



Information Rights

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

Edward Brooke

request-718667-c435992e@whatdotheyknow.com

17 February 2021

Dear Mr Brooke

Request for Information – RFI20210093

Thank you for your request to the BBC of 16th January 2021 under the Freedom of Information Act 2000 ('the Act') seeking the following information:

“Please direct this to the party responsible for handling Freedom of Information requests.

1) (a) In relation to TV Licensing I understand there exists a document titled ‘Court Presenter’s Manual’. Please provide me with the latest copy of this document.

(b) Please provide me with any legal advice the BBC has obtained relating to the document – including in relation to FOI disclosure (Please provide this regardless of whether it relates to the present copy of the document or an earlier copy – in the event it relates to an earlier copy of the document please also provide me with that copy of the document).

If fulfilling (b) should prove prohibitively expensive, please focus on providing me with legal advice relating to the most recent copies of the document – noting the dates that are applicable.

If the document mentioned in (a) does not exist under that exact title but a substantially similar document exists under another title please provide the substantially similar document.

In the eventuality it is not possible to provide the information requested due to the information exceeding the cost of compliance limits identified in Section 12, please provide advice and assistance, under the Section 16 obligations of the Act, as to how I can refine my request..”

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 Limited ('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 Limited ('Target') is the supplier for the Simple Payment Plan. Marketing and printing services are contracted to RAPP Limited (formerly Proximity London Limited). 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.

I should firstly explain that the Act gives a general right of access to all types of recorded information held by public authorities. We are not required to create new information to respond to a request, or give a judgement or opinion that is not already recorded.

Part 1(a)

I attach as, Disclosure Document 1, the current version of the document you have requested, which is held by Capita on the BBC's behalf. Please note that this document is scheduled for review by Capita, to ensure that any legislative amendments and developments in case law are accurately reflected.

For your information, the documents listed under the heading 'Appendix' on page 6 of the manual do not constitute an appendix: this is a list of additional reference material which does not form part of the Court Presenters' Manual. The Policy for TV Licensing Prosecutions is available on the TV Licensing website at <http://www.tvlicensing.co.uk/about/foi-policies-ABI7>.

Please note that certain sections of this document have been redacted. This is because we consider the information contained therein to be exempt from disclosure under the sections of the Act outlined below. Each instance of redaction has been annotated to indicate which exemption has been applied. In addition, there is one instance where information designed for internal use only has been removed.

Section 40 – Personal information

Information which constitutes personal information has been redacted. The redacted personal information comprises the names of individuals employed by Capita who are not senior managers; and therefore do not have a reasonable expectation that their details will be disclosed in this context. We are withholding this information under section 40(2) of the Act.

Personal information about living individuals is exempt under the Freedom of Information Act if disclosure to a third party would breach one or more principles in the General Data Protection Regulation (GDPR). The BBC is of the position that disclosure of the requested information would breach principle (a) of Article 5(1) of the GDPR, which requires personal data to be processed lawfully, fairly and in a transparent manner. As non-senior employees from other organisations do not expect their details to be disclosed in this context, to do so would be unfair.

Section 31 – Law enforcement

The remainder of redacted information has been withheld 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.

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); in TV Licensing's Annual Review publications (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. 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.

5. 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.
6. 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 just over 3% for the financial year 2019/20. 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 strategy¹.
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 majority of people who are 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. 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.

¹ 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.

Part 1(b)

This is a Capita document, held on behalf of the BBC, and any legal advice obtained in relation to the production of this document will have been received by Capita, not the BBC². I can confirm that no legal advice has been obtained by the BBC in respect of the disclosure of this document.

For your information, please be advised that legal advice obtained by the BBC, which remains live and is still being relied upon by TV Licensing, is generally considered to be exempt from disclosure under section 42 of the Act which relates to legal professional privilege.

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 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

² The Act gives rights of public access to information held by public authorities (as defined in section 3 of the Act). Section 3(2)(a) of the Act says that, for the purposes of the Act, information is held by a public authority if it is held by the public authority themselves or if it is held by another person on behalf of the authority. Capita is not a public authority as defined by the Act therefore information it holds but which is not held on behalf of the BBC is not subject to the Act.

