

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 13 March 2008

Public Authority: British Broadcasting Corporation (BBC)
Address: MC3 D1,
Media Centre,
Media Village,
201 Wood Lane,
London,
W12 7TQ

Summary

The complainant requested from the BBC details as to what type of accommodation was used by BBC staff sent to cover the World Cup 2006, what type of travel was used and how much the staff and presenters were paid. The BBC refused to provide this information on the basis that it was held for the purpose of journalism, art or literature. During the course of the investigation the BBC also sought to rely on exemptions under the Act to withhold the information.

The Commissioner has investigated and concluded that the BBC misapplied the Schedule 1 derogation and that the information requested falls within the scope of the Act. The Commissioner investigated the BBC's application of the exemptions and found that the exact salaries of the presenters are exempt under section 40 of the Act. However the Commissioner found that the details of salary bands paid to staff were not exempt under section 40. The Commissioner also found that section 43 was not engaged for the remaining information on accommodation and travel costs. The Commissioner requires the BBC to disclose the withheld information that is not exempt to the complainant within 35 calendar days of this notice.

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"). In the particular circumstances of this complaint, this duty also includes making a formal decision on whether the BBC is a public authority with regard to the information requested by the complainant. This Notice sets out his decision.

The Request

2. The Complainant has advised that on 8 June 2006 he made the following request for information to the BBC:

“Please let me know how many employees the BBC has for the world cup in Germany and what cost this is to me and the rest of the public who are bankrolling it!”

3. The BBC responded on 12 June 2006 confirming the number of staff taken to Germany to cover the World Cup

4. On the 27 June 2006, the complainant made another information request to the BBC:

“(i) How much are the BBC spending on accommodation, food and transport for these individuals [BBC staff sent to cover the World Cup]? Are some staying in hotels? Are some camping or self catering? Where there is a range of accommodation please specify how many staff are staying in which cost of accommodation.

(ii) Please also let me know how these 160 staff were transported to Germany including what class of air travel, or train travel they were afforded!

(iii) I would also be grateful if you could supply me with a list of salaries paid to employees during the world cup, including the presenters: “Lineker” et al!”

5. The BBC responded on 17 July 2006. It advised that the request ‘fell outside the scope of the Act because the BBC, Channel 4 and S4C are covered by the Act only in respect of information held for purposes other than journalism, art or literature’. This is known as the Schedule 1 ‘derogation’. The BBC stated it was not obliged to supply the information requested as it is held for the purposes of creating its output (i.e. its programmes) or information that supports and is closely associated with these creative activities. The BBC also advised the complainant that as the information requested is not covered by the Act it would not offer the complainant an internal review.

The Investigation

Scope of the case

6. On 13 August 2006 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider if the information requested had been correctly withheld.

7. The Commissioner's investigation has therefore focused on the refusal by the BBC to disclose the information requested on 27 June 2006.

Chronology

8. On 1 November 2006 the Commissioner began his investigation by contacting the BBC to request further arguments regarding its application of the derogation to the withheld information. The Commissioner also requested a copy of the withheld information.
6. The Commissioner wrote again on 18 January 2007 again requesting further arguments from the BBC as to why it believes the derogation applies to the withheld information. The Commissioner again asked for a copy of the withheld information and, without prejudice, for further arguments under the Act to support its decision to withhold the requested information.
7. On 7 March 2007 the BBC responded providing to the Commissioner detailed arguments regarding its application of the derogation. The BBC also provided the Commissioner with alternative arguments under the Act to withhold the information. The BBC explained that in the alternative it considered that section 43 applied to the information in (i) and (ii) as it fell within its definition of 'in-house production costs' and to disclose this information would prejudice its commercial interests. In relation to the third part of the request the BBC explained that this could be considered in two parts, 'staff costs' and 'talent costs', the BBC explained the difference between the two. The BBC found that the 'talent costs' information was exempt under section 43 as well as sections 40 'personal data' and '41' information provided in confidence'. The BBC found that the 'staff costs' information was exempt under section 40.

Analysis

The Schedule 1 derogation

8. Part VI of Schedule 1 of the Act states that the BBC is a public authority 'in respect of information held for purposes other than journalism, art and literature'. This is commonly referred to as the Schedule 1 derogation. Similar provision exists in relation to Channel 4 and S4C – as a group these organisations are called public service broadcasters (PSBs).
9. In order to determine the purpose for which information is held the Commissioner will apply a dominant purpose test. This means that where information is held for a number of purposes he will weigh these purposes against each other to determine the dominant purpose for which that information is held.
10. In this case the requested information that the BBC considers to be covered by the derogation is information pertaining to production costs, talent costs and salaries.

