

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 31 March 2009

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

### Summary

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The complainant asked the British Broadcasting Corporation (the BBC) for information about the number of TV licenses that were collected for a number of specific addresses in his immediate neighbourhood, including his own. The public authority withheld the information, citing the exemption contained in sections 40 (1) and (2) of the Freedom of Information Act 2000 ("the Act"). The BBC confirmed to the requester that, under the Data Protection Act 1998 ("the DPA"), it was required to supply them with their personal information and would do so upon payment of an administration fee.

The Commissioner has investigated the complaint and has found that the requested information constitutes personal data and its disclosure would breach the first data protection principle, which requires that personal data be processed fairly and lawfully. The Commissioner believes that the information that was exempt from disclosure under section 40(2) was by virtue of section 40(3)(a)(i). Therefore, the Commissioner also decided that the BBC did not fulfil the requirements of section 17(1)(b), in that it did not fully cite the exemption it was seeking to rely upon. The Commissioner requires no steps to be taken.

### 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 Act. This Notice sets out his decision.

## The Request

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2. On 4 April 2007 the complainant requested from the BBC the following information:

*'the number of TV licenses that are collected per address for the following addresses, --, --, --, -- (our address), --, -- & -- -----, -----, --- -- postcode area.'*

3. The BBC replied on 18 April 2007. Its decision was that information about the complainant's own address was their personal data, which was exempt under section 40(1) of the Act. However, it would provide this personal data under the DPA, if the complainant completed a form which it enclosed and paid a £10 fee. The BBC stated that the remainder of the requested information was exempt under section 40(2), since it was the personal data of other people and disclosure would breach the First Data Protection Principle, in that its disclosure would be unfair. It advised the complainant that they could request an internal review, and complain to the Commissioner.
4. The complainant replied on the same day objecting to this decision. The complainant offered to expand the request by rephrasing the question *'if it helps'* as being: *'In the last five years what was the maximum number of TV licenses issued to --, --, --, --, -- and -- ----- ----... [etc]'*. This request has not formed part of the investigation as it is no more than a recasting of the original request.
5. On 19 April 2007, the complainant sent a further email to the BBC, which it interpreted as a request for internal review.
6. The BBC sent an acknowledgement on 20 April 2007. It provided the complainant with its internal review decision on 14 May 2007. The internal review concluded that the information requested about the complainant's own household fell within section 40(1) and the remaining information was exempt under section 40(2). It reminded them of the right to complain to the Commissioner.
7. The complainant contacted the BBC again on 14 and 15 May 2007 indicating their dissatisfaction with the decision.
8. The BBC sent a further letter on 16 May 2007 advising the complainant again of the Information Commissioner's Office and its role.
9. The complainant continued to communicate with the BBC in an effort to persuade it to comply with the request. They also made what was termed a 'revised' freedom of information request to the BBC on a date which is not apparent from the documentation and has therefore not been subject to any investigation.

## The Investigation

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### Scope of the case

10. On 8 June 2007 the complainant wrote to the Commissioner complaining about the BBC's decision.
11. The complainant set out their argument as to why they believed the Section 40 exemption did not apply to the requested information and their belief that the information could be provided in such a way that it would not be regarded as 'personal'.

### Chronology

12. The Commissioner wrote to the complainant and confirmed that he would investigate the complaint in accordance with the original request of 4 April 2007. On the same day, 6 June 2008, he asked the BBC to comment on various issues and to provide him with the withheld information. The Commissioner further invited the BBC to provide him with its views on why disclosure of the requested information would breach the first data protection principle. He also asked them to develop their argument to support the decision to withhold the requested information.
13. The BBC responded on 18 August. It provided clarification in respect of how the BBC holds personal information regarding TV licences. It then proceeded to explain its decision.

### Analysis

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14. A full text of the relevant statutes referred to in this section is contained within the legal annex.

### Procedural matters

#### Section 17

15. The Commissioner has initially considered whether the BBC has complied with its obligations under section 17(1) of the Act.
16. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal notice within the time for complying with section 1(1) (e.g. within twenty working days of receipt of the request), which –  
  
states that fact,  
specifies the exemption in question, and

states (if that would not otherwise be apparent) why the exemption applies.

