

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 26 November 2008**

**Public Authority:** British Broadcasting Corporation ('BBC')  
**Address:** Room 2252  
2nd Floor  
BBC White City  
201 Wood Lane  
White City  
London  
W12 7TS

### Summary

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The complainant requested the amount the BBC gave away in prize money on game shows in 2005 and 2006. The BBC refused to provide the information on the basis that it was not a public authority in relation to this request because the information was held for the purposes of journalism, art or literature within the meaning set out in Schedule 1 of the Act. Having considered the purposes for which this information is held, the Commissioner has concluded that the requested information was not held for the dominant purposes of journalism, art or literature and therefore the request falls within the scope of the Act. However, the Commissioner has concluded that to fulfil the request would exceed the appropriate cost limit and therefore the BBC does not have an obligation to respond to the request because the cost of compliance would exceed the appropriate limit under section 12. However, the Commissioner has also concluded that in handling this request the BBC breached sections 1(1)(a) and 17(5).

### The Commissioner's Role

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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

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2. On 9 January 2007 the complainant submitted the following request to the BBC:

*'1. How much prize money was given away in 2005 on all quiz shows/game shows/National Lottery shows screened on BBC1?*

*2. How much prize money was given away in 2006 on all quiz shows/game shows/National Lottery shows screened on BBC1?'*

3. The BBC responded on 10 January 2007 and informed the complainant that the information he had requested fell outside the scope of the Act because the BBC is only covered by the Act in respect of information held for purposes 'other than those of journalism, art or literature' and the requested information was held for the purposes of creating the BBC's output or information that supports and is closely associated with its creative activities.

## The Investigation

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### Scope of the case

4. On 11 January 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant argued that in his opinion the information he requested fell within the scope of the Act.
5. During the course of the Commissioner's investigation the BBC provided the complainant with some of the information falling within the scope of his request despite the fact that it remained of the view that all of the requested information was derogated and that it also believed that to fulfil the request in its entirety would exceed the appropriate cost limit. Therefore, in this decision notice the Commissioner has made a decision on whether the requested information falls within the scope of the Act (see paragraphs 28 to 46 below) and also whether the BBC could correctly rely on section 12 of the Act to refuse to answer the complainant's request (see paragraphs 47 to 59).

### Chronology

6. The Commissioner contacted the BBC on 21 February 2007 and asked to be provided with any further arguments it wished to rely on to support the position that the information was covered by the scope of the derogation. The Commissioner also asked the BBC to provide, without prejudice to its position on the derogation, details of any exemptions it would seek to rely on should the Commissioner conclude that the requested information fell within the scope of the Act.

7. The BBC provided the Commissioner with a response on 13 April 2007 which included further arguments to support the BBC's position that the information fell within the scope of the derogation. The BBC also outlined how it would handle the request if it fell within the scope of the Act:
8. Firstly, the BBC explained that it would have refused the request on the basis of section 12 of the Act because it estimated that the cost of complying with the request would exceed the appropriate limit of £450 as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations). The BBC explained that this was because 'complying with the Requested Information would have involved requesting information from all BBC programme makers and managers across BBC One involved in production of shows featuring games or quizzes for both 2005 and 2006. There were 39 series in 2005 and 26 series in 2006 of such shows.' The BBC suggested that if they were to cite section 12, it would then have asked the complainant to narrow the scope of his request.
9. Secondly, the BBC explained that it considered the information exempt from disclosure on the basis of section 43 of the Act because disclosure would prejudice its commercial interests.
10. In this response the BBC noted that the issues in this case were similar to another case that the ICO was also investigating in which the applicant had asked for details of prize money paid out by BBC Wales. (The Commissioner subsequently issued a decision notice on this case, FS50102206, on 1 October 2007).<sup>1</sup>
11. The Commissioner wrote to the BBC on 4 October 2007 and suggested that in light of the recent decision notice FS50102206 in which he had concluded that the requested information was not covered by the derogation, it was likely that with regard to this case he was also likely to conclude that the BBC was a public authority for the purposes of this request.
12. Therefore, the Commissioner asked the BBC to provide a more detailed explanation of how it had estimated that the cost of fulfilling the request in this case was over £450 so that the Commissioner could reach a decision as to whether the BBC was entitled to rely on section 12 to refuse to answer the request. Specifically, the Commissioner asked the BBC to provide a breakdown of the time taken in relation to the four activities that public authorities could charge for under the Regulations, namely, determining whether the information was held; locating the information; retrieving the information; and extracting the information.
13. In his letter the Commissioner also highlighted paragraphs 13 to 15 in the Section 45 Code of Practice which suggests that should a public authority refuse a request on the basis of section 12 of the Act, then it should discuss with the applicant whether the request can be narrowed so that it can be answered within

