

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 24 August 2011

Public Authority: British Broadcasting Corporation
Address: 2252 White City
201 Wood Lane
London
W12 7TS

Summary

The complainant requested details on how much the BBC had spent on media training for its staff over a specific time period, as well as the names of the agencies or businesses that had been used for this training. The BBC refused to disclose the cost of this training under section 43(2). The Commissioner is satisfied that this information is exempt under section 43(2).

The Commissioner's Role

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

The Request

2. The complainant contacted the BBC on 15 September 2010 and made the following request,

"For each of the last three financial years please provide figures for the amount the BBC has spent on providing media training to either its staff, guests or contracted temporary employees. Please give the names of any agencies/businesses that were used for this and how much each organisation received in each financial year."

3. On 13 October 2010 the BBC responded to the complainant. It explained that,

"The BBC Academy provides media training to some of its most senior executives as part of the overall Senior Leadership Development Programme. This began delivery in the financial year 2010/11. So far 28 delegates have received the training (year to date)..."

It confirmed that it held the requested information in relation to this training, but refused to disclose the names of the companies it used, or the amount paid, stating that this information was exempt under section 43(2), as disclosure would be likely to prejudice the commercial interests of the BBC and the third party trainer(s).

4. In addition to this, it also explained that,

"...not all training is organised centrally via the [BBC] Academy; some courses run by external organisations are booked locally by individual departments. Information relating to these events is not recorded centrally and therefore, in order to respond in full to your request we would need to contact each individual department across the BBC to check for any records relating to any locally organised training events. We estimate that to carry out this search would take more than two and a half days."

Therefore it stated that to locate this information would exceed the appropriate limit, and as such it was not obliged to respond to the request in relation to this information, as section 12 applied.

5. On 5 November 2010 the complainant contacted the BBC and requested an internal review of its use of section 43(2). The complainant made no reference to the way in which the BBC had interpreted his request, nor its use of section 12.
6. The BBC carried out an internal review and responded on 8 February 2011. It states that after reviewing the case, the names of the third party who provided the training could be released. It also clarified that in the time period specified in the request only one external supplier had provided training of this type to the BBC. However, it upheld its use of section 43(2) to withhold the amount paid to the third party trainer.
7. Subsequently, on 18 March 2011 the BBC contacted the complainant and provided him with the name of the training provider. It gave more details of the media training that it provided and explained that,

"...the BBC Academy offers a one day course designed to increase the confidence of executives to take part in such interviews and to

help them improve their understanding of the requirements of interview situations. Approximately 8 such days per year are offered. 4 managers are trained together on each day to reduce costs."

The Investigation

Scope of the case

8. On 14 February 2011 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 the BBC's use of section 43(2) to withhold the cost of the media training.

Chronology

9. On 13 June 2011 the Commissioner wrote to the complainant and informed him that the scope of this case would be to consider whether the BBC was correct to rely upon section 43(2) to withhold the cost of the media training provided by the BBC Academy. As the complainant had not referred to the use of section 12 this would not be included in the scope of this case. The complainant contacted the Commissioner on the same day and confirmed that he was content with the intended scope of the case.
10. The Commissioner contacted the BBC on the same day and asked for a copy of the withheld information, together with its submissions in relation to section 43(2). This was provided by the BBC in a letter dated 25 July 2011.

Analysis

Exemptions

Section 43(2)

11. Section 43(2) provides an exemption for information, if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). This is a qualified exemption, and is therefore subject to a public interest test.
12. The full text of section 43 can be found in the legal annex attached to the end of this notice.

13. In this case the BBC argued to the complainant that the disclosure of the cost of the media training would, or would be likely to, prejudice its own commercial interests, and those of the third party training provider (the "third party"). However, in its submissions to the Commissioner the BBC has only provided arguments as to how the disclosure of this information would be likely to prejudice the commercial interests of the third party. Therefore the Commissioner has initially considered the application of this exemption in relation to the commercial interest of the third party.
14. In reaching a view on the application of this exemption the Commissioner has first considered whether the potential prejudice argued by the BBC relates to the interest identified in the exemption – i.e. if the prejudice were to occur, would this prejudice relate to the commercial interests of the third party?
15. The withheld information consists of the cost of media training provided to the BBC by an external training provider over a specific time period. This information is clearly commercial in nature, as it relates to the fees charged by the third party for the provision of a service. Furthermore, after considering the BBC's arguments the Commissioner is satisfied that the potential prejudicial effects would relate to the commercial interests of the third party. Therefore he is satisfied that the withheld information, and the potential prejudicial effects argued by the BBC, relate to the commercial interests of the third party.
16. The Commissioner has gone on to consider whether the BBC has shown that a causal relationship exists between the potential disclosure of the withheld information and the third party's commercial interests. He has also considered whether the resultant prejudice would be real, actual, or of substance.
17. In this instance the BBC has argued that the third party is operating in a highly competitive market. Were the withheld information to be disclosed, this would be of great use to the third party's competitors, and would allow them to undercut the third party when bidding for future training contracts. Bearing in mind the nature of the withheld information and the arguments made by the BBC, the Commissioner is satisfied that there is a causal relationship between the potential disclosure of the withheld information and prejudice to the commercial interests of the third party. Furthermore he is satisfied that the resultant prejudice (if it were to occur) would be real and of substance.
18. Next the Commissioner has to consider whether the disclosure of this information would be likely to prejudice the commercial interests of the third party.