The BBC's view

11. The BBC believes that the Schedule 1 derogation applies broadly and therefore its scope includes information such as programme content but also extends to include multi-purpose information, such as financial information related to the cost of programme making. The BBC argue that although this financial information (including details of salaries, talent costs and the total cost of in-house productions) is not in itself journalism, art or literature, this financial information is part of the production process and therefore has an obvious impact on creativity.
12. In support of this view the BBC cite three sources:
 - (a) The Commissioner's view in his Provisional Decision in the case of *Sugar v Information Commissioner*, EA/2005/0032 that this sort of budgetary information deals with the 'sustenance...of the creative journalistic purpose that the designation is meant to protect'.
 - (b) Evidence given by Mr Richard Sambrook, Director of News at the BBC, in relation to appeal EA/2005/0032 to the Information Tribunal. He stated that:

'Questions about how you make (various) selections or the resources that are available to make selections, might be characterised on the one hand as management, but they are absolutely core to journalism and determine both the quality, nature and character of journalism.'
 - (c) A letter from the Home Office to the Department for Culture Media and Sport of 13 January 2000 which states:

'the Government has sought to ensure that...including them [the public service broadcasters] in the Bill does not place them at a commercial disadvantage to their commercial rivals. The Bill therefore provides that the inclusion of the public service broadcasters does not relate to information held for journalistic, artistic or literary purposes.'
13. In summary, the BBC's position is that the staffing, talent and in-house production cost information is not held for purposes other than journalism, art or literature and therefore is outside the scope of the Act.

The Commissioner's view

14. In the Commissioner's view the purpose of the derogation is to protect journalistic, artistic and literary integrity and to preserve a "creative space" in which programme makers can continue their core activities free from outside interference.
15. The Commissioner accepts that the requested information (salaries, talent costs and in-house programme costs) supports the creation of programme content. It is

self evident that in the majority of cases some form of financial support is necessary to produce programme content. The BBC and the Commissioner agree on this point and as such he has not considered it further.

16. However, the Commissioner's view is that the requested information is also held by the BBC for operational purposes in **addition** to being held for journalistic, literary and artistic purposes. The Commissioner believes that financial information serves a number of direct purposes; for example, it is used to budget, monitor expenditure, identify opportunities to improve efficiency, and to comply with legal obligations.
17. In the particular circumstances of this case, the Commissioner has found it useful to understand the Royal Charter which constitutes the BBC when considering these purposes. It should be noted that the Royal Charter in existence on the date of the complainant's request for information (27 June 2006) ran from 1 May 1996 to 31 December 2006 and is known as the 1996 Charter. A new Royal Charter came into force on 1 January 2007 and is known as the 2006 Charter.
18. The Commissioner has noted the following provisions of the 1996 Charter:
 - Article 7(1)(b) states that it shall be the functions of the Governors to *"satisfy themselves that all the activities of [the BBC] are carried out in accordance...with the highest standards of probity, propriety and value for money in the use of the Licence Revenue and moneys paid..."*
 - Article 18(1) states that the BBC's accounts shall be audited annually. Article 18(2) provides that the BBC *"shall...prepare an Annual Report...and attach thereto an Account or Accounts of the Income and Expenditure of the Corporation and...shall include in such Report such information relating to its finance, administration and its work generally..."*
19. The 2006 Charter has similar provisions to the 1996 charter albeit with a new structure to reflect changes in corporate governance, via the BBC Trust, and the formalisation of the Executive Board as the executive body of the BBC with responsibility for the functions listed in paragraph 38 of the 2006 Charter; notably these include the operational management of the BBC, and the conduct of the BBC's operational financial affairs.
20. Under the 2006 Charter, the BBC Trust is the guardian of the licence fee revenue and the public interest. To fulfil this role the Commissioner understands the general functions of the BBC to include the following:
 - (i) assessing the performance of the Executive Board in delivering the BBC's services and activities and holding the Executive Board to account for its performance;
 - (ii) representing the interests of licence fee payers and exercising rigorous stewardship of public money; and