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<sup>1</sup> This decision notice can be viewed at [http://www.ico.gov.uk/upload/documents/decisionnotices/2007/fs\\_50102206.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2007/fs_50102206.pdf)

- the cost limit. Given the nature of the information requested in this case, the Commissioner suggested that the most obvious way for this request to be narrowed would be to supply the information for one year only, i.e. 2005 or 2006 rather than the information for both.
14. Subsequent to this correspondence, the Commissioner understands that the complainant and BBC discussed the BBC's position on this case. The BBC explained to the complainant that it had noted the Commissioner's decision notice in case FS50102206 in which the Commissioner had concluded that information related to prize money was not covered by the derogation and informed the complainant that it disagreed with this decision. Nevertheless the BBC explained that in this case it was prepared to provide the complainant with some of the information he had requested, namely the information that it was able to locate within 18 hours, i.e. until the appropriate cost limit was reached. The complainant agreed to narrow his request to the previous calendar year.
  15. The BBC, in-line with the explanation previously provided to the Commissioner in its letter of 13 April 2007, informed the complainant that it did not have a centralised record of the value of all the prize money paid on quiz/games shows. Consequently, to gather all of the information he originally requested would involve requesting information from all BBC programme makers and managers across BBC One involved in the production of shows featuring games or quizzes for both 2005 and 2006. However, the BBC explained that it was able to provide the figures for in-house produced programmes for the period 1 April 2006 to 31 March 2007 and it had collated this information 'using our financial records as this was the quickest way to access information on prize monies and to provide you with the most information possible within the appropriate limit'. (The BBC explained that it could only provide information in relation to in-house productions because for externally produced programmes the BBC only holds the overall fee paid to the independent production companies and does not hold lower level budgetary information, such as the cost of prizes, which are determined by the independent production company.)
  16. On 12 February 2008 the Commissioner wrote to the BBC and explained that he understood that the BBC's position was that to answer the original request would exceed the appropriate cost limit because to gather the information would involve contacting all production units of the BBC. However, the Commissioner suggested that the BBC's letter to the complainant implied that there was an alternative and quicker method of gathering this information, namely using financial records. The Commissioner therefore asked the BBC to clarify whether there were in fact two distinct methods of gathering the information needed to answer the original requests: (a) by gathering information from the various production units and (b) using financial records, and whether using method (b) to fulfil the original request would in fact exceed the cost limit.
  17. Having received no response the Commissioner contacted the BBC again on 14 May 2008 and asked the BBC to provide a response to his correspondence of 12 February 2008.

18. On 9 June 2008 the Commissioner contacted the BBC again and explained that as he had not received a substantive response to his letter of 12 February 2008, if he did not receive a response within 10 working days he would issue an Information Notice under section 51 of the Act which would require the BBC to provide a response to the points in his letter of 12 February 2008.
19. The BBC subsequently provided the Commissioner with a response on 17 June 2008. In this response the BBC explained that there were not in fact two distinct systems for gathering the information requested. Rather, the necessary process to gather the information involved first, a review of the programme files in order to establish which shows were awarded a cash prize and then second, a search of the financial records was necessary. The BBC's full explanation read:

‘Some information can be extracted from the financial records, however this is not a straightforward matter and to ensure its accuracy, it would have to be cross-checked against the relevant production files. This is because the BBC does not collect information at a ‘cash’ prize level within the financial records system, so there is no simple way to extract the data as the ICO has supposed. There is not a single material code or Work Breakdown Structure (‘WBS’) code where cash prizes payments are recorded; and therefore they are not consistently recorded from show to show (or sometimes even within a series). Therefore it is a case of somebody having to review each show where case prizes are known to form part of the editorial brief, line by line in the financial records, and examine individual transactions in the most likely WBS elements to have been used to record the payments’.
20. Having considered this response the Commissioner contacted the BBC again on 21 October 2008 because he was still unsure exactly how the information relevant to this request was held by the BBC and had still not been provided with a breakdown of the estimated cost of complying with this request. The Commissioner specifically asked the BBC for:
  - A detailed description of which elements of the requested information can be extracted from the financial records.
  - A detailed explanation of what searches could be carried out to locate each element of the information requested taking account of whether the financial records are held electronically or manually and how these are then structured (e.g. table of contents for each file or search queries available).
  - A detailed description of which elements of the requested information can be extracted from the programme files.
  - A detailed description of what searches could be carried out to locate each element of the information requested taking account of whether the programme files are held electronically or manually and how these are then structured (e.g. table of contents for each file or search queries available).
  - On the basis of the above analysis and the fact that the BBC has established that there were 39 series in 2005 and 26 series in 2006 a

detailed breakdown of the costs involved in locating, retrieving and extracting the information requested.

