

Freedom of Information Act 2000 (Section 50)

Decision Notice

11 December 2008

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

Summary

The complainant's information request to the BBC was for the equivalent geographic telephone number for each of its non-geographic telephone numbers. The BBC said it held some but not all of the requested information; of the information it did hold, sections 38 (health and safety) and/or 43(2) (commercial interest) of the Act exempted it from disclosure.

The Commissioner's decision is that the BBC held some but not all of the requested information. Regarding the information held by the BBC, sections 38 and 43 (2) of the Act were not engaged and therefore it should be communicated to the complainant. The Commissioner also concluded that the BBC breached sections 1(1)(b), 10(1) and 17(1).

The Commissioner's Role

1. The Commissioner's role 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. The complainant, on 31 July 2006, requested that the British Broadcasting Company ("BBC") provide him with "the equivalent geographical number of all ... (its)...0870 numbers".
3. In a reply dated 2 August 2006, the BBC explained that they had contracted with Capita Business Services Limited ("Capita") to provide the "BBC Information" contact centre services that use the 0870 service numbers. Capita in turn

purchased telecom services from Cable & Wireless to deliver calls to the contact centre.

4. The BBC went on to say that, while it did hold the requested information it was exempt from disclosure by virtue of section 43(2) of the Act, as disclosure of the information would harm its commercial interests. A mass calling of a 0870's equivalent geographical number or numbers would lead to telephone systems becoming inoperable and this would negatively affect its business.
5. The BBC further maintained that accurate statistics are compiled from the use of 0870 numbers but this would not be possible if people used the 0870's equivalent geographical number(s) instead. Additionally people using the geographical number would bypass (with adverse consequences) the current system of using recorded messages during very busy periods. Both these factors gave further weight to its reliance on section 43 (2) not to disclose the information sought by the complainant.
6. The complaint on 3 August 2006 asked the BBC to review its decision. The BBC undertook the review .The outcome of the review was that the original decision was correct and this was communicated to the complainant on or about the 7 September 2006.

The Investigation

Scope of the case

7. On 14 September 2006, the complainant contacted the Commissioner to complain about the handling of his information request by the BBC. He wished the Commissioner to consider whether the BBC had correctly applied the Act. In correspondence dated 12 September 2007 the Commissioner sought from the BBC further details regarding its reliance on section 43 of the Act not to provide the complainant with the information he had requested.
8. In a letter to the Commissioner dated the 22 October 2007 the BBC provided further clarification on its use of non-geographical numbers and sought to rely on further exemptions provided by the Act to prevent their disclosure.
9. The BBC explained that there are two ways of receiving non-geographic numbers; those that were supported with a call plan and those that were not.
10. Non-geographic numbers with a call plan (92 numbers in total) do not have an equivalent "fixed" geographic number. This is because those numbers have the ability to be routed to any particular geographic number as required by the BBC business needs. The flexibility in the system means that a non-geographic number's equivalent geographic number can change on a daily or even an hourly basis.

11. The BBC confirmed that non-geographic numbers without a call plan are always linked to a fixed geographic number held by them and therefore have an equivalent geographic number.
12. The BBC also modified and expanded upon their original reason not to communicate the requested information to the complainant. This was done as follows:
 - The BBC did not hold the majority of the information requested in accordance with section 1 (1) (a) of the Act. That information being the “fixed” geographic number of the non-geographic numbers with a call plan
 - The BBC estimated that to deal with the request in its totality would exceed the appropriate fees limit in accordance with section 12 of the Act.
 - In relation to the 31 (0870) telephone numbers which are linked directly to BBC geographic telephone numbers, releasing the geographical telephone numbers would, or would be likely to, endanger the physical health or safety of individuals, and were therefore exempt from disclosure by virtue of section 38 (1)(a) and (b) of the Act.
 - In relation to the 31 (0870) telephone numbers which are linked directly to BBC geographic numbers, releasing the geographic numbers would, or would be likely to, prejudice the commercial interests of the BBC and were therefore exempt from disclosure by virtue of section 43 (2) of the Act.
13. The Commissioner, on the 22 November 2007, asked the BBC to provide evidence both as to the likelihood of a mass calling of a non-geographic's equivalent geographic number and to the resulting endangerment of the physical health or safety of individuals.
14. In reply, the BBC provided a copy of a letter dated the 21 January 2008 from Cable & Wireless to the BBC that stated -

