

Freedom of Information Internal Review decision

Internal Reviewer	Simon Pickard
Reference	IR2013018
Date	8 April 2013

Requested information

The requestor submitted the following request for information to the BBC on 7th January 2013 under the Freedom of Information Act 2000 (the 'Act'):

“The text of a sworn oath of a BBC application for a search warrant has entered the public domain. An excerpt of the text of that statement relevant to this FOI request is reproduced below.

“5. A television display generates light at specific frequencies. Some of that light escapes through windows usually after being reflected from one or more walls in the room in which the television is situated. The optical detector in the detector van uses a large lens to collect that light and focus it on to an especially sensitive device, which converts fluctuating light signals into electrical signals, which can be electronically analysed. If a receiver is being used to watch broadcast programmes then a positive reading is returned. The device gives a confidence factor in percentage terms, which is determined by the strength of the signal received by the detection equipment and confirms whether or not the source of the signal is a “possible broadcast””

“6...When the detector camera was pointed at the window of the Premises a positive signal was received indicating a TV receiver was in use receiving a possible broadcast with a confidence factor of 97%. ...”

–Excerpt ends–

The text in this statement makes plain that the TV detector does NOT produce with 100% confidence that its ‘positive reading or signal’ is indicative of a live TV broadcast being received, which is the legally licensable factor.

Search warrants granted by Justices of the Peace and Magistrates are based on the information contained in these sworn statements.



The execution of these warrants will inevitably impinge on the liberty of legally TV licence free households.

It is also a criminal offence to make a false or misleading statement to a Justice of the Peace or Magistrate under oath.

There is therefore a strong public interest in full transparency of the capabilities of the TV detection equipment and any “confidence factor” statistic figures quoted to Justices of the Peace and Magistrates under oath in order to obtain search warrants.

For the avoidance of doubt I am not asking HOW the TV detectors work, but the provenance of the results that their detection parameters and/or statistics produce.

Under the Freedom of Information Act 2000, please answer the following questions.

Q1. Is the “confidence factor in percentage terms” actually output by the TV detector as described above? (Please answer Yes or No.)

If the answer to Q1 is Yes:

Q2a. What is the range of “confidence factor” percentages that the TV detector device can produce?

Q2b. What is the MINIMUM confidence factor percentage that the BBC will quote to a Justice of the Peace or Magistrate in order to apply for a search warrant?

If the answer to Q1 is No:

Q2c. What is the source of the confidence factor that is quoted to Magistrates and Justices of the Peace? (“97%” in this example)

Q3. How is the “confidence factor” percentage calculated?

Q4. Please state concisely what the “confidence factor” percentage is a function of and what variables are used in its calculation?

Q5. The statement says that the confidence factor in percentage terms in this particular case was “97%” of a “possible broadcast”. Are there statistics produced which may be quoted to Justices of the Peace and Magistrates to assist them to decide whether or not to grant search warrants that would indicate what the confidence

factor ACTUALLY is? If so, what are they and are they provided?

Q6. In regard to the following excerpt sentence "If a receiver is being used to watch broadcast programmes then a positive reading is returned."; Are there other circumstances in which a "positive reading" or "positive signal" is also returned? If so, what are they? (for example playing a DVD or video game)

Q7. Does the percentage "confidence factor" phrase referred to in paragraphs 5 and 6 refer to the output from the TV detector device in BOTH cases? Please answer Yes or No.

Q8. Does the detector provide three (3) separate outputs indicating "Received Signal Strength", "Possible Broadcast" and "Confidence Factor Percentage"? If not, what are the outputs?

Q9. Is the "confidence factor" solely a function of the "Received Signal Strength" and "Possible Broadcast" TV detector output parameters?

Q10. Are Justices of the Peace or magistrates being made aware that the statistical "confidence factor" percentage of the TV detector may in fact be much LOWER if the "positive reading" were representing an ACTUAL (rather than 'possible') broadcast detected?

Q11. Is the 97% "confidence factor" quoted in the statement above merely the 2012 published BARB statistic that "97% of UK households have a television"?

Q12. Does the "TV Detector" exist at all? Please answer Yes or No."

Issues on review

The information requested was withheld on the basis that disclosure would or would be likely to prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, 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.

Decision

In considering this appeal I looked at sections 31(1)(a),(b)(d) and (g) and (2)(a) of the Freedom of Information Act. I also referred to the ICO publications 'the Public Interest Test' and 'The Exemption for Law Enforcement'.



Whilst the Requester's interest in knowing more about the capabilities of the TV detection equipment used is understandable there seems little doubt that the information requested in questions 1 to 11 would be of assistance to anyone who was seeking to avoid detection. It therefore falls clearly within the exemption set out in Section 31 of the Act and detailed in the letter dated 1st February sent to the requester. In his request for an appeal the requester does not explain why he considers that the answers would not fall within the Section 31 exemption stating only that he disagrees with the decision and that he does not consider the answers prejudice the discharge of the BBC's obligations. However the information requested is seeking to ascertain more detail as to how the detection system works in practice and I find it difficult to follow any argument which maintains this would not be of assistance to anyone planning to avoid detection. It seems clear that the information requested if answered would supply information that could assist an offender and enable him or her to avoid detection or conviction. The public interest in favour of withholding the information requested has been clearly stated in the original response. It may be worth pointing out that the ICO makes clear that the public interest means the public good and not what is of interest to the public. For the reasons stated above I do not find any evidence that there are grounds for finding that the original response was wrong and therefore do not uphold this appeal.

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