

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2012

Public Authority: The British Broadcasting Corporation
(‘the BBC’)

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. The complainant requested a copy of the ‘national database of addresses’ referred to on the TV licensing website. This is known as the ‘TVL database’. He also specified a preference as to format.
2. The BBC refused to provide the information and in its refusal notice considered that sections 12(1) [the costs limits] and 40(2) [personal data] were appropriate exemptions. In its internal review, it also relied upon section 43(2) [commercial interests] and 44(1)(a) [statutory bar]. The complainant then made a complaint to the Information Commissioner (‘the Commissioner’).
3. During the course of his investigation, the complainant confirmed that his complaint concerned only the address fields of the database. The BBC also applied section 21(1) to the information that was available from Royal Mail.
4. After careful consideration, the Commissioner considers that section 43(2) exemption was correctly engaged to the information within the scope of the complaint. However, he has found procedural breaches of sections 10(1), 17(1)(b), 17(1)(c) and 17(3). The Commissioner requires no remedial steps to be taken in this case.

Request and response

5. On 4 July 2011 the complainant wrote to BBC and asked for:

'I would like to request a copy of the national database of addresses referred to on the TV Licensing website at [link redacted]: I would prefer to receive this in an editable electronic format such as CSV.'

6. The website the request referred to explained that *'we have a database of approximately 31 million licensed and unlicensed addresses. This tells us if your address has a TV Licence'*.
7. The BBC issued a refusal notice on 18 July 2011. It confirmed that it held the information requested and explained how the TV Licence fee was collected. It explained that the requested database when considered in context (the database including other data such as names, bank account details etc) was personal data. It considered that its disclosure would contravene the first data protection principle and that the information was exempt by virtue of section 40(2) [third party personal data]. It explained that it might be possible to generate a report containing just addresses off the database, but claimed that the work required to do this would exceed the costs limit of 18 hours and therefore it was applying section 12(1) [the costs limit] to this information. It also explained that it received the database from the Home Office on the strict terms that the information was only to be used for the administration of the television licensing system. Finally, it confirmed that the Royal Mail offers for sale a product known as the Postcode Address File (PAF) which the Royal Mail claims is the most complete address database in the UK with 28 million addresses. It informed the complainant that he may wish to contact the Royal Mail to purchase this product.
8. The complainant requested an internal review on the same day. He contended that some fields are not personal data and he disputed that extraction of that data would take more than an hour. He considered that disclosure of the information would not amount to a 'use' of the data and that the duty of disclosure overrode an agreement between authorities. He also made a new request:

'I would also like to request the titles/names of the fields in the database (those which the BBC claim are exempt) to show which personal information is held in the database.'

9. On 30 August 2011 the BBC communicated the results of its internal review. It offered a great deal of detail about why it considered section 40(2) applied to the database as a whole. It explained its view that whether the information was personal data was to be considered by the BBC when it was in possession of it. It also explained that it considered that the information could be used by members of the public with other available databases (such as the Electoral Roll) to readily identify other

individuals. It considered that the disclosure of the information would not be fair to the data subjects in this case.

10. It confirmed that it was now applying section 43(2) [commercial interests] to the requested information. It explained that the Post Office exploits the address information on a commercial basis and while it is not the whole database it uses, the majority of the addresses come from the Post Office. It also explained that the disclosure of the list would lead to a breach of its agreement with the Post Office and may lead to it losing the use of the Royal Mail's PAF. Furthermore, it would undermine the Post Office's business model of selling the PAF under licence. It explained that its initial view was that the public interest would favour the maintenance of the exemption, but that it hadn't fully conducted this public interest test because it believed section 40(2) worked for the information.
11. For section 12(1), it explained that it would need to write a complex report to extract the addresses from the database, however it explained that the estimate only just exceeded the costs limit and it was mainly relying on the other exemptions, but leaving this exemption on the table. It explained that section 44(1)(a) [prohibitions of disclosure] may also apply by virtue of the Broadcasting Act 1990. However, it explained that it hadn't considered this exemption any further given that it considered sections 40(2) and 43(2) apply. Finally, it provided a partial list of the fields of the database in relation to the new request emphasising that this was just a sample rather than a complete list.