21. The BBC provided the Commissioner with a response on 4 November 2008. In this response the BBC provided the Commissioner with a more detailed description of how its records falling within the scope of this request were held. In summary, the BBC repeated its previous suggestion that using electronic financial records for the series in question, the BBC could only retrieve some of the information falling within the scope of the request. This was because there was no consistent approach across programmes for recording the prize money paid out to contestants; although for some series this may be recorded on the electronic financial records system, for other series it would not be.
22. Consequently, the BBC explained that in order to locate **all** of the cash payments for the 39 series in 2005 and the 26 series in 2006 manual searches of the hard copy production files for each production would have to be conducted. The BBC explained that this would be a time-consuming task for the following reasons: the person who initially prepared the files may no longer be in the employ of the BBC and therefore someone unfamiliar with the files would have to search them; there was no consistent manner in which the production files were structured; the production files were not held centrally but in different buildings in both London and Manchester. The BBC also stated that the 'consolidated total from the manual records would then need to be reconciled to the information available from the financial system to ensure that it is complete'.
23. The BBC went on to explain that from the hard copy production files it could establish the following:
  - The value of the prize;
  - Name of the prize winner;
  - Date prize was won, i.e. record date;
  - By default the names of the programme that the prize was in respect of.
24. On the basis of this analysis the BBC estimated that for each of the series as an average it would take the following time to locate, retrieve and extract the relevant information:
  - (a) 2 hours per series to locate the correct production folder;
  - (b) 1 hour per series to tally the total value of prize winners for that series;
  - (c) 2 hours to consolidate all the series information from that financial year to provide the final information needed to fulfil the request.
25. The BBC's letter to the Commissioner also explained that:

'Therefore for 2005 I estimate 119 man hours, and for 2006 80 man hours. This gives approx 200 man hours of work, which translates as 29 days. I would expect a production co-ordinator would be the appropriate level to carry out this work. This would cost approx £4,640 to locate the information requested.'

While the above ignores checking for accuracy, I do not believe that this can be fairly excluded from the calculation, as certain reconciliations would be needed to ensure that "each element of the information requested" has been obtained. I would estimate that this would add on average another 0.5 hours per series, and would cost an additional £742.'

26. The BBC explained that it considered this process of cross-checking falls within the meaning of 'extracting' in section 4(3)(d) of the Regulations.
27. Having considered this response from the BBC, a representative of the Commissioner's Office called the BBC in order to clarify a number of aspects of their latest response. On the basis of this call the Commissioner understands that on average for each series there would be between 20 and 30 lever arch files for each year. The information containing details of prize money paid to each contestant was likely to be included in the files labelled as containing information on contestants and for each series there were an average of 5 or 6 such files. The Commissioner also established that for the time taken to locate and extract the information for each series was likely to vary, with 30 minutes being the minimum amount of time, but up to 2 hours in some cases. During the call the Commissioner also clarified with the BBC that undertaking activity (a) as described in paragraph 24 involved the cost for locating and retrieving the information for each series and undertaking activity (b) involved the cost of collating that information into one total for the financial years requested.

## Analysis

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### The Schedule 1 derogation

28. 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).
29. 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.
30. In this case the requested information that the BBC considers to be covered by the derogation is financial information pertaining to programme production.

### The BBC's view

31. 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 prize money) 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.

32. 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.'*

33. In summary, the BBC's position is that in-house production cost information, which includes the prize money information which is the focus of this request, is not held for purposes other than journalism, art of literature and therefore is outside the scope of the Act.

### **The Commissioner's view**

34. The Commissioner has noted the arguments put forward by the BBC.

35. 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.

36. The Commissioner accepts that the requested information about prize money 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.



37. 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.
38. 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 at the time of the complainant's request (9 January 2007) a new Royal Charter had recently come into force on 1 January 2007. This new Charter ('the 2006 Charter') superseded the 1996 Charter which had been in effect from 1 May 1996 until 31 December 2006. As the information requested by the complainant dates from a period when the 1996 Charter was in force he has considered both Charters in order to determine for what purpose the requested information was held by the BBC.
39. 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..."*
40. 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.
41. 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.
42. Therefore the Commissioner believes that, as a result of both Charters, 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.
43. Details of prize money 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 it supports the creation of programme content.
44. 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.
45. In this case prize money 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 producing programmes in-house.
  - (iv) It contributed to meeting the BBC's obligations to publish annual accounts.
  - (vi) 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.
46. The Commissioner considers that the ultimate purpose of the derogation is to protect journalistic, artistic and literary integrity by carving out a creative and journalistic space for programme makers to produce programmes free from the interference and scrutiny of the public. In this case the Commissioner is of the view that the information requested is held predominantly for purposes other than journalism, art and literature.