“The Intelligent Network is specifically designed and built to manage large and simultaneous responses to media generated events. This allows any mass call event to be effectively managed and monitored both pro-actively and re-actively to safeguard the integrity of the network. A normal PSTN line would actually bypass the Intelligent Network and reduce our ability to react to an event and manage the call flows effectively.

Poor mass call event management could result in parts of the infrastructure being overloaded with call traffic. A customer's PABX is typically scaled to manage standard business call volumes and would not include simultaneous call processing required to support mass call events. The PABX would be at an unusually high risk of failure and routing stoppage should it be used as the focal

point for high call volumes. If the event was unusually large the operation of the local exchange, which hosts the PSTN numbers, may also be compromised.”

15. The Commissioner next asked the BBC (a) if it was aware of any occasion where a release of a non-geographic number's equivalent geographic number had resulted in a pbx becoming inoperable and also (b) if the BBC have a back up system to manage the failure of a pbx?
16. The BBC reply for (a) was that it was unable to confirm that the release of a non-geographic telephone number had resulted in a PBX becoming inoperable and for (b) that the back up system it had was limited both in its functionality and scope.
17. The Commissioner, in a letter dated the 13 March 2008, asked the BBC to resolve apparent differences that had arisen in its correspondence with the complainant and the Commissioner where -

(a) In its letter to the complainant dated 2 August 2006 the BBC stated-

“...the BBC has contracted Capita Business Services Ltd ...to provide the “BBC Information” contact centre services that use 0870 numbers. Capita in turn purchases telecom services from Cable Wireless...to deliver calls to the contact centres”.

(b) While in its letter to the ICO dated the 22 October 2007 it stated-

“The BBC has a general telecommunications technology contract with Siemens who order non-geographic numbers from their preferred communications supplier for BBC services – Cable & Wireless (C&W). There are two ways that the BBC receives 0870 numbers from C&W...”

18. The BBC in a reply stated –

” The actual 0870 telephone numbers that Capita use are purchased by the BBC via Siemens. Siemens purchase them from Cable & Wireless. Separately, Capita purchases functionalities/services directly from Cable & Wireless to support the telephony services they provide their customers (such as the BBC).”

Findings of Fact

19. The Public Switched Telephone Network (the PSTN) is the network of `cables, connections and exchanges or switching systems that allows anyone with a telephone connection to call, or receive calls from anyone else with a telephone connection, in the same country or in any other country whose PSTN is linked.
20. Non-geographic numbers are telephone numbers which, rather than being assigned to a particular telephone line, provide callers with a contact number which gives no indication as to the geographical location of the line being called. The owner of the number can retarget the called non-geographic numbers to any other telephone number.

21. A telephone exchange that serves a particular business or office, as opposed to one that a telephone company operates for many businesses or for the general public is known as a private branch exchange (pbx).
22. The Commissioner finds that the BBC purchases non-geographic numbers from Siemens. These numbers are used by the BBC and by Capita Business Services for the benefit of the BBC. Capita Business Services have contracted with the BBC to provide the "BBC Information" contact centre services that use some of the non-geographic numbers purchased from Siemens. Capita Business Services itself purchases telecom services from Cable & Wireless to service and deliver calls to the contact centres.
23. Non-geographic numbers utilised by the BBC are of two different types, either with or without a call plan. Call planned numbers (ninety-two in total) connect to geographic telephone numbers held by Capita Business Services. Capita Business Services will then route the call as directed by the BBC. These calls may be directed to an interactive voice response system or to a BBC geographic number. Accordingly, there is not an equivalent geographical number held by the BBC for its non-geographic numbers with a call plan.
24. Numbers without a call plan (thirty-one in total), as the BBC confirmed, do have an equivalent BBC geographic number.