Scope of the complaint

12. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
13. There was some confusion about the scope of the request. On 3 February 2012, the complainant confirmed to the Commissioner that he wanted:
 - the address fields of the TV Licensing database; and
 - an understanding about what the BBC holds on each address.
14. After the Commissioner discussed the case with the BBC, the BBC provided the complainant with a list of all the fields in the database on 7 February 2012. The complainant confirmed to the Commissioner that this satisfied the second element of his investigation.

15. His investigation therefore focussed on: *'Whether the address fields of the TV Licensing database can be disclosed to the public, or whether an exemption has been appropriately applied to it by the BBC.'*
16. As noted above, the Commissioner considers that section 43(2) has been applied appropriately to all the information. He will consider that exemption first. It should be noted that FOIA is a public disclosure regime. That means that if the information is disclosed under FOIA, it must be provided to anyone that asks for it. The Commissioner is therefore considering the impact of the disclosure of the address fields to the public at large (without any restrictions placed on its use).
17. The complainant also made a number of arguments in support of the disclosure of this information. For clarity, the Commissioner has considered all the information before him, but will only mention the information that is relevant to the decision that he has made.

Reasons for decision

Section 43(2)

18. Section 43(2) of the FOIA states 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)". This is a qualified exemption and is therefore subject to the public interest test.
19. The Commissioner must therefore firstly consider whether the exemption is engaged and if it is, consider whether or not the public interest favours the maintenance of the exemption.

Is the exemption engaged?

20. In this instance the BBC argued that disclosure of the requested information would be likely to prejudice both its own commercial interests and that of Royal Mail.
21. The evidential burden is on the BBC to prove a causal relationship exists between the potential disclosure and prejudice, and the prejudice is 'real, actual or of substance'.¹

¹ *Hogan v Oxford City Council* (EA/2005/0026 EA/2005/0030),

22. The term 'commercial interests' is not defined in the FOIA. However the Commissioner's guidance states that such interests relate to the ability to participate competitively in a commercial activity such as the sale or purchase of goods or services.
23. The Commissioner will consider each parties' commercial interests in turn:

Prejudice to the commercial interests of the Royal Mail

24. The BBC discussed this case with the Royal Mail and was able therefore to explain in its submissions to the Commissioner the prejudice that Royal Mail considered would be likely to occur in this case.
25. The Commissioner accepts that the Royal Mail engages in commercial activities (see case **FS50122733** for example). Although it is principally funded by tax payers, like private companies, the Royal Mail operates within a competitive communications market and consequently there are aspects of its operations which have to be protected from unfair competition.
26. The BBC explained that Royal Mail offers the public and organisations a service that allows them to acquire addresses. Royal Mail collates and maintains a database called the Postcode Address File ('PAF'). It contains around 29 million current addresses and is regarded by Royal Mail as a commercial asset of its business².
27. Royal Mail requires this database in order to undertake its statutory functions and is also bound by Section 116 of the Postal Services Act 2000 to maintain the database and make it available to any person who wishes to use it on 'such terms as are reasonable'. It does this by offering licensed access to PAF. It should also be noted that PAF does not contain individual's names unless they are the only method to identify a delivery point.
28. The cost of the licence is designed to enable the Royal Mail to recover the cost of the work required to maintain the database and allow it to make a small profit. The cost of the licence is regulated independently by Ofcom (which replaced Postcomm). The Royal Mail considers that it requires these fees to maintain the value of its intellectual property and cover the costs in undertaking the work that is required to maintain the

² Detailed information about the PAF database can be found here:
<ftp://ftp.royalmail.com/Downloads/public/cmwalk/doc/active/doc21800003/DIGEST%20%20MASTER%203sep09.pdf>

database. To explain the scope of the work that is required, Royal Mail has confirmed that it makes around 1.5 million amendments to its database each year³ and the BBC receives updated information daily.

29. The BBC explained that the disclosure of the addresses on its TV Licensing database would prejudice the Royal Mail's commercial interests in three main ways:

- It would offer a publicly available rival to PAF that would mean that the Royal Mail would not be able to charge for licences for the same information. It would disable the Royal Mail from recovering its costs in maintaining the database and making its small profit. It explained that the ongoing maintenance, production and distribution of the database would be put at serious risk;
- It would also mean that other services the Royal Mail offers to the public such as postcode finder would also be put at risk because the work done maintaining PAF would not be done; and
- As the TVL database uses PAF, the disclosure of the data to the public would publicise the Royal Mail's own information outside any licence agreement and would also be an unlawful erosion of Royal Mail's intellectual property rights.