## **Procedural matters**

### Section 12

47. Section 12(1) of the Act states that a public authority is not obliged to comply with a request for information if it estimates that the cost of complying with a request would exceed the appropriate limit.
48. The appropriate limit, as prescribed by the Regulations is £600 for Central Government and £450 for other public authorities, with staff costs calculated at a

rate of £25 per hour. When calculating whether the appropriate limit is exceeded, authorities can take account of the costs of determining whether the information is held, locating and retrieving the information, and extracting the information from other documents. They cannot take account of the costs involved with considering whether information is exempt under the Act. For the BBC to legitimately cite section 12 in this case, therefore, it needs to demonstrate that the time needed to comply with the request exceeds 18 hours.

49. On the basis of the BBC's submissions, and in particular the clarification provided by the BBC during the telephone call summarised at paragraph 27 the Commissioner is now satisfied that to respond to the complainant's original request would exceed the appropriate cost limit. However, in the Commissioner's opinion the initial estimates advanced by the BBC were not reasonable. The Commissioner has reached these conclusions for the following reasons:
50. With regard to the BBC's initial estimates being unreasonable, the Commissioner wishes to highlight the following points:
51. Firstly, in its written submissions to the Commissioner, up to and including its letter of 4 November 2008, the BBC appeared to be suggesting that the process of collating the information needed to fulfil this request involved both a search of manual hard copy records **and** an analysis of electronic financial records. The Commissioner understands that the BBC believed that this two stage process was necessary in order to check the accuracy of the data that had been collated. As noted above, the BBC believe that this process of cross checking to ensure accuracy falls within the meaning of 'extracting' in section 4(3)(d) of the Regulations. The Commissioner wishes to make it clear that he does not agree with the BBC's interpretation of regulation 4(3)(d); in his opinion extraction does not include any form of checking the accuracy of, or validation of, data that has been collated. For avoidance of doubt nor does the Commissioner accept that any of the other activities listed in the Regulations at sections 4(3)(a) – 4(3)(c) allow public authorities to charge for such an activity. Therefore the BBC's figure of £742 quoted in paragraph 25 cannot be included in the cost estimate.
52. Secondly, on the basis of the telephone call with the BBC, it became clear that **all** of the information needed to answer this request was contained within the hardcopy production files and there was in fact no need for the BBC to interrogate its electronic financial records.
53. Thirdly, during this telephone call the Commissioner also established that the cost estimated at point (c) – i.e. consolidation of all the series information from that financial year to provide the final information needed to fulfil the request – included the time taken to check whether the information located, retrieved and collated at (a) and (b) was correct. Therefore, as this was in effect a check of the accuracy of the information, the BBC could not include the cost incurred by activity (c) in its estimate.
54. Fourthly, although the BBC's letter of 4 November 2004 explained that the time taken to carry out activity (a) for each series was an average of 2 hours, during the subsequent telephone call it was established that the time taken to carry out

this exercise would in fact be likely to take a minimum of 30 minutes per series, albeit that for some series this activity could take up to two hours. Therefore, in the Commissioner's opinion the estimate that it would take 2 hours per series on **average** to carry out activity (a) could be seen as an inflated estimate.

55. Nevertheless, as stated above the Commissioner is satisfied that to fulfil this request would take over 18 hours. The Commissioner has reached this conclusion for the following reasons:
56. The Commissioner accepts that BBC does not have a centralised electronic system or hardcopy set of records which may be easily manipulated or searched to provide the information requested by the complainant. Rather the Commissioner accepts that the hard copy production files for each series would have to be searched in order to locate, retrieve and extract the relevant information for each series.
57. Given the number of folders held for each series, i.e. approximately 20 to 30 files for each series with on average 5 or 6 of these folders containing relevant information, the Commissioner accepts that the searching of these folders is likely to be a time consuming process. Based on the **narrowest** estimate of the time taken to carry out activity (a), i.e. 30 minutes per series, it is clear that to locate and extract the relevant information for all series would significantly exceed the cost limit:

30 minutes per series x 39 series in 2005 = 1170 minutes, or 19.5 hours

30 minutes per series x 26 series in 2006 = 780 minutes or 13 hours

Total for 2005 and 2006 therefore equals 32.5 hours, representing a cost of £812.50.