17. The BBC informed the complainant that it was relying upon section 40(2) to withhold the requested information. Section 40(2) states that information is exempt from disclosure if one of the conditions listed in sections 40(3)(a)(i), 40(3)(a)(ii), 40(3)(b) or 40(4) is satisfied. In order to cite this exemption fully the Commissioner believes that the public authority should also cite which of the conditions it believes is satisfied (including citing the relevant sub-section number). In this case, although the BBC informed the complainant that it believed that the information was exempt under section 40(2) and also stated that it believed that disclosure would be a breach of the data protection principles, it did not go on to cite which of the sub-sections it was seeking to rely upon (i.e. section 40(3)(a)(i)). For this reason the Commissioner believes that the GMC did not comply with section 17(1)(b), as it did not specify which parts of these exemptions it was relying upon.

## **Exemption – section 40**

### **Personal Information Exemption**

18. In relation to the requester's own household, the Commissioner agrees that section 40(1) applies as this information is the requester's own personal data and he can request such information under the DPA.

19. Turning to section 40 (2). Here, the BBC maintains that the information about the number of TV Licences collected for named addresses constitutes personal data of which the applicant is not the data subject. It states that this is covered by subsection 2(a) of the exemption. It maintains that as personal data is defined in the Data Protection Act 1998 as data which relates to a living individual who can be identified from those data, or from those data and other information which is in the possession, or is likely to come into the possession, of the data controller, the requested information is covered and, thus, exempt.

20. The BBC confirms that, where a household has a TV Licence, the licence is always held in the name of an individual. Therefore, when the BBC's licensing arm (TV Licensing) locates a household (address) and this household has a TV Licence, the BBC will clearly be able to identify a living individual from this data, which meets the definition of Personal Data as outlined above.

21. Furthermore, if a household does not have a TV Licence, but an individual has advised TV Licensing of the fact that they do not have a TV, or TV Licensing is aware that they have recently purchased TV receiving equipment and is liaising with an individual regarding paying their licence, the name of the individual (where it is provided) will be recorded at this address. Therefore, the BBC will again be able to identify a living individual from this data, which meets the definition of Personal Data as outlined above.

22. Finally, the BBC has explained that while a household does not have a TV Licence and TV Licensing is in the process of determining whether the household is required to purchase a TV Licence, TV Licensing will not have the name of an

individual recorded against the address/household but, as outlined above, TV Licensing will be undertaking the process of determining whether the household is required to purchase a TV Licence. Therefore the BBC is of the view that it was likely that an individual will be able to be identified from the data (the address) and from other information which is likely to come into the possession of the data controller during the above process and therefore, meets the definition of Personal Data.

23. Based on the above definition of personal data, the BBC maintains that the information requested by the complainant regarding his neighbours is personal data and that this is applicable whether a household had a TV Licence or not. The BBC has made specific reference to the fact that the complainant is seeking information regarding his immediate neighbours and that even if the information is anonymised, it is probable that the complainant would be able to identify the individuals of the named households (due to the fact that they are his neighbours) and would therefore have access to their personal data regarding their TV Licences if the BBC was required to release the withheld information.
24. The BBC further maintains that the first condition set out in subsection (3) of the Section 40 (subsection 2(b) of the exemption), is satisfied, as the information constitutes 'personal data' according to the terms of the exemption and its disclosure would contravene the first Data Protection Principle.

### **Unfair Processing**

25. The first Data Protection Principle requires that personal data be processed fairly and lawfully, and not at all unless one of the conditions in Schedule 2 of the DPA is satisfied. The BBC maintains that this principle would be contravened if information regarding the number of TV Licences per address were released. It is the BBC's view that releasing the information that is held regarding TV Licences would not constitute it being processed fairly.
26. The BBC has referred to the ICO's guidance regarding Personal Data (*Freedom of Information Act Awareness Guidance No 1*). It maintains, first, that TV Licensing gathers information regarding the household and whether it has a TV in order to determine if the household is required to purchase a TV Licence. Information which is so gathered and held by TV Licensing (and therefore the BBC), includes the address, the name of the individual, and whether it requires a licence, is assembled mainly for the purpose of payment of TV Licences.
27. The BBC argues that TV Licence holders are advised (via the TV Licensing Privacy Policy) that their information will not be disclosed to anyone outside of TV Licensing unless the BBC is required or permitted to do so by law and that personal data would only be disclosed when it is necessary and in the public interest to do so, for example, where the data can only be obtained from TV Licensing and disclosure is necessary for the prevention or detection of crime. One of the key places that TV Licences are purchased is directly from the TV Licensing website. On this site, the public have access to the TV Licensing Privacy Policy. Furthermore, even if TV Licences are purchased through other

methods, a large number of the public access the TV Licensing website for information on TV Licences prior to purchasing their licence.