30. The Commissioner considers that the disclosure of the TV Licensing database would cause the Royal Mail commercial prejudice that is 'real, actual or of substance'. He considers that the Royal Mail's PAF database is the most reliable address database and it contains significantly more precise and complete information than any potential commercial rival (the majority of organisations who need this data purchase the database from the Royal Mail itself). He also considers that the provision of this information to the public (including its competitors) would damage the Royal Mail's commercial interests because the complete and detailed information held by the Royal Mail (subject to automatic updates) gives the Royal Mail a commercial advantage in the field of address databases.

31. He is satisfied that the disclosure of the database (including the data on PAF) by the BBC to the public would entirely undermine the Royal Mail's business model and would prevent it from providing a service that it must provide by law. He is satisfied that the Royal Mail would lose the commercial value of the work that has gone into creating and updating

³ The government recently rejected a petition to make the PAF available for free. Please see further at the following link:
<http://webarchive.nationalarchives.gov.uk/+/http://www.number10.gov.uk/Page20993>

the PAF database. He is satisfied that the likelihood of this prejudice is substantially more than remote. He therefore finds that the exemption found in section 43(2) is engaged in this case.

32. The Commissioner has also gone on to consider the prejudice to the BBC's own commercial interests because this adds weight to the public interest in maintaining the exemption.

Prejudice to the commercial interests of the BBC

33. The BBC explained that it was one of the Royal Mail's customers. It explained that the Royal Mail provided it with a licence to use the updated addresses on a regular basis in exchange for a fee.
34. The licence provides that that the BBC 'shall not at any time copy, reproduce, publish, sell, let, lend, extract or otherwise part with possession of the whole or any part of The Data as contained in the PAF Internet Product or relay or disseminate such Data to any other party other than as expressly permitted by [the] Agreement.' The BBC explained that it had consulted with the Royal Mail which has expressly forbidden the BBC from disclosing the PAF's data.
35. The BBC explained that the disclosure of the information under FOIA would constitute a breach of its licence, would place it in breach of contract, may lead to a claim of damages and even prevent it from purchasing the database updates in the future.
36. The Commissioner has considered the licence and confirms that the BBC's statement about what is in it is correct.
37. The BBC said that the disclosure would prejudice its commercial interest in three ways:
 - Firstly, Royal Mail would be entitled to terminate the licence and refuse to provide a new one. The BBC would be directly prejudiced because it would not be able to participate in the purchase of a service it requires for its business;
 - Secondly, the BBC explained that the Royal Mail's service is the only daily data feed that goes into its database. The Commissioner notes that if the licence was terminated, it would no longer have access to the up to date data. The data on its database would gradually become less and less useful to the BBC which requires up to date information. This would have negative consequences for the BBC because it would be unable to identify new properties or remove reference to inaccurate and/or obsolete addresses as quickly as it now does. It will also create potential distrust in the BBC's

management of information and this would lead to a decrease in compliance and lost revenue for the BBC; and

- Thirdly, the BBC explained that the disclosure of the information would be likely to lead to a more widespread detriment to its other functions. Its failure to keep the Royal Mail's data as stated would lead to future negotiations becoming more difficult. Other parties would see it as a great risk and therefore impose more stringent contractual penalties for breaches of contract.

38. Having considered all the evidence, the Commissioner considers that the disclosure of the information would also prejudice the BBC's own commercial interests. He finds the argument about it being a breach of its licence compelling and considers that the release of the information to the public would lead to the BBC being disbarred from using the data that it requires to offer an effective service. He therefore finds that the exemption found in section 43(2) is also engaged due to this.
39. As the qualified exemption has been successfully engaged, the Commissioner must now conduct a public interest test. He must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information. He is satisfied that the likelihood of this prejudice is substantially more than remote.

Public interest arguments in favour of disclosing the requested information

40. Firstly, the Commissioner is mindful of the presumption of openness in approaches to requests for information under FOIA, and of the strong public interest in openness, transparency, public understanding and accountability in relation to the activities of public authorities.
41. The BBC did not offer proper arguments about the balance of public interest in its internal review and this was a procedural breach of FOIA (noted below). However, the BBC did offer proper submissions to the Commissioner when defending its position during the course of his investigation. In those submissions it offered the following general arguments that it considered favoured the disclosure of the information:
- The BBC should provide accountability and transparency for the expenditure of public funds; and
 - In this case, the public interest relates to the BBC's ability to demonstrate that it effectively discharges its duty to collect the Licence Fee by maintaining a complete and accurate database.

