

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 27 March 2007

Public Authority: British Broadcasting Corporation
Address: Media Centre
Media Village
201 Wood Lane
London
W12 7TQ

Summary

An information request was made for information concerning the assets of the BBC. The BBC refused this request on the grounds that to supply the information requested would exceed the appropriate cost limit. The Commissioner finds that the cost limit was applied correctly and so finds no breach of the Act in this regard. However, the Commissioner also finds that the BBC failed to comply with the Act in that it did not respond to part of the information request and did not provide advice as to how to refine the request in order to bring it within the cost limit. These breaches have since been remedied and no further action on the part of the BBC is required.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 5 January 2005, the following information request was made to the Department for Culture, Media and Sport (the "DCMS"):

"A listing of all assets operated, held and owned by the BBC together with the definitive name of the person(s) who either own or are otherwise responsible for those assets."

3. The DCMS identified that this request would be dealt with more appropriately by the above public authority and transferred this request to it. The public authority received the transferred information request on 1 February 2005.

4. The public authority responded to this request on 28 February 2005. This response stated that the information requested could not be provided as to do so would exceed the appropriate limit of £450 and thus section 12 provided that the public authority was not obliged to comply with the request. This refusal did not give any detail as to how the cost estimate was formed and did not advise the requester how his request could be refined in order to bring it within the cost limit.
5. The public authority did, however, refer the complainant to its Annual Report and Accounts 2003/2004, in which details of its assets and liabilities are published. Whilst this report contains some information about the assets of the public authority, it does not contain a listing of all assets operated, held or owned by the public authority.
6. The complainant responded to this on 6 March 2005. In this response, the complainant stated that he was not satisfied with the refusal of his information request and asked the public authority carry out an internal review of its handling of the request.
7. The public authority responded giving the outcome of its internal review on 18 April 2005. This upheld the initial decision to refuse the information request on the grounds of cost.

The Investigation

Scope of the case

8. The complainant contacted the Commissioner in connection with this matter on 30 June 2005. The complainant specified the ground for his complaint as the refusal of his request on the grounds of cost. The complainant did not accept that the cost limit would be exceeded through providing the information requested.
9. The complainant argued that the public authority must maintain a list of its assets for accounting and insurance purposes and that this is needed in order to justify the public authority's public funding. The complainant also stated that the public authority had provided no basis for its refusal of his information request on the ground of cost.

Chronology

10. The Commissioner contacted the public authority in connection with this matter on 17 August 2006. In this letter, the public authority was asked to explain how its cost estimate had been formed.
11. The public authority responded on 14 December 2006. In this letter, the public authority set out its reasoning as to why it was estimated that to provide the information requested would exceed the cost limit.
12. The public authority described the size of the organisation, stating that it has over

25,000 employees and offices in several countries. The public authority provided the following list of what could be considered to fall within the scope of the request:

- tangible fixed assets
 - land and buildings
 - plant and machinery
 - furniture and fittings
 - share holdings in joint ventures and associates
 - programme stocks
 - originated/acquired programmes ready for transmission
 - programme tape archive
 - debtors and cash
13. The public authority stated that to respond to the information request, providing information from all of the above categories, would take longer than 2.5 days of staff time and would, therefore, exceed the appropriate limit of £450 set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
14. The public authority went on to state that it holds a register of tangible fixed assets for accounting purposes. This would not represent a complete list of all assets held by the public authority however as it has many assets which have no accounting value as the value of these assets have fully depreciated, such as very old assets.
15. The public authority went on to refer to the second part of the complainant's information request:
- "...the definitive name of the person(s) who either own or are otherwise responsible for those assets."*
16. The public authority stated that the information asked for here is not held by it. The public authority acknowledged that the complainant had not been informed of this and that its response to the information request should have stated that this information was not held.

Analysis

17. The public authority acknowledged that the complainant in this case had not been offered any advice as to how his information request could be refined in order to bring it within the cost limit. The public authority also stated that its procedures had since been amended and, where requests are refused under section 12, the complainant is advised as to how the request can be amended to bring the cost of complying with it within the cost limit.
18. The Commissioner contacted the public authority again on 2 January 2007. In this letter, it was noted firstly that the public authority did maintain a register of