28. The TV Licensing Privacy Policy sets out TV Licensing's policy regarding the information that will be collected from individuals and how their personal data will be dealt with. Of particular significance is the information provided to individuals in response to the question '*How do we use the information that we collect?*' The Privacy Policy clearly states that the information collected may be used for any of the following purposes:

- To administer the television licensing system, including to process an individual's TV Licence application, assess and collect the licence fee, enforce the relevant law and to perform any relevant TV Licensing function.
- To communicate with individuals from time to time about matters relating to their TV Licence.
- To ensure that correspondence is accurate and lawful.
- To verify an individual's identity when they contact TV Licensing so that TV Licensing can protect an individual's privacy and prevent unauthorised processing of their data.
- For training purposes so that TV Licensing can continuously improve their customer service standards.
- To understand and improve the effectiveness of the website for its users.
- For historical, statistical or research purposes.

It is clear this information is provide to reassure the public that it is not to be used for any other purpose, including data sharing.

29. Furthermore, in response to the query '*Will we disclose your personal information to anyone else?*', this position is reinforced. Those accessing the site are clearly advised that any information they provide will only be used by TV Licensing and its service providers. The individual is advised that their information will not be disclosed to any other third parties without obtaining their prior consent, unless TV Licensing is required or permitted to do so by law.

30. Therefore, having regard to TV Licensing's Privacy Policy and the purpose that TV Licensing collects information from an individual, the BBC insists that disclosing information regarding the number of TV Licences at a household to a third party, such as the complainant, would be incompatible with the purposes for which this information was obtained and is incompatible with TV Licensing's Privacy Policy.

31. The BBC has asked the Commissioner to consider what the reasonable expectations of the occupants of the households would be in the circumstances, and whether they would expect their personal data to be disclosed to third parties. It argues that individuals would not expect that information would be disclosed to third parties (such as their neighbours) as to whether they hold a TV Licence within their household or not, as this information related to their private lives. Furthermore, as outlined above, the BBC has highlighted that individuals are advised in TV Licensing's Privacy Policy that the information that they provide will



only be used by TV Licensing and its service providers. Whether or not a household has a TV and therefore requires a licence is clearly information regarding an individual's private life and the information is not in the public domain. As such, it would seem reasonable to determine that an individual would not expect this information to be released to a member of the public, such as their neighbour.

32. The BBC contends that the information would not be processed fairly as there is insufficient public interest in disclosing the number of TV Licences at the named addresses to justify its disclosure.
33. Finally, the BBC states that disclosure of information regarding the number of TV Licences could cause unnecessary distress to the individual covered by the information. The BBC has asked the Commissioner to consider the potential consequence of releasing the personal data as requested. It stated that if information is released that advises the requestor that one or more of the households does not hold a TV Licence, but the requestor knows, or becomes aware that this household has a TV, this information would reveal to the requestor that the occupants of those households were potentially committing a criminal offence. This could cause distress to the individuals involved.

### **Processing in Breach of the Schedule 2 Conditions**

34. The BBC has reasoned that releasing the information would not constitute it being processed in accordance with the first Data Protection Principle as none of the conditions in Schedule 2 of the DPA would be satisfied. Of these conditions, the BBC referred to the only two it deemed to be potentially relevant to this matter, namely conditions 1 and 6(1).
35. In relation to these conditions, the BBC has stated that Condition 1 is not satisfied as the data subjects have not given consent to the processing of information for this purpose, bearing in mind the requirements set out in sections 1(1), 2(1) (a) and (3) of Part II of Schedule I of the Data Protection Act that must be observed if data is to be processed fairly. Although there is no explicit agreement between the BBC and TV Licence holders that information regarding their TV licences will not be disclosed, (i) such an explicit agreement is not required by condition 1(1), which states that consent must be given to the release of information and not that there must be an explicit refusal to consent to the non-disclosure of information; and (ii) there is an expectation that TV Licence payers details and data would not be released, as per the TV Licensing Privacy Policy (as outlined above).
36. The BBC is of the view that section 40(2) of the Act applied in this case and as this is an absolute exemption under the Act; it did not consider the public interest in withholding the information.
37. In relation to the six neighbouring households, the Commissioner finds that section 40(2) applies for the reasons set out below:
- The requester has asked for the information in respect of six neighbouring addresses. An individual's address constitutes the personal data of that