42. The complainant offered the following arguments about why he considered the public interest favoured disclosure:
- The disclosure of the addresses would make the accuracy and timeliness of the database transparent;
 - The BBC could therefore be held accountable for obsolete or inaccurate data and this would enhance the public confidence in the TV licensing system; and
 - There are widespread concerns that the BBC's enforcement strategy causes damage and distress to individuals who are wrongly accused of not paying their TV licence and the release of the database would enable the scope of this problem to be proactively reduced by its customers.
43. The Commissioner also offers the following further factors that he considers should be given some weight in this case:
- The disclosure of the data in an accessible format would provide the public with a free dataset that could be used for commercial reasons;
 - There have been a number of petitions made to Parliament to make the provision of the PAF data free either to the whole public or the voluntary/charity sector. The Commissioner can understand that the release of this data would be useful for example for a local charity to solicit donations;
 - The data could be part of an 'open source' tool that would enable the public to update the data themselves saving the Royal Mail the work in updating the database itself;
 - In the spirit of enabling citizens to use information to improve governance, this dataset could be manipulated with other datasets to provide additional layers of accountability; and
 - The disclosure of the data would enable different search tools to be developed that may be more useful to the public than the PAF database and this would force the Royal Mail to produce a more innovative or better user-orientated products.
44. The BBC has also explained why it considers the public interest in transparency and accountability to be minimal in this case and the Commissioner considers the following points to be of relevance:
- Other than the PAF database, there is no comparable database that can be used to assess the accuracy and/or completeness of the TVL

database. For some areas, such as the Crown Dependencies there may be no database at all. The lack of a comparator reduces the ability to assess the accuracy of the database;

- This decision notice acknowledges that the TVL database and the PAF database are updated daily in synchrony. This reduces the public interest in understanding how accurate the data is because it is now known that the majority of the data has the same accuracy as the PAF database which is updated daily;
- The BBC also publishes a lot of other information about TV licensing that more meaningfully evidences its ability to effectively administer the TV licence fee. For example, it provides the total revenues, the evasion rate, the number of prosecutions, who its contractual partners are and what they are responsible for;
- In addition, the interest in transparency and accountability are also addressed through a broad range of both internal and external oversight mechanisms. In particular:
 1. The BBC Trust is responsible to ensure that arrangements for Licence fee collection are 'efficient, appropriate and proportionate';
 2. The National Audit Office conducts independent annual reviews on the processes used to collect this revenue – including how customer data is collected, stored and used to collect revenue; and
 3. KPMG act as an independent statutory auditor who also review the BBC's technology and processes to ensure that the data supporting the income in the BBC's accounts is accurate and not materially misstated.

45. The Commissioner will explain the weight he has given to the factors noted above after he has firstly explained the public interest factors that favour the maintenance of the exemption.

Public interest arguments in favour of maintaining the exemption

46. The BBC explained in its internal review that its preliminary verdict was that the balance of public interest lay in the maintenance of the exemption. It explained why in its detailed submissions.

47. The Commissioner can summarise its arguments as follows:

- The Royal Mail's commercial interests will be prejudiced to such an extent that a service that it is obliged to undertake will no longer be viable. Parliament's intention (and its response to two petitions about the same) was that Royal Mail could recover its money back through the statutory scheme. It is in the public interest for the statutory scheme not to be upset. The damage that would be done to the Royal Mail must be considered to be a strong public interest factor against the disclosure of the information;
 - The only other option for the Royal Mail would be to comply with the letter of its statutory obligations and merely maintain the database, but not do the work to update it or improve its accuracy. If the Royal Mail took this option, then the third parties who currently use PAF would all be prejudiced and the public would too for they benefit from the organisations having accurate personal data; and
 - The BBC's commercial interests would also exhibit great prejudice. Firstly, it would breach its licence and potentially lose the opportunity to use the updated address data. It would gather less revenue because it would find it much more difficult to administer the licence fee as it would be unable to either identify new properties or minimise evasion. When it has less money, it would have greater difficulty fulfilling its obligations under the Royal Charter in relation to developing relevant creative content. Secondly, it would lose the trust of key stakeholders and the public because it cannot keep this personal data safe or comply with an unambiguous licence. It would need to agree to more onerous contracts because it had lost credibility and the consequent loss of licence revenue would mean it had less to spend on content in already straightened times and would mean that value for money would be less for those who pay their licence. The damage that would be done to the BBC must also be considered to be a strong public interest factor against the disclosure of the information.
48. The Commissioner also considers that it is in the public interest for Royal Mail to be commercially viable. The Royal Mail has statutory obligations such as maintaining PAF and providing a Universal Service and in the Commissioner's view, it is appropriate for it to be able to:

'to protect its commercially valuable data in order to support the universal service at present, as well as in the future, when the need for Royal Mail to draw on all resources available to it and maximise their value may be even greater to support this service.'