Analysis

25. The Commissioner has considered the public authority's response to the complainant's request for information.

Procedural breaches

Section 1

26. Section 1(1) of the Act states the following:

"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".

27. The BBC did not inform the complainant, as it was later to maintain (see paragraph 12 above), that it did not hold the majority of the requested information. The Commissioner's decision therefore is that the public authority did not deal with this part of the request for information in accordance with section 1(1) of the Act.

Section 17

28. Section 17(1) of the Act requires that, where a public authority is relying on a claim that an exemption in Part II of the Act is applicable to the information requested, it should state in its refusal notice which exemptions are applicable and why the exemption applies. In this case, the public authority failed to state in the refusal notice that it believed that the exemption provided by section 38 applied to the requested information it held and therefore breached section 17(1).

Section 12

29. Section 12(1) states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the statutory appropriate limit. The appropriate limit here is £450 as set by the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.
30. The BBC was only to rely on this exemption if the Commissioner decided that it held the equivalent geographic numbers for non-geographic numbers with a call plan. The Commissioner, as reasoned at paragraph 24 above, concludes otherwise and therefore consideration of the applicability of section 12 is unnecessary.

Exemptions

31. The BBC relies on the following exemptions not to communicate the requested information it does hold (ie the BBC geographic numbers of non-geographic numbers without a call plan) to the complainant:
- Section 38(1)(a) and (b) - releasing the geographic telephone numbers would, or would be likely to, endanger the physical health or safety of individuals.
 - Section 43(2) - releasing the geographic telephone numbers, would be likely to prejudice the commercial interests of the BBC.

Section 38

32. This exemption is engaged where disclosure would or would be likely to endanger the mental or physical health or the safety of any individual. Where information is exempt by virtue of section 38(1)(a) and (b), it can only be withheld from disclosure if the public interest in maintaining the exemption outweighs the public interest in disclosure. Full details of the exemption at section 38 are given in a legal annex to this notice.
33. The BBC, in its letter to the Commissioner dated 22 October 2007, explained why it considered section 38 to be engaged. It believed that there would be a risk to public telephone exchanges if the geographic telephone numbers were publicly available and this would or would be likely to endanger the physical health or safety of individuals.

34. The Commissioners view is that where a public authority has failed to specify the level of prejudice at which an exemption has been engaged the lower threshold of “would be likely to prejudice” should be applied, unless there is clear evidence that it should be at the higher level of “would” prejudice. The BBC did not specify which level of prejudice it believed to be engaged and therefore the Commissioner view is that the lower threshold of “would be likely to prejudice” applies and has utilised this lower threshold test in this decision notice.
35. The BBC stated that the two main threats, if the geographic telephone numbers were publicly available, were:
- Lobby groups, who have formed in protest to the higher charges relating to using 0870 numbers, could seek to ‘attack’ the switchboard with a large amount of calls.
 - Where the BBC run particular competitions/ interactive programmes where they encourage people to call in, a large number of people could use the geographic telephone numbers to call in.
36. In either event, if an office telephone number was given out and mass calls came in it would only take a relatively low number of simultaneous calls to freeze the BBC’s PBX, which is the local telephone exchange system in each BBC building which services the internal telephones.
37. A higher number of simultaneous telephone calls would or would likely cause the BT public telephone exchange for the local area (for example, Shepherds Bush for telephones coming out of Television Centre) to collapse. This might in turn disable the 999 system for the area. A very large number of simultaneous calls might cause other wider public exchanges around the country to collapse.
38. The Information Tribunal has stated that for a prejudice-based exemption, such as section 38, to be engaged, “the chance of prejudice being suffered should be more than a hypothetical possibility; there must ... (be)... a real and significant risk”, (*John Connor Press Associates Limited v The Information Commissioner (EA/2005/0005)*). Moreover, subsequent Tribunal decisions have emphasised that the public authority must go beyond mere assertion and provide credible evidence as to the likelihood of harm, *Hogan v Oxford City Council & The Information Commissioner (EA/2005/0026, EA/2005/0030)* and *Reith v ICO and London Borough of Hammersmith and Fulham (EA/2006/0058)*.
39. The evidence provided by the BBC consisted of a letter, dated 21 January 2008, from Cable & Wireless UK set out at paragraph 14 above. The Commissioner is of the view that the evidence provided by the BBC is not compelling enough to engage the exemption. The evidence as presented failed to give a persuasive indication of the number of simultaneous telephone calls to a geographic number that would cause the equipment failure and the likelihood of those calls being made.

