



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

Mr C Lee-Koo

Via email: request-146193-bb7e7b16@whatdotheyknow.com

15 February 2013

Dear Mr Lee-Koo

Request for Information – RFI20130093

Thank you for your request of 18th January 2013 referring to your request under the Freedom of Information Act 2000 ('the Act') seeking the following information:

"A Statement on Oath applying for a search warrant was placed in the public domain. This statement was sworn by a Chris Christophorou, (acting on behalf of the BBC and employed by the BBC's appointed agent Capita Business Services Ltd.) before a JP of Canterbury Magistrates' Court on 28 June 2011.

A copy of the statement can be viewed here:

<http://tv-licensing.blogspot.co.uk/2011/07/lifting-lid-on-tv-licensings-pandoras.html?m=1>

Under the Freedom of Information Act 2000, please provide all BBC produced or held documents or information that mention or refer to this particular sworn statement (including any drafts of this statement and the final version)

For the avoidance of doubt, this request includes all information held in BBC documents and emails including documents and emails held by any of the authorised agents, third-parties or sub-contractors acting for or on behalf of the BBC in connection with this sworn statement."

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. Marketing and printing services are contracted to Proximity London Ltd. Media services are contracted to Mediaedge:CIA International Limited ("MEC"). The BBC is a public authority in respect of its television licensing functions and retains overall responsibility.

I can confirm that the BBC holds information relevant to your request. However, with the exception of the web link referred to above and which is already in the public domain, I'm withholding this information under section 42 of the Act which relates to legal professional privilege. Legal professional privilege covers amongst other things, confidential communications between lawyers and their clients for the purpose of

seeking, obtaining and consulting on legal advice and between parties who share a common interest in the confidentiality of the communication. It is important that openness between them is protected and access to fully informed, frank legal advice, including potential weaknesses and counter-arguments, is safeguarded in order to achieve the administration of justice.

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 – Section 42

I am required under section 2(2) of the Act to assess whether the public interest in maintaining the section 42 exemption outweighs the public interest in disclosing the information.

The following factors are in favour of disclosure:

- That there is a public interest in the BBC being accountable for the decisions it makes, and demonstrating that legal advice is sought appropriately to ensure that the right outcome is achieved.
- That releasing the information held would ensure that the public, including staff, understand the reasoning upon which the BBC is making decisions that have the potential to affect large numbers of people.

The following factors are in favour of withholding the information:

- The public interest factors in maintaining the exemption centre on the principle of protecting communications between lawyers and clients and those who have a common interest in relation to the legal advice. The seeking of legal advice by all persons so that they can order their affairs in a lawful manner is strongly in the public interest. That public interest is perhaps at its strongest where the client seeking, receiving or consulting on legal advice is a public body or quasi-public body whose decisions have the potential to affect large numbers of people.

In order for the advice given to be valuable, it is crucial that the seeking and determination of such advice be carried out with absolute candour. This requires that the persons seeking and where appropriate sharing the legal advice are secure in the knowledge that the information that passes between them and their lawyers will be free from scrutiny by outsiders. As the Information Tribunal recognised in Bellamy v Information Commissioner EA/2005/0023:

“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.”

- If legal professional privilege was not upheld, it could lead to lawyers providing only partial advice, or to public authorities choosing not to seek legal advice (whether from external or internal lawyers), thereby reducing the quality of decision making. It is in the public interest for lawyers to

be able to present their advice to the BBC in full, and to ensure that all legal advice is fully and accurately recorded in writing.

- The advice remains live and is still being relied upon by TV Licensing, which strengthens the public interest in maintaining privilege at this time.
- 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.”*

I am therefore satisfied, in terms of section 2 of the Act, that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest (outlined above) in disclosing the information.

Appeal Rights

If you are not satisfied that the BBC has 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 under the Act 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/>.

Kind regards

Rupinder Panesar

Freedom of Information Advisor, TV Licensing Management Team

INFORMATION HELD BY CAPITA

Capita legal considers everything on this list, with the exception of document 13 which is already in the public domain and document 5 which is not held on behalf of the BBC, to be legally privileged.

N o	Date and Type	Description
1	11 th May 2011 – Email between Anthony Hardwell (Legal Team) and Lee Charnock (Darwen Field Office)	Email containing 3 attachments of drafted search warrant depositions for swearing at various courts. 1 attachment relates to the Fol.
2	29 th June 2011 – Email from Christopher Christophorou (Court Presenter) to multiple recipients.	Email confirming that the search warrant deposition had been sworn in successfully at Canterbury Magistrates and posted to local manager to execute.
3	19 th April 2012 – Schedule of Sensitive Material	In line with the requirements of the Criminal Procedure and Investigations Act 1996, a list of documents held by Prosecutor in relation to the case that are considered ‘sensitive’ and not for release. Deposition referred to in list
4	30 th April 2012 – Letter from Palmers Criminal Defence Solicitors	Letter from defendants solicitors regarding case. Request for detection evidence and reference to Chris Christophorou deposition.
5	30 th April 2012 – Email between Anthony Hardwell and Jason Jones (Legal)	Discussion regarding the points raised in letter referred to above in doc 5
6	1 st May 2012 – Attendance Note from Counsel	Record of Counsels attendance at Court for the pre-trial review. Mention made of deposition within note.
7	21 st May 2012 – Defence Case Statement	Defence statement regarding the case and their position. Defence refers to deposition sworn at court on the 28 th June 2011
8	29 th July 2012 – Counsel Advice	Detailed advice from Counsel on the prosecution case and potential disclosure requirements.
9	31 st July 2012 – Email from Anthony Hardwell to Rocco Marinaccio (Palmers Defence Solicitors)	Prosecution response to ‘Defence Case’. Reference to deposition and refusal by prosecution to allow Chris Christophorou to give evidence. Attachment to email is case law on the subject entitled “Bell”
10	8 th August 2012 – Email from Rocco Marinaccio (signed by Lewis Holloway) to Anthony Hardwell	Request for Chris Christophorou to attend trial and give evidence
11	8 th August 2012 – Email response from Anthony Hardwell	Confirmation that Chris Christophorou will not attend.
12	May and September 2012 – Brief to Counsel	Instructions from TV Licensing Legal Team to appointed Counsel on the trial
13	22 nd July 2012 – Website Blog ‘tv-licensing.blogspot’	Posting referring to case and uploaded attachment of the deposition itself with various comments

