter services are provided by PayPoint plc (‘PayPoint’) in the UK, and by the Post Office in the Isle of Man and Channel Islands. Target Group (‘Target’) is the supplier for the Simple Payment Plan trial. Marketing and printing services are contracted to Proximity London Ltd. Media services are contracted to Media Planning Limited trading as Havas Media UK. The BBC is a public authority in respect of its television licensing functions and retains overall responsibility.

In my initial response to you of 4th April, I confirmed that the BBC holds information of the type described in your request. However I explained that we considered that the exemptions in section 31 (law enforcement) and section 43 (commercial prejudice) were engaged in relation to multiple sections of the information you have requested and extended the deadline of the response, as permitted by the Act, to consider the public interest in disclosing versus withholding the information.

I am providing you with copies of the Service Review Packs for the 2016/17 and 2017/18 financial years, incorporating the data from the relevant monthly reports (including the month you have specified).

Having assessed the information and identified exempt information, I can confirm that I am withholding some information within these reports under section 31(1)(a), (b), (d) and (g)

and 2(a) of the Act which relates to law enforcement; i.e. that disclosure would, or would be likely to, prejudice the prevention or detection of crime, the collection of the licence fee and the BBC's ability to discharge its public functions in respect of such matters. This is because it would provide information of use to those seeking to evade and/or assist others in evading paying the licence fee.

I am satisfied in terms of section 2(2) of the Act that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. I have considered the public interest test in the section on 'why information has been withheld' below.

Why information has been withheld

I am required under section 2(2) of the Act to assess whether the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. At the outset, we would like to note that it is likely to be only in the most exceptional circumstances that it will be appropriate to prejudice the discharge of a legal duty.

The BBC accepts that there is always a public interest in transparency, accountability and public understanding in respect of TV Licensing's operations. In this particular case the following factors are in favour of disclosure:

1. ensuring that the licensing authority is exercising its functions appropriately and proportionately;
2. that public funds are being appropriately applied, and specifically that:
 - a. the TV Licensing system is being efficiently run; and
 - b. value for money is being obtained.

However, I consider that the above public interest factors in favour of disclosure are adequately addressed by the following:

1. The substantial amount of information which the BBC publishes about TV Licensing's operations in its Annual Report and Accounts; on TV Licensing's website (www.tvlicensing.co.uk); in TV Licensing's Annual Review publications (www.tvlicensing.co.uk/about/our-performance-AB6); and in the National Audit Office's annual Licence Fee Settlement Statement released at the end of each financial year.
2. The BBC Board is specifically tasked under Article 20(7) of the BBC Charter with ensuring that the arrangements for the collection of the Licence Fee are efficient, appropriate and proportionate.

3. *TV Licensing's functions are subject to external review through reports of the Comptroller and Auditor General to the House of Commons and directions given by the Treasury.*
4. *The BBC is required to satisfy the NAO as to the value for money of the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. NAO's most recent audit is published at www.nao.org.uk.*
5. *The BBC has reduced the cost of collection from 6.2% of the total licence fee collected in 1991/2, when it took over this responsibility from the Home Office, to below 3% for the financial year 2017/18. This demonstrates that the TV Licensing system is being efficiently run.*

In addition, the following factors are in favour of withholding the information:

1. *The BBC has a duty to enforce the television licensing system and it is essential that opportunities are not provided to potential or actual evaders to escape detection or prosecution. There is a strong public interest in ensuring that information which prejudices law enforcement is not disclosed.*
2. *There is a strong public interest in the BBC being able to collect all the licence fee money to which it is entitled to enable the BBC to provide the public with services that encompass its public mission to inform, educate and entertain.*
3. *Part of keeping evasion to a minimum is maintaining uncertainty as to TV Licensing's enforcement practices. This uncertainty contributes to the deterrent effect which is an important part of TV Licensing's enforcement strategy¹.*
4. *There is a strong public interest in ensuring the voluntary compliance with the licence fee regime. Without an effective deterrent to licence fee evasion, evasion would invariably increase. This would be to the detriment of the honest majority of people who are properly licensed, and who should not have to pay any more than is strictly necessary to ensure the compliance of those who deliberately evade paying the licence fee.*
5. *An increase in the rate of licence fee evasion would lead to an increase in enforcement costs and may lead to more prosecutions. There is a strong public interest in ensuring that the BBC can keep enforcement costs to a minimum,*

¹ The Information Commissioner has acknowledged in his Decision Notice [FS50476136](#) that there is a very strong public interest in the BBC being able to enforce the television licensing system and in not disclosing information which could impede the deterrent effect.

because any increase in enforcement costs will lead to a decrease in the funds available for producing the BBC's content.

The applicant made an application for an internal review of the BBC's response on 01 September 2019:

Issues on review

The scope of this internal review is limited to considering whether the BBC correctly applied section 31 of the FOIA in its response.

Decision

I can confirm that the BBC holds the requested information. On review, I am upholding the BBC's decision to withhold the requested information under section 31 of the FOIA. I specifically rely on section 31(1)(a), (b), (d) and (g) of the FOIA in reaching this decision.