- (iii) to ensure that the Executive Board conducts the BBC's operational financial affairs in a manner best designed to ensure value for money.
21. Therefore the Commissioner believes that, as a result of the Charter, the BBC holds financial information to enable:
- (i) the Governors (and now BBC Trust) to perform their role as 'guardians' under the Royal Charter by assessing the performance of the Executive Board; and
 - (ii) the Executive Board to manage the BBC's financial and operational affairs in a manner best designed to ensure value for money.
22. People costs and in-house programme costs constitute financial information and therefore serve a number of purposes in addition to that accepted by both the BBC and the Commissioner, i.e. that they support the creation of programme content.
23. Where information is held for a number of purposes the Commissioner's approach is to consider whether the dominant purpose for holding that information is a purpose specified in the Schedule 1 derogation.
24. In this case in-house production, talent and staff cost information served the following purposes:
- (i) It supported the delivery of programme content.
 - (ii) It enabled the BBC to monitor its expenditure against its agreed budget for that year.
 - (iii) It enables the BBC to predict with some certainty the future costs of engaging talent.
 - (iv) It enables the BBC to predict with some certainty the future costs of producing programmes in-house.
 - (v) It contributed to meeting the BBC's obligations to publish annual accounts.
 - (v) It contributed to the ability of the Governors (now the BBC Trust) and the Executive Board to perform their respective functions and operational duties under the Royal Charter
25. The final factor which the Commissioner has weighed, in coming to a decision on whether the derogation applies, is whether the decision on the cost of in-house production and the cost of engaging talent and other staff constitutes a creative decision.
26. A creative decision would relate to the inception, planning and delivery of new content. For example, the decision to use presenter X instead of presenter Y would tend to be a creative decision, based on the reputation and standing of the entertainer in the industry, but the determination of the level of remuneration for presenter X or Y would not be characterised as a creative decision.
27. As such, the Commissioner does not consider that the requested information constitutes a creative decision.

28. After carefully balancing these competing purposes, the Commissioner finds that the requested information was, or was more likely to have been, held by the BBC for predominantly operational purposes (including financial, management and administrative purposes) and not for journalism, literature or art. As a result, Schedule 1 is not applicable to in-house programme costs and talent costs information and the BBC is a public authority with regard to this information.

Exemptions

29. The BBC provided additional arguments, without prejudice to its view that the derogation was engaged, as to the exemptions which it would seek to rely on, in the event that the Commissioner found that the derogation did not apply in this case.
30. The BBC explained that the information requested in part one and two of the request fell under the definition of in house production costs and was considered exempt under section 43 of the Act. The information in part three was broken down into two parts, 'talent costs' and 'staff costs'. The BBC found that 'talent costs' was exempt under sections 43,40 and 41 and 'staff costs' was considered to be exempt under section 40.

Section 40 'Personal Data'

Talent Costs

31. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998 ('DPA').
32. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:

'...data which relates to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

33. The Commissioner accepts that the salaries paid to presenters clearly fall within the description of personal data as defined by the DPA because it is information which directly relates to an identifiable living individual.
34. The BBC argued that presenters' salary details are exempt from disclosure because to do so would breach the first, second and sixth data protection principles.

35. The first data protection principle has two components:
1. Personal data shall be processed fairly and lawfully and
 2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.
36. In considering whether disclosure would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- The presenters' reasonable expectations of what would happen to their personal data;
 - Whether the presenters specifically refused to consent to the disclosure of the requested information;
 - Whether disclosure would cause any unnecessary or unjustified damage to the presenters; and
 - The legitimate interests of the public in knowing how much the presenters earned weighed against the effects of disclosure on the presenters.
37. In the BBC's view payments made to talent are not analogous to the salaries paid to senior employees in public sector organisations. This is because the sums paid by the BBC to talent do not relate to the performance of a public function, but rather to individuals who are contracted to provide services to the BBC in an entirely private capacity. In the BBC's view disclosure of the requested information would therefore impinge on the private lives of the relevant individuals, particularly given that in the case of talent, their work forms part and parcel of their lives to such a degree that the professional and private aspects of their lives are often intertwined.
38. Furthermore, with regard to the expectations of the talent, the BBC has explained that the contracts it enters into with talent contain express confidentiality provisions which state that: 'the Broadcaster shall not at any time during the Term or afterwards disclose to anyone in circumstances whatsoever confidential information relating to the business or affairs (including programmes) of the BBC its subsidiaries and associates'.
39. The BBC has acknowledged that, strictly speaking, individuals with knowledge of talent deals are free to disclose that information. However, the Commissioner understands that in this case none of the talent covered by the scope of the request have made any public comment to such an effect. Furthermore, the BBC has explained that in fact there is very little sharing of information of this kind and that this is demonstrated by the newsworthiness of leaks to the press regarding individual talent deals. The BBC argues that if such information were commonplace it would not merit the headlines that it normally does. The BBC has also noted, on occasions where details of deals have been leaked to the press the BBC has received complaints from several agents and from talent themselves about breaches of confidentiality. Therefore, set against this context of talent costs very rarely being proactively disclosed, and the particular circumstances in which the agreements with these individuals were negotiated, the BBC believes

that the individuals covered by these requests would have a clear expectation that details of their agreements would not be disclosed.