individual and could lead to their identification. As the requester is a neighbour, there is a high probability that he may already know the identities of the occupants of the six households, and in the event that he does not know their identities, it would be relatively easy for him to find out (as it would be for any person, not just a neighbour). This is particularly so as the six households relate to a relatively small number of people.

- As the requester is already in possession of details of the six addresses, which in itself constitutes personal data, two questions must be asked:
  - (i) whether releasing the number of TV licences held per household constitutes personal data; and
  - (ii) if the information constitutes personal data, whether the release of it would contravene the first data protection principle, which requires that personal data be processed fairly and lawfully.

In answer to the first question, as the individuals who live in the six households could be identified from their addresses, it is the Commissioner's view that releasing information about whether each household has a TV licence constitutes the personal data of the occupants of each household. In answer to the second question, it is necessary to consider what the reasonable expectations of the occupants of the households would be in relation to how their information would be used and to whom it may be disclosed. In the Commissioner's view, the occupants of each household would have a reasonable expectation that the information, as to whether they hold a licence in relation to their household, would not be disclosed to a third party. He believes this information relates to those occupants' homes and therefore, their private lives. Disclosing such information would constitute an unfair infringement of their private lives and hence, would breach the fairness element of the first data protection principle. Further, it is not apparent that the requester has a legitimate interest in the information requested which could possibly outweigh the unfairness to the occupants of the six households.

- Although the Commissioner has outlined that, on the basis of the occupants' reasonable expectations, the requested information should not be disclosed, he thinks it is helpful (though not necessary) to develop this further and consider the potential consequences of releasing the requested information. The BBC's point is well made - if, for example, two of the households do not hold TV licences but the requester knows (or finds out) that these households in fact own TV sets, this information would reveal to the requester that the occupants of those two households are potentially committing a criminal offence. The alleged commission of an offence constitutes sensitive personal data which is given stronger protection and disclosure in these circumstances would be a clear breach of the data protection principles.



## **The Decision**

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38. The Commissioner's decision is that the public authority was correct to withhold the requested information under section 40(1) and section 40(2) by virtue of section 40(3)(a)(i).

39. However the Commissioner also believes that the BBC failed to meet the requirements of section 17(1)(b) of the Act, in that it did not fully cite the exemption it was relying upon.

## **Steps Required**

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40. The Commissioner requires no steps to be taken.

## Right of Appeal

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41. 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).

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 31<sup>st</sup> day of March 2009**

**Signed .....**

**Gerrard Tracey  
Assistant Commissioner**

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

## **Legal Annex**

### **Freedom of Information Act 2000**

#### **Effect of Exemptions**

#### **Personal information**

**Section 40(1)** provides that –

‘Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.’

**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).’

**Section 40(5)** provides that –

‘The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
  - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
  - (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).'

## **Data Protection Act 1998(DPA)**

### **SCHEDULE 1 THE DATA PROTECTION PRINCIPLES**

#### **PART I THE PRINCIPLES**

**SCHEDULE 1** provides that –

*'1 Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless—*

*(a) at least one of the conditions in Schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'*

### **SCHEDULE 2 CONDITIONS RELEVANT FOR PURPOSES OF THE FIRST**

#### **PRINCIPLE: PROCESSING OF ANY PERSONAL DATA**

**SCHEDULE 2** provides that –

*'1 The data subject has given his consent to the processing.*

*2 The processing is necessary—*

*(a) for the performance of a contract to which the data subject is a party, or*

*(b) for the taking of steps at the request of the data subject with a view to entering into a contract.*

*3 The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.*

*4 The processing is necessary in order to protect the vital interests of the data subject.*

*5 The processing is necessary—*

*(a) for the administration of justice,*

*(b) for the exercise of any functions conferred on any person by or under any enactment,*

*(c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department, or*

*(d) for the exercise of any other functions of a public nature exercised in the public interest by any person.*

*6 (1) 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.*

*(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.'*