Reasons for the decision

Section 31(1) states that *'Information which is not exempt by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice:*

- (a) The prevention or detection of crime;*
- (b) The apprehension or prosecution of offenders;*
- (d) The assessment or collection of any tax or duty or of any imposition of a similar nature; and*
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).*

When deciding whether this exemption is engaged, a public authority should:

1. Identify the applicable interests in the exemption;
2. Identify a causal relationship between disclosure and the claimed prejudice; and
3. Assess whether there is a real and significant risk that the prejudice will occur if there is a disclosure.²

The Upper Tribunal held in *WS v Information Commissioner and North Lancashire Primary Care Trust* that the activities in section 31(1) and the

² Hogan and Oxford City Council v Information Commissioner, EA/2005/0026, [75].

purposes in section 31(2) ‘go beyond actual law enforcement in the sense of taking civil or criminal or regulatory proceedings’ to include:

*“a wide variety of activities which can be regarded as in aid of related to the enforcement of (i) the criminal law, (ii) any regulatory regime established by statute, (iii) professional and other disciplinary codes, (iv) standards of fitness and competence for acting as a company director or other manager of a corporate body, (v) aspects of the law relating to charities and their property and (vi) standards of health and safety at work”.*³

The disclosure of all of the requested information would mean revealing details of certain aspects of TV Licensing enforcement practices and outcomes. If this information were to be provided, it would assist actual or potential evaders to evade payment of the licence fee.

Sections 31(a) and (b) are engaged as disclosure of the requested information would prejudice the prevention and detection of crime and the apprehension and punishment of individuals who are evading payment of the licence fee. ICO Guidance provides that section 31(1)(a) covers information that would make anyone, including the public authority itself, more vulnerable to crime for example, by disclosing its own security procedures’.⁴

There is precedent for the application of the section 31 exemption in analogous circumstances. In *Hemsley v Information Commissioner and Chief Constable of Northants*, the Upper Tribunal found that prejudice from disclosure may arise where such disclosure would make it easier for people to commit criminal offences. In that case, the information would have revealed the operational systems used to deploy speed cameras by the police.⁵

Further, disclosure would prejudice section 31(d) (and (g)) as the BBC is tasked under the Royal Charter and Funding Agreement with the collection of the licence fee and is required to ensure the fee is collected in an appropriate and efficient way. This is a public function and is therefore a ‘function for a specific purpose’ as prescribed by sub-section 2. I note this point was identified in the BBC’s initial response.

By way of analogy, ICO Guidance explains that (d) would apply to situations where disclosure would ‘promote tax avoidance’. It is plain that the scope of

³ [2013] UKUT 181 (AAC).

⁴ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>, para 19.

⁵ EA/2005/0025.

the current request would likely lead to avoidance of payment of the licence-fee.

The nature of the prejudice

ICO Guidance explains that prejudice to law enforcement under section 31 must meet the threshold of 'real and significant risk' so that the disclosure of the information would more probably than not cause detriment to the BBC.⁶

This request poses a *real* risk of prejudice.

For reference, the performance pack comprises key TV Licensing operational performance statistics reported by Capita to the BBC. This contains sensitive information pertaining primarily to TV Licensing enforcement capabilities and activities: disclosure of this specific information would be highly prejudicial to the BBC as it would adversely affect its ability to collect licence fee because it would make available information of use to those seeking to evade and/or help others in evading payment.

In reaching this decision the BBC has relied on previous ICO Decision Notices that have upheld BBC decisions not to disclose information about the number of search warrants obtained by the BBC to investigate suspected cases of TV licence-fee evasion. By way of example, in FS50215269, the ICO upheld the BBC's decision to withhold the number of search warrants obtained over a ten year period under section 31(1)(a),(b),(c)(d) and (g) of the FOIA.⁷

The Public Interest Test

Section 31 is a prejudice-based exemption and is therefore subject to the public interest test. This means that a public authority must demonstrate that the public interest in preventing prejudice outweighs the public interest in disclosure of the requested information. ICO Guidance notes the 'strong public interest in protecting the law enforcement capabilities of public authorities'. The Guidance goes on to explain that when considering the public interest in preventing and detecting crime it is important to take account of all the consequences that can be 'anticipated as realistic possibilities'.⁸

⁶ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>, para 16.

⁷ https://ico.org.uk/media/action-weve-taken/decision-notices/2010/523054/FS_50215269.pdf

⁸ <https://ico.org.uk/media/for-organisations/documents/1207/law-enforcement-foi-section-31.pdf>, page 3.



Public interest factors in favour of disclosure

The BBC recognises that the disclosure of some information is beneficial in promoting transparency. To this end, the BBC publishes a significant amount of information about TV licensing, including for instance: <https://www.bbc.co.uk/foi/publication-scheme/classes/disclosure-logs/tvlicence>. Other ways of obtaining information about BBC TV licensing was provided in the BBC's initial response.

Public interests factor in favour of maintaining the exemption

There are several public interest arguments for maintaining the exemption.

First, promoting efficient ways to collect the licence fee is an important way of protecting public funds and promoting the best use of those funds to generate output for BBC audiences.

Second, were the information to be disclosed, the BBC would be required to invest greater resources in alternative ways of detecting licence-fee evasion.

Balance of public interest

On the balance of these arguments, I have maintained the BBC's position that there is a strong public interest in maintaining the section 31 exemption. The public interest in protecting the integrity of the TV licence fee enforcement system to protect and promote the production of BBC output, outweighs interests in increased public access to detailed information about TV Licence enforcement.

Appeal Rights

If you are not satisfied with the outcome of your 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 www.ico.gov.uk