40. On the basis of the above, the Commissioner accepts that the talent involved in this case would have an expectation that details of their financial arrangements with the BBC would not be disclosed. Furthermore, the Commissioner is also persuaded that this expectation is a reasonable one. In reaching this conclusion the Commissioner has placed considerable weight on the fact that the relationship which talent enters into with the BBC is distinct from the relationship that salaried employees enter into with the BBC. This key distinction is based on the fact that the talent's work for the BBC is inextricably linked to their private lives and because it is not possible to separate the private and professional aspects of their lives it would be unfair to disclose how much these individuals were paid by the BBC.
41. Therefore, the Commissioner accepts that disclosure of the talent costs would be unfair and that disclosure would breach the first data protection principle and so the exemption at section 40 of the Act is therefore engaged. The Commissioner has not gone on to consider the application of sections 41 and 43 to this information as he considers section 40 applies.

Staff Costs

42. Part three of the complainant's request asked for a list of salaries paid to all employees during the world cup. In line with the arguments in paragraphs 32 and 33 the Commissioner accepts that the salaries paid to staff clearly fall within the definition of personal data.
43. The BBC state that disclosure of information pertaining to staff remuneration would breach the first data protection principle. To reiterate, the first data protection principle has two components:
 1. Personal data shall be processed fairly and lawfully and
 2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.
44. In considering whether disclosure would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
 - The employees reasonable expectations of what would happen to their personal data;
 - Whether the employees specifically refused to consent to the disclosure of the requested information;
 - Whether disclosure would cause any unnecessary or unjustified damage to the employees; and
 - The legitimate interests of the public in knowing how much the employees earned weighed against the effects of disclosure on the employees.

45. The BBC state the information would not be processed fairly as there is insufficient public interest in the sums paid to staff to justify its disclosure. The staff concerned operate in programme making areas, in other words their duties relate directly to the BBC's content and as such it would be wrong to view them as 'public servants' in the way that would apply to individuals engaged in an organisation whose activities are public facing.
46. The BBC also explained that information pertaining to staff remuneration is confidential information and that the staff would have had a reasonable expectation that this information would not be disclosed for the following reasons:
 - Information regarding remuneration is communicated to staff in a letter marked 'personal' or 'staff private'
 - Staff are advised on the BBC intranet that salaries other than Executive Board and Board of Governors will not be disclosed on request
 - The BBC Press Office routinely advises that disclosure of this information, other than for the Executive Board and Board of Governors, would breach the Data Protection Act
 - There is a common law duty on employers not to disclose to third persons confidential information about their employees.
47. The Commissioner accepts that the employees would have an expectation that their salary details would not be disclosed. The Commissioner believes it is important to draw a distinction here between the disclosure of the salary bands of the staff sent to the World Cup and the exact salary details. Clearly, disclosure of exact salary would lead to a greater infringement into the privacy of the staff because it would reveal specific details a person's financial situation. However, disclosure of the salary bands within which they fell, particularly if it was a relatively broad salary band, would have less of an infringement into the staffs' privacy
48. In this case the Commissioner has not been provided with any information from the BBC to establish how many of the staff sent to the World Cup are paid in identifiable salary bands, however, it is reasonable to assume that the BBC would be able to provide a number of broad salary bands into which the majority, if not all, of the staff sent to cover the world cup would fall.
49. The Commissioner considers that providing an exact list of all the salaries would be unfair and that the staff would have a reasonable expectation that this information would not be disclosed; even if actual names were not listed, those on the list would be able to not only identify themselves but others carrying out similar job roles receiving the same salary.
50. However, in relation to disclosure of the salary bands, the Commissioner is not persuaded that in this case the expectation that the information would not be disclosed is a reasonable one, particularly if employee names are not listed
51. Whilst the Commissioner accepts that a person's salary details are their personal data, he does not accept that disclosure of an anonymised list of the salary bands