(the Commissioner received this submission from the Royal Mail in **FS50319573** in relation to a similar request for post box data

– and the Commissioner considers it equally relevant in this case).

49. The Commissioner notes that the Royal Mail has both privileges and obligations. Its obligations are to provide a service to everyone in the UK and its privileges are designed to counterbalance its obligations. The removal by the BBC of one of its privileges but not its obligation would upset this balance and this adds to the public interest in the maintenance of the exemption.

Balance of the public interest arguments

50. Overall, the Commissioner has concluded that the balance of public interest favours the maintenance of the exemption.
51. The Commissioner has carefully considered the factors that favour disclosure and considers that:
- some weight can be given to the public having access to the list of the addresses for reasons of transparency and accountability in relation to how the BBC conducts itself and to enable the public to use this data to improve accountability in a wider context. In addition, he is mindful as noted above that the open data may be useful to enable the public to pursue further avenues of accountability in this case. However, he considers that the weight of the public interest arguments in favour of transparency are mitigated by the other information that the BBC discloses, the information that is available from Royal Mail and the independent scrutiny the BBC already experiences;
 - there is also some weight in the complainant's arguments that the release of the information would enable the public to assess the accuracy of the database and potentially increase the credibility of the BBC's enforcement strategy. However, he considers this public interest is mitigated in there being no direct way to assess the accuracy of the database by way of comparison and given that this notice discloses that its database follows the updates made to the PAF; and
 - there is some weight in the argument that the disclosure could lead to further innovation. However, he considers this public interest is reduced by the potential loss of the updated dataset to those who require it, if the Royal Mail cannot afford to maintain it.
52. However, he considers that the public interest factors that favour the maintenance of the exemption are compelling in this case. In particular:

- significant weight should be given to the public interest in the Royal Mail's continued commercial viability. As noted above, the disclosure of the information would lead there to be a public version of its intellectual property available in the public domain without restrictions. He notes that the Royal Mail is operating within an increasingly competitive and challenging environment and is entitled to use its commercial property in a manner expressly allowed in a statutory scheme. He considers that there is a particular public interest in the Royal Mail being commercially successful in order to allow its commercial activities to subsidise the provision of the PAF to those who require it and for it to provide a "universal service" that it is obliged to provide under the terms of its licence from the Postal Services Commission. He considers the weight of this public interest factor is very strong in this case;
 - another strong public interest consideration is the public interest in not undermining the BBC's ability to use a service it requires to fulfil its obligations to collect the TV licence fee effectively at the minimum cost. He considers that the disclosure of the PAF information would place the BBC in breach of its licence and that Royal Mail would be entitled to refuse to provide it with another licence. In addition, the BBC would not be seen as a trusted commercial partner and this would lead to further adverse consequences for it. He considers that there is considerable weight in not disabling the BBC from operating effectively in this case; and
 - the final strong public interest consideration is the public interest in the work being done to update the PAF. He considers that the PAF offers a very valuable service for many customers and the offer of this service for free would mean that there would be no incentive for the Royal Mail to continue to update the database. He considers it is not in the public interest for the PAF to become obsolete.
53. It follows that the weight of public interest lies strongly in the maintenance of the exemption in this case and he finds that section 43(2) has been applied appropriately by the BBC.
54. For the avoidance of doubt, the Commissioner appreciates that the TV licensing database contains more addresses than the PAF database alone. However, he considers that the disclosure of the larger database would have the same prejudice to both the Royal Mail and the BBC as would the disclosure of just the addresses on the PAF database. Similarly, he considers it is impossible for the BBC to divorce the addresses that did not come from the PAF database from the whole database to mitigate this prejudice.

55. As the Commissioner has found section 43(2) has been applied correctly to all of the information, he has not gone on to consider the operation of the other exemptions cited in this case.