58. The Commissioner accepts that the time it would take to search the folders for some series is likely to exceed 30 minutes and therefore the estimate of 32.5 hours would inevitably increase. Moreover, the BBC would still have to carry out the activity described at point (b) above; namely to collate the information into annual totals, again adding to the time it would take to fulfil the request,
59. The Commissioner is therefore satisfied that the BBC is entitled to rely on section 12(1) of the Act to refuse the complainant's original request.

### Section 16

60. Section 16 of the Act provides that public authorities should provide advice and assistance, as far as it is reasonable to expect the public authority to do so, to people who propose to make or have made information requests.
61. Paragraph 14 of the section 45 Code of Practice states that:

'Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the

cost of complying would exceed the “appropriate limit” (I.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee’.

62. Despite the fact that the BBC’s position is that it is not a public authority for the purposes of the Act, the Commissioner notes that the BBC provided useful advice to the complainant which allowed him to refine his request which resulted in the BBC responding to this refined request and therefore met the requirements of section 16.

### Section 1 and 17

63. The complainant submitted his request on 9 January 2007 and the BBC responded to this request on 10 January 2007. In its refusal the BBC relied on the Schedule 1 derogation and therefore did not specify the exemptions under which it considered the information to be exempt from disclosure under the Act. As the Commissioner has concluded that the requested information is not covered by the Schedule 1 derogation and therefore falls within the scope of the Act, he must conclude that a breach of section 17(5) has occurred.
64. Section 17(5) requires that when a public authority refuses access to information on the basis of section 12 or section 14 it must provide the applicant with a notice stating that fact within the time for complying with section 1(1). Therefore a breach of section 17(5) occurred because the BBC failed to provide the complainant with a refusal notice citing section 12.
65. Furthermore, in replying to this request the BBC failed to inform the complainant whether it held the information requested. By failing to provide this confirmation or denial the BBC breached section 1(1)(a) of the Act.

### **The Decision**

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66. The Commissioner’s decision is that the public authority did not deal with the request for information in accordance with the Act.
- The requested information is held by the BBC for purposes other than those of journalism, art and literature. Therefore the BBC has not dealt the complainant’s request in accordance with Part I of the Act in that it failed to comply with its obligations under section 1(1).
  - The BBC breached section 17(5) of the Act because it failed to provide a refusal notice explaining that it believed that responding to the original request would exceed the cost limit and therefore it believed that section 12 of the Act provided a basis to refuse the request.

67 However, the Commissioner has also decided that the following elements of the request were dealt with in accordance with the Act:

- The Commissioner was correct to refuse to provide the requested information on the basis that to do so would exceed the cost limit and therefore it could have relied on section 12 to refuse to answer the request.
- The BBC has provided adequate advice and assistance in line with the requirements of section 16 of the Act.

### **Steps Required**

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68. The Commissioner requires no steps to be taken.

## Right of Appeal

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69. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 26th day of November 2007**

**Signed .....**

**Nicole Duncan  
Head of FOI Complaints**

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

## Legal Annex

### Freedom of Information Act 2000

**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(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(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”.

**Section 17(5)** provides that –

“A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.”

### The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004

#### *Estimating the cost of complying with a request - general*

**4.** - (1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,



(c) retrieving the information, or a document which may contain the information, and

(d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.

## **BBC resources**

2006 Royal Charter

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/charter\\_agreement/royalchartersealed\\_sept06.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/royalchartersealed_sept06.pdf)

2006 Agreement with Department for Culture Media and Sport

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/charter\\_agreement/bbcagreement\\_july06.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/bbcagreement_july06.pdf)

1996 Royal Charter

[http://www.bbc.co.uk/foi/docs/bbc\\_constitution/bbc\\_royal\\_charter\\_and\\_agreement/BBcs\\_royal\\_charter.pdf](http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/BBcs_royal_charter.pdf)

1996 Agreement with the Department of National Heritage

[http://www.bbc.co.uk/foi/docs/bbc\\_constitution/bbc\\_royal\\_charter\\_and\\_agreement/Agreement.pdf](http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/Agreement.pdf)

2003 Amended agreement with Department for Media Culture and Sport

[http://www.bbc.co.uk/foi/docs/bbc\\_constitution/bbc\\_royal\\_charter\\_and\\_agreement/Amendment\\_to\\_the\\_Agreement.pdf](http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/Amendment_to_the_Agreement.pdf)