- of the staff sent to cover the World Cup, without reference to their names or job roles would be unfair.
52. The Commissioner must therefore move on to consider if one of the requirements of Schedule 2 are met in order for disclosure of the information to be in accordance with the first data protection principle.
53. The Commissioner considers that the most relevant condition is Condition (6)1 which states that the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
54. The BBC contend that Condition 6 (1) is not satisfied because the processing of the information does not serve any legitimate interest pursued by the complainant, rather it is unwarranted, by reason of the prejudice to the rights and freedoms or legitimate interests of the individuals concerned. The BBC maintains that there is very limited value in disclosing this information to the public compared to the likely harm to the data subject.
55. The Commissioner considers that the public has a legitimate interest in seeing how the BBC spends money and the decisions it makes based on financial constraints. He considers in this case, that disclosure of a list of all the salaries paid to employees sent to cover the world cup would assist the public in understanding where some of the TV Licence Fee money is being spent. The Commissioner also considers that disclosure of this kind of anonymised data would increase public confidence in the expenditure of the BBC and create an air of transparency.
56. The Commissioner rejects the argument from the BBC that disclosure of the salary bands with no reference to names or job roles would be unfair to the individuals concerned.
57. For these reasons, the Commissioner finds that in respect of the 'staff costs' and salary bands section 40 is not engaged.

In House Production Costs

58. The BBC argued that the information requested in parts one and two of the request falls within the definition of in-house production costs.

“How much the BBC are spending on accommodation, food and transport for these individuals (BBC staff sent to cover the World Cup). Are some of the BBC staff staying in hotels? Are some camping or self-catering? Where there is a range of accommodation please specify how many staff are staying in which cost of accommodation.

How these 160 staff were transported to Germany including what class of air travel, or train travel they were afforded.

Section 43: Commercial Interests

59. Section 43 (2) states that information is exempt if its disclosure would, or would be likely, to prejudice the commercial interests of any person.
60. The BBC contends that disclosure of information relating to in-house programme costs would harm its commercial interests because disclosure of this information may result in a ratchet effect among bids from independent production companies (IPCs) for licence deals in respect of similar programmes. This is because disclosure would allow IPCs to establish the minimum level of funds which were available for a particular programme or type of programme and IPCs will then have an incentive to bid beyond that level. This will prejudice the BBC's commercial interests because it will be forced to increase what it pays for those licence deals or face losing these deals. The BBC has highlighted a number of features of the market for IPCs that substantiate this argument.
61. The BBC operates within a strict commissioning regime. This regime, as detailed in Clause 52 of its Agreement with the Department for Culture Media and Sport, requires the BBC to commission at least 25% of programmes through IPCs and to ensure that at least a further 25% of programming is open to competition between in-house production departments and IPCs (under clause 54 this is known as the Window of Creative Competition – 'WOCC').
62. The BBC has explained that its commissioning process ensures that bids from in-house and independent producers will always be evaluated side by side to ensure fair decision making, i.e. in-house producers are not given an advantage over external independent producers. Therefore, a competitive market effectively exists between BBC in-house producers and IPCs when bidding for commissions from the BBC. The BBC has also explained that in-house production staff whose role it is to bid for programmes would not be privy to bid information submitted to the BBC by IPCs. Moreover, very few people outside of their own companies will have knowledge of the relevant sums and although staff moving between companies may take knowledge with them, it will be current and of limited value. In addition all information is treated as confidential within the BBC and limited to those with a need to know.
63. For these reasons, the disclosure of information relating to the budget and cost of in-house programmes by the BBC alone would have the effect of creating an informational asymmetry. The BBC has argued that it is well known that the effect of such asymmetry is to change bidding strategies and to provide relative strength to the beneficiaries of the asymmetry. In support of this argument the BBC have cited Paul Klemperer's paper on Bidding Markets (http://www.competition-commission.org.uk/our_role/analysis/bidding_markets.pdf) which illustrates that a change to the relative flow of information between participants in an auction can affect the outcome of that auction. In this case where the information relates to the final cost of an in-house production it enables IPCs to ascertain with certainty what price the BBC is willing to pay in respect of a particular programme. This knowledge would then enable IPCs to increase their bids for licence deals with the BBC in order to provide the same services.

64. In order to demonstrate the likelihood of this prejudice occurring the BBC have highlighted the fiercely competitive nature of the media and entertainment industry which means that margins on programmes are very low. Consequently, a minor adjustment in the cost of an individual programme, as a result of a ratchet effect among bids from IPCs, can have a huge and deleterious effect on the broadcaster. Moreover, the BBC has highlighted the fact that since it is funded by the licence fee and has a corresponding duty to exercise careful stewardship of public money, this places it in a difficult position. In the short-term it may well be unable to afford the increased bids from IPCs. In the long term the consequence is that the BBC will suffer an outflow of programming from IPCs and a reduction in programming quality.