40. The Commissioner has not been presented with (nor been able to otherwise identify) sufficient evidence that this has happened previously or is likely to occur in the future. While the Commissioner does not discount that there is some possibility of harm occurring the likelihood is sufficiently remote not to engage the exemption. As the Commissioner does not agree that the exemption is engaged it has not been necessary for him to consider the public interest test in relation to section 38.

Section 43

41. 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)”.

42. Where information is exempt by virtue of section 43 (2), it can only be withheld from disclosure if the public interest in maintaining the exemption outweighs the public interest in disclosure. Full details of the exemption at section 43 are given in a legal annex to this notice.
43. The BBC maintains that a disablement of telephone exchanges, as stated in paragraph 4 above, would hamper its core business functions. In particular, an inoperative BBC's PBX would disrupt both the BBC internal and external communications.
44. As with section 38, the BBC reliance on section 43 is based upon the supposition that the release of the geographic telephone numbers would likely result in the disablement of the BBC's PBX and possibly a local area exchange. Therefore the Commissioners observations as set out in paragraphs 40 and 41 are equally applicable here and the exemption provided by section 43 (2) is not engaged. The Commissioner has not been presented with or otherwise been able to identify sufficient evidence for him to conclude that the exemption is engaged. As the Commissioner does not agree that the exemption is engaged it has not been necessary for him to consider the public interest test in relation to section 43.
45. As the exemptions from disclosure provided by sections 38 and 43 are not engaged the BBC breached section 1(1) (b) in failing to disclose the requested information and section 10(1) by failing to provide it within the statutory time limit.

The Decision

46. The Commissioner's decision is that the public authority did deal with some areas of the request for information in accordance with the Act, but failed to deal correctly with others.
- The BBC does not hold the information sought as regards non-geographic numbers accompanied by a call plan.
 - The BBC does hold the information sought as regards non-geographic numbers not accompanied by a call plan.
 - The exemption from disclosing the held information provided by section 38 is not engaged.
 - The exemption from disclosing the held information provided by section 43 (2) is not engaged.

Steps Required

47. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The BBC is to supply the complainant with the equivalent geographic number of its non-geographic numbers not accompanied by a call plan.
48. The public authority must take the steps required by this notice within 35 calendar days from the date of this notice.
49. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of Appeal

50. 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

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 11th day of December 2008

Signed

**Gerrard Tracey
Assistant Commissioner**

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

Legal Annex

Section 1 provides

- (1) 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 provides

- (1) 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.
- (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
- (3) In subsections (1) and (2) “the appropriate limit” means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.
- (4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—
 - (a) by one person, or
 - (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign, the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
- (5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated.

Section 17 provides

(1) 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 38 provides

(1) Information is exempt information if its disclosure under this Act would, or would be likely to—

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

(2) 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, have either of the effects mentioned in subsection (1).

Section 43 provides

(2) 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).

