



Information Rights

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Richard Channing

[request-676381-033e1085@whatdotheyknow.com](mailto:request-676381-033e1085@whatdotheyknow.com)

10 August 2020

Dear Mr Channing

**Request for Information – RFI20200964**

Thank you for your request to the BBC of 11<sup>th</sup> July 2020 under the Freedom of Information Act 2000 ('the Act') for the following information:

*“Please provide me with the latest manual on how audio video equipment is tested when a TVL enforcement officer serves a court warrant [sic] to search for evidence of licence evasion”*

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. Target Group ('Target') is the supplier for the Simple Payment Plan trial. Marketing and printing services are contracted to Proximity London Ltd. Media services are contracted to Havas Media Limited. The BBC is a public authority in respect of its television licensing functions and retains overall responsibility.

By way of background, please note that search warrants are only applied for in cases where the evidence means that it is likely that a device is in use and applications are considered scrupulously before they are submitted. Search warrants are issued by independent third parties (the magistrate or sheriff in Scotland) and, as a matter of law, cannot be granted unless there are reasonable grounds for the application.

With regard to your specific request, please be advised the Act gives a general right of access to all types of recorded information held by public authorities; and that we are not required to create new information to respond to a request, or give a judgement or opinion that is not already recorded. I can confirm under section 1(1) of the Act that we hold recorded information relevant to your request. However, we consider that this exempt from disclosure under sections 31(1)(a), (b), (d) and (g) and (2)(a) of the Act which relate to law enforcement; specifically 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 such information would be of use to those considering evading paying the licence fee and/or assist others in evading paying the licence fee.

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 exemptions outweighs the public interest in disclosing the information. I have provided further explanation of my consideration of the public interest test in the section 'Why information has been withheld' below.

### **Why information has been withheld**

I am required under section 2(2) of the Act to assess whether the public interest in maintaining the exemptions outweighs the public interest in disclosing the information. At the outset, we would like to note that it is likely to be only in the most exceptional circumstances that it will be appropriate to prejudice the discharge of a legal duty.

The BBC accepts that there is always a public interest in transparency, accountability and public understanding in respect of TV Licensing's operations. In this particular case the following factors are in favour of disclosure:

1. ensuring that the licensing authority is exercising its functions appropriately and proportionately;
2. that public funds are being appropriately applied, and specifically that:
  - a. the TV Licensing system is being efficiently run; and
  - b. value for money is being obtained.

However, I consider that the above public interest factors in favour of disclosure are adequately addressed by the following:

1. The substantial amount of information which the BBC publishes about TV Licensing's operations in its Annual Report and Accounts; on TV Licensing's website ([www.tvlicensing.co.uk](http://www.tvlicensing.co.uk)); in TV Licensing's Annual Review publications ([www.tvlicensing.co.uk/about/our-performance-AB6](http://www.tvlicensing.co.uk/about/our-performance-AB6)); and in the National Audit Office's annual Licence Fee Settlement Statement released at the end of each financial year.
2. The BBC Board is specifically tasked under Article 20(7) of the BBC Charter with ensuring that the arrangements for the collection of the Licence Fee are efficient, appropriate and proportionate.
3. TV Licensing's functions are subject to external review through reports of the Comptroller and Auditor General to the House of Commons and directions given by the Treasury.

4. Since search warrants are only issued by independent third parties (the magistrate or sheriff in Scotland) in accordance with strict legal requirements, the public interest in knowing that we are using our powers proportionately is satisfied.
5. The BBC/TV Licensing does not prosecute unless we have sufficient evidence to proceed and it is in the public interest to do so. If there are public interest factors against prosecution that outweigh those in favour of prosecution, then a prosecution will not take place. Culpability, age and ill health are amongst the factors considered. The importance of each factor and the individual circumstances of each case are taken into consideration.

These are key principles of the Crown Prosecution Guidelines which we publicly state that we adhere to. A further safeguard in place is that each case is determined by a magistrate whose role is to assess sufficiency of evidence and uphold the public interest in the judicial system.

6. The BBC is required to satisfy the NAO as to the value for money of the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. NAO's most recent audit is published at [www.nao.org.uk](http://www.nao.org.uk).
7. The BBC has reduced the cost of collection from 6.2% of the total licence fee collected in 1991/2, when it took over this responsibility from the Home Office, to below 3% for the financial year 2018/19. This demonstrates that the TV Licensing system is being efficiently run.

In addition, the following factors are in favour of withholding the information:

1. The BBC has a duty to enforce the television licensing system and it is essential that opportunities are not provided to potential or actual evaders to escape detection or prosecution. There is a strong public interest in ensuring that information which prejudices law enforcement is not disclosed.
2. There is a strong public interest in the BBC being able to collect all the licence fee money to which it is entitled to enable the BBC to provide the public with services that encompass its public mission to inform, educate and entertain.
3. Part of keeping evasion to a minimum is maintaining uncertainty as to TV Licensing's enforcement practices. This uncertainty contributes to the deterrent effect which is an important part of TV Licensing's enforcement strategy<sup>1</sup>.
4. There is a strong public interest in ensuring the voluntary compliance with the licence fee regime. Without an effective deterrent to licence fee evasion, evasion would invariably increase. This would be to the detriment of the honest majority of people who are

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<sup>1</sup> The Information Commissioner has acknowledged in his Decision Notice [FS50476136](#) that there is a very strong public interest in the BBC being able to enforce the television licensing system and in not disclosing information which could impede the deterrent effect.

properly licensed, and who should not have to pay any more than is strictly necessary to ensure the compliance of those who deliberately evade paying the licence fee.

5. Search warrants are only ever used as a last resort, once all other available means of enforcement (most notably written correspondence) have been exhausted.
6. Revealing additional information about search warrants will provide information that could be of use to people who wish to avoid paying the television licence fee.
7. An increase in the rate of licence fee evasion would lead to an increase in enforcement costs and may lead to more prosecutions. There is a strong public interest in ensuring that the BBC can keep enforcement costs to a minimum, because any increase in enforcement costs will lead to a decrease in the funds available for producing the BBC's content.

## **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. A request for an internal review must be made within 40 working days of receiving the BBC's response to your original request.

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, Tel: 0303 123 1113 or see <https://ico.org.uk/>.

Yours sincerely

Rupinder Panesar

**Freedom of Information Advisor, TV Licensing Management Team**