The Commissioner's Position

65. The Commissioner understands that the main basis of the BBC's argument as to why information covered by requests one and two should not be disclosed is based on the fact that disclosure of the cost of a single element of an in-house production would lead to further requests for the other costs of the programme and thus, over time, it is possible that the entire budget of a programme would be disclosed. Once the total cost of a production was in the public domain, the BBC's commercial interests would be harmed in the way outlined above.
66. In the Commissioner's opinion for this argument to be sustained the BBC has to be able to demonstrate that disclosure of the information covered by requests one and two would lead to further requests for costs of the component parts of a production; that the information covered by these requests will always be disclosed; and that it will be practical to combine the cost of the component parts into a useable format. If these circumstances occur, then it is possible that the total cost of a production will essentially be placed in the public domain and the prejudice outlined above may occur.
67. The Commissioner does not accept that disclosure in this case would have this effect. In reaching this decision the Commissioner has considered the fact that much of the information does not relate to a specific programme but to the cost of sending staff to cover a sporting event which resulted in a number of different programmes. The Commissioner also considers that much of the information does not relate to production costs at all but is a request for statistics on the types of accommodation and travel used.
68. Whilst some of the information requested does relate to financial information such as the cost of accommodation and travel the Commissioner does not consider that future such events would have similar comparable costs associated with it. The Commissioner notes that the next World Cup is scheduled to take place South Africa in 2010 and considers that the cost of accommodation and travel to this World Cup will significantly differ from the 2006 World Cup in Germany.
69. The Commissioner has also considered whether disclosure of the discrete units of information covered by requests would, in itself, be likely to prejudice the commercial interests of the BBC. Whilst the Commissioner accepts that in some cases disclosure of the overall total cost of a production may prejudice the BBC's

commercial interests he does not accept that disclosure of these component elements would. In the Commissioner's opinion disclosure of this information would not provide IPCs with sufficient information to allow them to formulate an alternative bid, especially considering the different location of the next World Cup. Therefore, the ratchet effect described earlier would be unlikely to occur because disclosure of information covered by requests is not simply to sufficient to allow IPCs to establish the price the BBC pays for certain programmes.

70. On the basis of the above the Commissioner has concluded section 43 does not provide an exemption for disclosure of the information covered by requests one and two.

Procedural matters

71. Section 17(1) states that a public authority which is relying on a claim that the information is exempt, must, within the time for complying issue a refusal notice which:
- (a) states the fact that information is exempt,
 - (b) specifies the exemption in question, and
 - (c) states why the exemption applies.
72. As the BBC was relying on the Schedule 1 derogation, its refusal notice of the 17 July 2006 did not explain which exemptions it considered applied to the requested information. Technically this is in breach of the requirements of section 17 of the Act.

The Decision

73. The Commissioner's decision is that the BBC failed to deal with the following elements of the complainant's request in accordance with the Act:
- i. The information requested is held by the BBC for a dominant purpose other than that of journalism, art or literature. Therefore the BBC has not dealt with the complainant's request in accordance with Part 1 of the Act in that it failed to comply with its obligations under section 1(1)
 - ii. The BBC breached section 17 of the Act because it failed to provide a refusal notice stating which exemptions it believed applied to the information covered by the request listed in the previous paragraphs.
 - iii. The BBC was incorrect to rely on section 43 to withhold the information requested in parts one and two of the request.
 - iv. The BBC was incorrect to rely in section 40 to withhold the information requested in part three of the request in relation to the salary bands of the 'staff costs'

74. However, the Commissioner has decided that the following aspects of the request were dealt with in accordance with the Act:

- i. The salary details of the presenters are exempt from disclosure under section 40(2).
- ii. The BBC was correct to rely on section 40(2) to withhold the exact salary details of the staff sent to the World Cup.

Steps Required

75. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- i. Disclose the information requested in parts one, two and three (salary bands of the staff costs only) of the request within 35 calendar days.

Failure to comply

76. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

75. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 13th day of March 2008

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
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Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Relevant Statutory Obligations and Provisions under the Act

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 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 40(2) provides that –

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
 - (i) any of the data protection principles, or

- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Commercial interests.

Section 43(1) provides that –

“Information is exempt information if it constitutes a trade secret.”

Section 43(2) provides that –

“Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).”

Section 43(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”