

Freedom of Information Internal Review decision

Internal Reviewer	Louise Lander
Reference	IR2013028 and IR2013078 (RFI20130233)
Date	16 December 2013

Requested information

You initially wrote to the BBC on 17 February 2013, requesting the following information under the Freedom of Information Act ('the Act');

I refer to Freedom of Information request RFI20130094.

Disclosure Document 2, released in response to the request, contains the instruction "Log request on TVLMT spreadsheet". Under the Freedom of Information Act please provide the most up-to-date version of this spreadsheet.

Disclosure Document 3 refers to:

*"Related documents - Complaint Codes - R139
Freedom of Information Checklist - R151
Freedom of Information presentation R341".*

Again under the Freedom of Information Act please provide the most up-to-date versions of these related documents.

Request history

The BBC acknowledged the request on 18 February 2013. On 16 March you contacted the BBC to seek an internal review, as no response had been received within the statutory deadline (15 March 2013). On 23 March you contacted the BBC again, as no response had been received, and the request for an internal review had not been acknowledged. The internal review was acknowledged by the BBC on 25 March, but a response to the review was not issued, and is only now being dealt with. While the BBC's acknowledgement of 25 March did contain an apology for the delay in responding to RFI20130233, the response to the request itself was not issued until 5 April 2013.

The BBC's response provided the requested information subject to certain redactions under section 40(2) (personal information); however, in response to the



request for “the most up-to-date version of [the TVLMT] spreadsheet”, the information was provided as a PDF document, rather than in Excel spreadsheet format. You replied to the BBC on the same day to raise this as an issue, asking “Please supply the document requested - the actual spreadsheet.”

The BBC issued a further response to this enquiry, also on the same day. This set out the BBC view that the provision of the information in PDF format was compliant with the section 11 obligation to comply with any preferences expressed by the requester to ‘communicate information by particular means’ insofar as it is ‘reasonably practicable’, and explained further concerns that provision of this information in an Excel spreadsheet risked revealing the personal data contained within the spreadsheet.

You challenged this response, and the provision of the information in PDF format, in a further email of 5 April 2013. As no response was forthcoming from the BBC, you submitted a further email on 13 April asking for:

1. Acknowledgment of your previous email
2. The provision of the requested spreadsheet
3. The findings of the internal review requested on 16 March into the delay in responding to the original request RFI20130233.

The BBC did not reply, and you continued to seek a response to these three points in a series of further emails in April, May, June, July, August and September. I regret to say that the BBC did not respond to these enquiries.

On 5 October 2013, you submitted a request for an internal review of the handling of handling of RFI20130233, stating that “In 6 months there has been no communication whatsoever from the BBC regarding this FoI request despite many reminders and requests for action.”

This request for internal review was not acknowledged by the BBC.

On 2 December 2013, you submitted a further letter to the BBC. The letter sought a copy of the TVLMT spreadsheet in your preferred format, and that the decisions of the internal reviews requested on 16 March and 5 October respectively to be provided.

In this letter, you wrote that “In closing I would like to express my disappointment at the way the BBC has dealt with this request, particularly in deliberately ignoring my repeated requests for action.”

Decision – IR2013028 and IR2013078

IR2013028 has considered the initial delay in responding to RFI20130233. As set out in the Request History, the response to this request was due on 15 March 2013, but the response was not issued until 5 April 2013. I have established that while a draft was prepared prior to the deadline being reached, a delay occurred when concerns were raised that the method chosen to redact certain personal information was insufficient to prevent this information being visible to the applicant in Excel format. This led to further review and the eventual disclosure of the information in PDF format.

In this, the BBC failed in its duty to respond to this request within the statutory timeframe, and is thereby in breach of section 10 (1) of the Act. The BBC also failed to provide the requested information in the form acceptable to the applicant, contrary to section 11(1)(a) of the Act; this will be dealt with further in the concluding part of this review.

IR2013078 has considered the handling of your request for internal review IR2013028 – which while acknowledged, did not receive a response – and the series of communications from you between April and October 2013 including a further request for internal review. This culminated in a further written complaint on 2 December 2013.

My decision here identifies a number of significant failings on the part of the BBC in the handling of this request. From the outset, I wish to say how very sorry I am for the errors that have occurred. I agree that the delays you have experienced are unacceptable and wish to state that this review recognises that the BBC's handling of RFI20130233 has not only failed to meet our obligations under the Act, but has also fallen far below our standards in terms of the service we hope to provide. In providing the following explanation I do not attempt to excuse what has occurred.

I have made enquiries to establish why the review IR2013028 was not conducted and your subsequent enquiries received no response.

