



Information Rights

bbc.co.uk/foi bbc.co.uk/privacy

Patrick Fischer

Via email: request-424695-af4fe388@whatdotheyknow.com

8 September 2017

Dear Mr Fischer,

Request for Information – RFI20171205

Thank you for your request of 10th August 2017 under the Freedom of Information Act 2000 ('the Act') seeking the following information:

“At the time of your semi-recent policy change re: WOIRA in Scotland (see RFI20150609), you mention that TV Licensing would no longer be honoring [sic] WOIRA requests from Scottish residents due to legal advice you had been given about the civil tort of trespass [sic] in Scottish law.

However, I would like to know what your policies are, and what advice or guidelines you have recorded, regarding two related acts of law which Scottish occupiers may use to restrict access to their properties.

These acts are:

1) The Land Reform (Scotland) Act 2003. I highlight Section 6 (1)(b)(iv) which defines private homes and gardens as “land over which access rights not exercisable”

2) Article 8 of the Human Rights Act 1998, which provides "right to respect for private and family life" and specifically states that "there shall be no interference by a public authority with this right"

Specifically, with reference to your internal policy documents, guidelines, training manuals, legal counsel records, emails etc., I would like to know:

- i) What information TV Licensing has been given regarding the above two acts in general;*
- ii) How TV Licensing deals with occupiers who instruct that they wish to be excluded from any form of contact with TV Licensing under those acts; and*
- iii) If there are any records of occupiers having successfully removed access rights from TV Licensing under those acts”*

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 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.

I shall address your requests in turn below.

Request i)

I can confirm under section 1(1) of the Act that we hold recorded information relevant to this part of your request. However, I have determined details pertaining to this advice to be exempt 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 safe-guarded in order to achieve the administration of justice.

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

I am satisfied in terms of section 2(2)(b) of the Act that in all the circumstances of the case, the public interest in maintaining the exemption at section 42 outweighs the public interest in disclosing the information. I have provided further explanation of my consideration of the public interest test below.

Request ii)

We are satisfied that we are compliant with all relevant legislation and can confirm that we have taken into account the provisions of the legislation you have cited. To reiterate my previous response to your request RF120171131, the withdrawal of the common law right for TV Licensing’s officers to approach properties is not recognised under Scottish law. In England, Wales and Northern Ireland we recognise that the common law right for TV Licensing’s officers to visit your property may be withdrawn, but we’ll use other methods of detection to check if a licence is needed. We do not recognise this withdrawal in Scotland as different laws apply.

Request iii)

In view of my response to request ii) above, I can confirm that there have been no instances of occupiers having successfully removed access rights under the legislation you have specified.

Why information has been withheld

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:

1. That there is a public interest in the BBC being accountable for the decisions it makes, and demonstrating that legal advice is sought to ensure that the right outcome is achieved.
2. 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.

I consider that the following factors are in favour of withholding the information:

1. 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.
2. 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.

3. The advice remains live and is still being relied upon by TV Licensing, which strengthens the public interest in maintaining privilege at this time.
4. 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.”

In this instance, the public interest is served by safeguarding openness in all communications between client and lawyer to ensure access to full and frank legal advice.

In light of the above, 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 exemptions cited in each case outweighs the public interest (outlined above) in disclosing the information identified.

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 SK9 5AF. Tel: 0303 123 1113 (local rate) or 01625 545 745 (national rate) or see <http://www.ico.gov.uk/>.

Kind regards

Rupinder Panesar

Freedom of Information Advisor, TV Licensing Management Team