- tangible fixed assets. The public authority was asked to advise if consideration had been given to supplying this information to the complainant.
19. Secondly, the Commissioner noted that the public authority had stated that information containing the names of those responsible for the assets was not held. The public authority was asked to state whether this information had been held previously and since been disposed of, or whether this information had not been held at any time.
 20. The public authority responded on 15 January 2007. This letter confirmed that information relating to those responsible for its assets had not been held at any time.
 21. The public authority went on to state that, at the time that the request was responded to initially, consideration had not been given to supplying to the requester the information contained in its register of tangible fixed assets. The public authority again stated that, whilst its practice now is to recommend to a requester how a request refused on grounds of cost can be usefully refined, this was not its practice at the time that the complainant's request was refused.
 22. The public authority indicated that it would be possible for it to retrieve and disclose the information held in its register of tangible fixed assets without exceeding the cost limit. The public authority agreed to disclose this information to the complainant in an attempt to resolve this matter.
 23. The Commissioner responded to the public authority on 17 January 2007. In this letter, the Commissioner stated to the public authority that disclosure of the information contained in the register of tangible fixed assets would be an appropriate way to progress this matter, but stressed that this would not conclude this matter if the complainant remained dissatisfied.
 24. The public authority contacted the complainant on 18 January 2007 and provided the information contained in its register of fixed assets. This disclosure was made with the caveat that this register had not been checked for completeness as a list of the tangible fixed assets of the public authority and that this list did not represent a listing of all assets held by the public authority.
 25. Following notification that this information had been disclosed, the Commissioner contacted the complainant on 22 January 2007 in order to ascertain whether the complainant still wished to pursue this matter. The complainant responded on 3 February 2007. In this response the complainant indicated that he remained dissatisfied and he wished to continue his complaint.

Findings of fact

26. The public authority has a very large volume of assets. These include both assets that have an accounting value and assets that have fully depreciated in value.
27. The complainant has been provided with some information about those assets that do have an accounting value.

28. The stance of the public authority is that to verify the list of tangible assets with an accounting value is complete and to provide a list of those assets that do not have an accounting value would exceed the cost limit.
29. In respect to the complainant's request for the names of the persons responsible for each of the public authority's assets, the stance of the public authority is that this information is not held.

Decision

Section 1

30. The public authority has stated that the information about the persons responsible for its assets is not held. Following enquiries from the Commissioner, the public authority confirmed that this information has not been held at any time.
31. In the absence of evidence to suggest otherwise, the Commissioner accepts the representations of the public authority that information about the persons responsible for its assets is not held. However, the public authority failed to refer to this part of the request in its refusal notice and, in so doing, failed to comply with the requirement of section 1 to confirm or deny whether requested information is held.

Section 12

32. The public authority's arguments concerning the cost of compliance with the complainant's request centre on the size of the public authority and the correspondingly substantial volume of assets held by it. The Commissioner notes that the public authority has over 25,000 employees and operates in many different countries. This supports the argument of the public authority about the volume of its assets. The Commissioner notes that the public authority has a considerable volume of assets.
33. The Commissioner has had sight of the limited asset register that was disclosed to the complainant. This list runs to 340 pages and contains details of several thousand assets.
34. A public authority should calculate the cost of responding to an information request at a rate of £25 per person per hour. This, in effect, sets a limit of 18 hours of staff effort. It is clear to the Commissioner that it would not be possible to verify that the limited asset register represents a complete list of all tangible assets held by the public authority within 18 hours staff time.
35. The public authority has also stated that, in addition to those assets included within the list provided to the requester, it holds substantial volumes of further assets that have depreciated in value and which it is not necessary to collate for accounting purposes. The Commissioner accepts the representations of the public authority in this regard and notes that assets of no accounting value would fall within the scope of the complainant's request, which makes no differentiation

between assets of differing value.

36. The Commissioner is satisfied that to comply with the complainant's request would exceed the cost limit of £450.

Section 16

37. When responding to the information request, and when responding giving the outcome of the internal review, the public authority made no mention to the requester of how his request could be refined in order that it could be brought within the cost limit. The Commissioner believes that, where citing section 12, section 16 requires that a public authority should assist the requester in refining their request in order that it will be possible to comply with this within the cost limit.
38. Although the public authority did not assist the complainant in this regard in this case, the Commissioner notes that since this time the public authority has provided to the complainant its list of tangible assets, on the understanding that this had not been verified for completeness. The Commissioner believes that this action by the public authority was consistent with the requirement of section 16 to offer advice and assistance.

Conclusion

39. The Commissioner's decision is that the public authority did not deal with the request in accordance with the Act in that it failed to comply with the requirement of section 1 to confirm or deny whether the information requested was held.
40. The public authority also failed to comply with the requirements of section 16 in that it failed to offer advice and assistance to the complainant as to how the request could be refined in order to bring it within the cost limit.
41. However, the Commissioner has also decided that the public authority did comply with the Act in that its estimate that the cost of providing the information requested would exceed the appropriate cost limit of £450 was accurate. The request was, therefore, correctly refused under section 12 of the Act.

Steps Required

42. Although the Commissioner has found that the public authority failed to comply with section 1, the requirement for the public authority to remedy this breach has been superseded by the content of this notice.
43. As noted above, the public authority has now taken appropriate steps to comply with its duty, imposed by section 16, to provide advice and assistance.
44. For these reasons, the Commissioner requires no steps to be taken.

Right of Appeal

45. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

46. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 27th day of March 2007

Signed

**Jane Durkin
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Section 1

Section 1(1) provides that -

“Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him.”

Section 12

Section 12(1) provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

Section 16

Section 16(1) provides that -

“It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it”.