First of all, I should make clear that the responsibility for the delay rests with the IPC team, and not TV Licensing. When an internal review is requested, the administration and allocation of the review is handled by the IPC team. The IPC team seek to locate an available reviewer from a number of senior managers and legal advisors across the BBC who have agreed to conduct reviews over and above their own duties. While your first request for review was logged and acknowledged, the further steps to locate a reviewer were not taken. Having spoken to those involved, I understand and can advise that there was no factor specific to your request that caused this, rather it was the result of human error on the part of a member of the team.

To explain further, you will be aware the number of requests received by the BBC has increased greatly since the latter part of 2012, and you will also be aware that this increase – initially related to the allegations against Jimmy Savile – has caused delays in our processing and response time. The level of requests has remained high throughout 2013, and it is only in recent weeks that the number of requests has begun to return to ‘normal’ levels. As a result, the initial processing of your review was affected by the wider demand on team resources at the time; I regret to say that it seems to be the case that following the logging of your request for review and the initial acknowledgment, the necessary further actions failed to be taken amidst the volume of work that the individual was dealing with – due to the continuing demands on the team’s time, it was not realised that the review had not been allocated.

I should also say that I share in the responsibility for the failure to deal with your request for review. I myself had noticed several of your emails as they were received by the BBC; however, as I could see that a review had been set up some time ago but I not been asked to conduct it, I presumed that the review had been allocated elsewhere and continued to work on other matters without making further enquiries to establish the situation.

It is recognised that this remains a serious oversight and one which we are taking steps to ensure will not be repeated. We have recently taken steps to increase the resource available to the IPC team, and will be undertaking further review of our procedure for dealing with internal reviews to prevent such errors occurring in future.

As indicated in the details given above, and having reviewed the handling of this request, it is quite clear that the BBC has:

- a. Failed to keep the requester up to date with the progress of their request and has therefore not met their duties under section 16 (1) of the Act to advise and assist the applicant
- b. Failed in its duty to respond to this request within the statutory timeframe, and is thereby in breach of section 10 (1) of the Act
- c. Further failed to deal with the requester’s correspondence and two requests for internal review in accordance with Part VI of the Section 45 Code of Practice, particularly paragraphs 41 and 42, which state that:

41. In all cases, complaints should be acknowledged promptly and the complainant should be informed of the authority's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the

authority should inform the applicant and explain the reason for the delay. The complainant should always be informed of the outcome of his or her complaint.

41. Authorities should set their own target times for dealing with complaints; these should be reasonable, and subject to regular review. Each public authority should publish its target times for determining complaints and information as to how successful it is with meeting those targets.

Finally as part of this review I have also considered the provision of the TVLMT spreadsheet to you in PDF format, rather than as an Excel spreadsheet as requested. While this part of my review has already been issued to you separately in my email of 11 December (see https://www.whatdotheyknow.com/request/tvlmt_spreadsheet_and_other_docu#outgoing-319556), I include it again here for completeness.

In respect of the request for a copy of the TVLMT spreadsheet) I have considered the BBC's response of 5 April 2013, which advised that *"Under s.11 of the Freedom of Information Act 2000, we are obliged to comply with any preferences expressed by the requester to 'communicate information by particular means' insofar as it is 'reasonably practicable'. It is reasonably practicable for us to have released such information to you in the format that we have."*

On review, I note that the Freedom of Information Act grants access to information, not documents. I am also aware that there are a number of valid concerns around the inadvertent disclosure of information which may occur when Excel spreadsheets are disclosed (see, for example: <http://www.ico.org.uk/news/blog/2013/the-risk-of-revealing-too-much> and <http://www.out-law.com/en/articles/2013/july/ico-considers-enforcement-action-over-disclosure-of-hidden-personal-data-in-foi-responses/>).

However, with regard to section 11 of the Act, I do not agree that it would be not be 'reasonably practicable' to provide a copy of the Excel spreadsheet on this occasion. While it may be a rather basic approach, I have created a new spreadsheet by copying over all relevant columns with the exception of the data contained in columns D and E, which are exempt by virtue of section 40. The use of this exemption has been indicated in the relevant columns on the spreadsheet itself. This ensures that the original data remains protected in this instance, but should still enable the filter and review of the information contained in the spreadsheet as required.

A copy of the redacted spreadsheet has been provided to your *whatdotheyknow* request address and is available on the following link:

https://www.whatdotheyknow.com/request/tvlmt_spreadsheet_and_other_docu#outgoing-319556



In conclusion, I would once again like to apologise for the serious delays which have occurred in the processing of this request and your subsequent requests for review, and for the undoubted inconvenience that this has caused you.

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

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