

Freedom of Information Internal Review decision

Internal Reviewer	Zac Sammour
Reference	IR2016035 (RFI20160539)
Date	13 May 2016

Requested information

On 23 March 2016 Luciano Giampaglia (“**LG**”) requested the following information from the BBC under the Freedom of Information Act 2000 (“**FOIA**”):

“...a list of all non-celebrities (staff, employed or self employed) working for the BBC who receive pay above £80,000 with their methods of receipt of payment and tax arrangements detailed. This includes directors, this includes James Harding.

If you do not have details of a person’s tax arrangements or do not deduce tax under PAYE, please state why along with details of any special arrangements”

The BBC has refused that request. By its letter dated 19 April 2016 it explained:

“We are withholding information regarding the salaries and tax arrangements of staff receiving above £80,000 under section 40 (2) (personal information) of [FOIA]. 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 of 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).”
(the “**Decision**”).

LG challenges the Decision. By an email dated 20 April 2016 he requested an internal review, stating:

“I have been refused details of the basic Tax arrangements of publicly funded individuals at the BBC on the grounds that this work would break data protection. However, the information on who they are and what they are paid is a matter of public record and as such does not breach the data protection act. I am simply asking how they are taxed. Via PAYE like the 99% of us, or via special personal arrangement. And if they are not being taxed like the majority then as a publicly funded institution it is in the public interest, especially given recent events, that these details be known”.

Scope of the internal review



The scope of this internal review is limited to considering whether the BBC correctly applied section 40 (2) FOIA in its Decision.

Decision

In my view, it did. That is for the following reasons.

The applicability of section 40 (2) to LG's request

Section 40 (2) FOIA exempts from the scope of the BBC's disclosure duties under section 1 of that Act information that constitutes personal data and the disclosure of that information would contravene one of the Data Protection Principles set out in the Data Protection act 1998 ("DPA") or s.10 of the DPA.

Personal data is defined in section 1 (1) of the DPA in broad terms. It encompasses:

"data which relate to a living individual who can be identified—

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;"

The information requested by LG undoubtedly falls within the scope of that definition. LG has requested a list of all employees of the BBC earning above £80,000 which identifies, inter alia, their pay and tax details. That is information from which living individuals can be identified (see ICO guidance *Requests for Personal Data about Public Authority Employees* at para 44).¹

The question, therefore, is whether the disclosure of that information would contravene one of the DPP or otherwise breach s.10 DPA. I consider that it would. Although it is clear that the disclosure of salary details can, in certain circumstances, amount to fair and lawful processing,² there are factors which militate against the fairness of disclosure in this case. Those factors include:

1. *The scope of LG's request.* LG has not confined his request to information relating to salary. He seeks information relating to the tax arrangements of BBC employees more broadly. That information is sensitive and its disclosure

¹ [https://ico.org.uk/media/for-](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

[organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf](https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf)

² See the decision of the Inner House of the Court of Session in **South Lancashire Council v The Scottish Information Commissioner** [2012] CSIH 30.

could prejudice the data subjects if, for example, they disclose matters relating to their financial affairs beyond their roles at the BBC.

2. *The expectations of BBC employees.* BBC employees who are not senior managers who have a full time equivalent salary £150,000 or more, or who do not sit on a major divisional board have a reasonable expectation of privacy in relation to details of their remuneration from the BBC and wider financial affairs. The BBC does not have a policy of disclosing that information proactively.
3. *The interest pursued by LG.* LG has not explained a cogent reason for his request. He has not, for example, stated that his request relates to investigative or journalistic work, nor is the request targeted or stated to be aimed at uncovering potential wrongdoing. The absence of any obviously compelling basis for disclosure is, in my view, significant.

Those factors are all recognised by the ICO as being significant to the fairness of an employer disclosing the salary details of its employees.³

One further point weighs heavily in the balance in support of the Decision. That is the fact that Parliament has intervened through legislation to set a clear indication as to the appropriate balance to be struck between the interests of employees in the public (or quasi-public) sector to financial privacy and those of the public to transparency in financial affairs. That balance is struck by the Accounts and Audit Regulations 2015/234 Schedule 1 para 1-2. Those paragraphs impose different levels of obligation on certain public bodies (which does not include the BBC) with respect to disclosure of salary information depending on the seniority of the employees in question. The relevant public bodies are required to disclose personalised salary information only in respect of employees earning more than £150,000. In respect of employees earning between £150,000 and £50,000, the relevant public bodies are required to disclose limited information and even then only in respect of job titles, and not individual persons.

Those Regulations provide strong support for the view that the proper balance to be struck by the BBC with respect to the interests outlined above is to disclose the salary details of only the highest earners in the organisation. Fairness does not require disclosure of salary details relating to employees who fall below the £150,000 band.

Conclusion

³ Ibid note 1 above, paras 43-47.



For those reasons, I am satisfied that the information requested by LG is personal data within the meaning of section 40 (1) and that it falls within the scope of the exemption set out in section 40 (2) as its disclosure by the BBC would contravene the First DPP.

However, as the BBC has confirmed publicly in the past, the BBC pays all its full-time staff with tax deducted at source in the normal way and this includes all senior managers.

Decision

The Decision is upheld.

I also note that the after seeking an internal review in relation to the BBC's response to RF120160539, the requester submitted a further request, designated RF120160888, seeking similar information, specifically: *"Please can you provide a list of the numbers of executive staff working for the bbc who do not have taxes deducted at source under PAYE. This is anyone from first level of management up. This includes Directors and Governors and anyone who is paid regularly for executive labour using public funds by any means from the BBC. As I am not asking for identifiable data this should be relatively straight forward. Please provide a list in the following format:*

Job Title :

Number in that title not taxed under PAYE:

Reason:"

As noted above, the inclusion of job titles in the request may capture personally identifiable information (to the extent that information falling within the scope of the request may be held) but the BBC will respond to this request separately.

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