



Information Rights

[bbc.co.uk/foi](http://bbc.co.uk/foi)      [bbc.co.uk/privacy](http://bbc.co.uk/privacy)

Nathan Gregory

[request-348183-26909b2c@whatdotheyknow.com](mailto:request-348183-26909b2c@whatdotheyknow.com)

6 September 2016

Dear Mr Gregory,

**Freedom of Information request – RFI20161388**

Thank you for your request under the Freedom of Information Act ('the Act') 26 July 2016 seeking information regarding a previous FOI request, reference RFI20160005:

*"In relation to this Freedom of Information request:*

[https://www.whatdotheyknow.com/request/monthly\\_performance\\_pack\\_2](https://www.whatdotheyknow.com/request/monthly_performance_pack_2)

*Please provide all the information you have when you communicated with whatdotheyknow about this request, to include details of you asking them to take down the disclosed information."*

I can confirm under section (1) of the Act that the BBC does hold correspondence between the BBC and WDTK about this request.

The BBC is, however, withholding the requested information under the following exemptions:

**Section 40(2) of the Act:** We are withholding some of the communication between WDTK and BBC staff under section 40(2) (personal information) of the Act. 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 in the Data Protection Act 1998. The individual concerned is a junior member of staff and 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).

**Section 42 of the Act:** In accordance with the Information Commissioner's guidance<sup>1</sup>, some of the information it is exempt from disclosure under section 42 of the Act as legal professional privilege (LPP) applies for the purposes of the Act. This exemption protects communications between lawyers and their clients for the purposes of obtaining legal advice, or documents created by or for lawyers for the purposes of prospective litigation. Communication between lawyers and third parties can be covered by LLP so long as the communication is made for the purposes of litigation, which is either prospective or has commenced.

The information which has been withheld under section 42 comprises of communications to WDTK and were created for the purposes of proposed or contemplated litigation.

As section 42 is a qualified exemption, the BBC is required under section 2(2) of the Act to assess whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

In favour of disclosure, we recognise that there is a public interest in the public being able to hold the BBC accountable for its decisions and allegations of misconduct. However, there is also a strong public interest in maintaining the principle of legal professional privilege; this is fundamental to the administration of justice.

The Information Tribunal<sup>2</sup> 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". Further guidance from the Ministry of Justice also states that "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.

You can find out more about Section 42 by reading the full text of the Act, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/42> and further guidance <http://www.justice.gov.uk/guidance/foi-exemptions-guidance.htm>.

## 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

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<sup>1</sup> [https://ico.org.uk/media/1208/legal\\_professional\\_privilege\\_exemption\\_s42.pdf](https://ico.org.uk/media/1208/legal_professional_privilege_exemption_s42.pdf)

<sup>2</sup> [http://www.informationtribunal.gov.uk/DBFiles/Decision/i28/bellamy\\_v\\_information\\_commissioner1.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i28/bellamy_v_information_commissioner1.pdf)

Commissioner. The contact details are: Information Commissioner's Office, Wycliffe House,  
Water Lane, Wilmslow SK9 5AF. Telephone 01625 545 745 or see <http://www.ico.org.uk>

Yours sincerely,

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