19. In reaching a decision on the question of the likelihood of prejudice the Commissioner considers that the expression 'likely to prejudice' means that, "*the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.*"¹
20. In cases where a public authority argues that disclosure of the requested information would or would be likely to prejudice a third party, the Commissioner expects a public authority to provide evidence that these arguments genuinely reflect the concerns of the third party involved rather than merely speculate about the prejudice that may be caused to the third party.
21. In this instance the BBC has provided evidence to show that its arguments do genuinely reflect the concerns of the third party.
22. In the refusal notice the BBC argued that the withheld information would be likely to prejudice the commercial interest of the third party as its disclosure, "*would reveal information which is both market-sensitive and of potential usefulness to competitors.*" Disclosure would weaken the third party's competitive negotiating position, specifically in future tendering processes covering the supply of training services to the BBC.
23. The BBC has provided the Commissioner with further arguments to support its use of this exemption.
24. The BBC has pointed out that this information directly relates to the pricing strategy of the third party, as it shows the amount paid by the BBC for a specific type of training over a specific time period. The Commissioner also notes that over this period the BBC only used one provider for this training, and as such the withheld information only relates to one third party's commercial interests. Given this, and the information already provided to the complainant as to the amount of media training that had taken place (see paragraphs 3 and 7 above), the BBC has argued that if the withheld information were to be disclosed this would enable the third party's competitors to gain a valuable insight into its pricing strategy. The BBC has also provided further arguments as to the commercial sensitivity of the withheld information, which the Commissioner is unable to detail in this notice (as to do so may reveal details of the withheld information). However, having considered these arguments carefully, the Commissioner is satisfied that they further support the argument that disclosure of the withheld information would give an insight into the pricing strategy of the third party.

¹ *John Connor Press Associates Limited v ICO* [EA/2005/0005], para 15.

25. In addition to this, the BBC has also argued that the market for media training is highly competitive, and has provided evidence to support this statement.
26. Bearing these points in mind, the Commissioner is satisfied that were the withheld information to be disclosed, this would be highly likely to provide an insight into the pricing strategy of the third party for the provision of training of this type. Given the highly competitive nature of the market for media training, the Commissioner considers that this insight would give the third party's competitors an advantage in bidding for future contracts for the provision of this type of training. This would be detrimental to the commercial interests of the third party.
27. Bearing in mind the test of prejudice as outlined at paragraph 19 above, and taking into account all the above factors, the Commissioner is satisfied that the disclosure of the withheld information would be likely to prejudice the commercial interests of the third party. Therefore the exemption is engaged.
28. The Commissioner has gone on to consider whether the public interest in disclosing the withheld information is outweighed by the public interest in maintaining the exemption.
29. He has first considered the public interest in disclosing the withheld information.

Public interest arguments in favour of disclosing the requested information

30. The complainant has stated that there is a public interest in the disclosure of this information, especially when the BBC has admitted that similar media training could be provided in-house.
31. In addition to this, the Commissioner considers that there is a strong public interest in increasing the transparency of the actions and decisions of public authorities. He also considers that there is a strong public interest in encouraging accountability in the spending of public money. This will increase public understanding as to whether public authorities are obtaining value for money in the purchasing of goods and services.
32. The BBC has argued that the public interest in accountability and transparency in the spending of public money is already somewhat met, *"by a broad range of oversight mechanisms, internal and external."* It has referred the Commissioner to the oversight of the BBC Trust and the Executive Board, as well as *"the fair trading regime and competition law."*

Public interest arguments in favour of maintaining the exemption

33. In considering the public interest arguments in favour of maintaining the exemption the Commissioner has been mindful of his conclusions that disclosure of the withheld information would be likely to prejudice the commercial interests of the third party. He considers that there is a strong public interest in avoiding unwarranted prejudice to the commercial interests of third parties.

Balance of the public interest arguments

34. In balancing the public interest arguments in this case the Commissioner has been particularly mindful that disclosure of the withheld information would be likely to cause prejudice to the commercial interests of the third party. Although not argued by the BBC, given the highly competitive nature of this field of business, the Commissioner considers that were the third party's competitors to gain an insight into its pricing strategy (by the disclosure of the withheld information), this would be highly likely to cause actual prejudice to the commercial interests of the third party. In reaching this view the Commissioner has also borne in mind that (at the time of the request) the withheld information related to the last financial year, and therefore would give an up to date insight into the third party's pricing strategy.
35. Whilst the Commissioner considers that the arguments in favour of accountability and transparency are particularly strong in situations involving the spending of public money, this has to be weighed against the public interest in avoiding any unwarranted prejudice to the commercial interests of a private business. In this case the Commissioner considers that the withheld information would give an insight into the pricing strategy of the third party. Given the highly competitive nature of this market the Commissioner considers that the disclosure of the withheld information at the time of the request would have given a significant advantage to the third party's competitors. He finds the argument that it is in the public interest to avoid such an unwarranted prejudice particularly weighty.
36. After considering these points the Commissioner has decided that the public interest in disclosure is outweighed by the public interest in maintaining the exemption. Therefore the withheld information should not be disclosed.

The Decision

37. The Commissioner's decision is that the BBC dealt with the request for information in accordance with the Act.

Steps Required

38. The Commissioner requires no steps to be taken.

Right of Appeal

39. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

40. 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.

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

Dated the 24th day of August 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
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SK9 5AF**

Legal Annex

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).”