Procedural Requirements

56. Even though the Commissioner has found that the BBC has correctly withheld the requested information in this case, he has still identified a number of procedural breaches of FOIA that he wishes to note in this section of the decision notice.

Section 10(1)

57. Section 10(1) of FOIA requires that a public authority complies with section 1(1) promptly and in 20 working days at the latest. Section 1(1) requires the BBC to confirm or deny whether it has relevant recorded information and either provide it or rely on an appropriate exemption.
58. The BBC failed to issue an appropriate response to the second request that the complainant made in his internal review request dated 18 July 2011 (marked in italics by the Commissioner) within 20 working days and therefore breached section 10(1).
59. The BBC did subsequently provide this information to the complainant, who accepted the information, and therefore the Commissioner does not require any remedial steps to be taken in respect to this particular breach.

Section 17(1)(b)

60. Section 17(1)(b) provides an obligation that a public authority informs a requestor of all the exemptions that it is relying on within 20 working days down to their subsection. The Commissioner considers that an internal review can rectify any problems with a refusal notice. However in this case, he notes that the BBC did not specify that it was relying on section 21(1) until the Commissioner's investigation had commenced. The failure to state an exemption that it was relying until after its internal review constitutes a breach of section 17(1)(b).
61. In addition, the Commissioner noted that the BBC failed to mention the subsection of section 44 that it was relying upon by the time of its internal review and he notes that this is also a breach of section 17(1)(b). The BBC should have said it was relying on section 44(1)(a).
62. The Commissioner does not require any remedial steps to be taken in this case because this decision notice notifies the complainant of the exemptions that the BBC purported to rely on.

Section 17(1)(c)

63. Section 17(1)(c) requires a public authority to explain why it was applying an exemption when it is not otherwise obvious within 20 working days. As above, the Commissioner considers that an internal review provides the BBC with an opportunity to rectify any problems with the refusal notice.
64. However in this case, the BBC failed to explain why sections 12(1) or 44 applied. Its internal review explained that its preliminary view was that the exemptions may apply but that it couldn't be certain. The Commissioner considers that this lack of certainty does not explain why the BBC was applying exemptions when it was not obvious and constituted a breach of section 17(1)(c).
65. The Commissioner does not require any remedial steps to be taken in this case because he has explained why the information can appropriately withheld from disclosure under FOIA by virtue of a different exemption.

Section 17(3)

66. Section 17(3) requires a public authority when relying on a qualified exemption (one with a public interest component) that it explains the public interest factors that it has taken into account and why the public interest favours the maintenance of the exemption over disclosure.
67. The BBC did not mention a qualified exemption in its refusal notice and explained for section 43(2) in its internal review [as it was relying primarily on section 40(2) at that time] that *'a public interest test is required were this exemption to be the primary reason for the rejection of this request. On a preliminary view it would seem that the test would be likely to favour the withholding of the information'*. It explained later on that *'two other exemptions [at that time referring to sections 40(2) and 43(2)] are already likely to apply to the data'*.
68. It offered no more information about its public interest test by the time of the internal review despite relying on section 43(2) – a qualified exemption.
69. The Commissioner considers that this internal review response breached section 17(3) because it failed to explain the public interest factor that it had taken into account or why the public interest favoured the maintenance of the exemption.
70. He does not require any remedial steps to be taken in relation to this procedural breach because this decision notice explains exactly what factors the BBC and the Commissioner have taken into account in their

public interest determinations and why the public interest in this case favours the maintenance of the exemption.

Section 11

71. Section 11 requires that where an individual expresses a preference in relation to the means by which information is to be communicated, that the public authority shall so far as reasonably practicable give effect to that preference.
72. It is noted in this case the complainant did express a preference to format. The Commissioner wants to make it clear that he considers that the obligation imposed by section 11 does not stand alone. The obligation applies only where the BBC is required to disclose information under FOIA, in order to comply with section 1(1)(b).
73. In this case, the BBC is not required to disclose any information under FOIA, there is no need to consider in what format the correctly withheld information could be provided. It follows that section 11 imposes no obligation on the BBC in this case.

Other matters

74. The Commissioner has noted another matter of concern that is not strictly a requirement of FOIA and considers it appropriate to mention it now.
75. During the course of his investigation, the Commissioner noted that the request had two objective readings and from its response it was apparent that the BBC was not clear what had been requested.
76. The two objective readings that the Commissioner identified were:
 - A copy of the TV Licensing database that included the addresses; or
 - A copy of the addresses on the TV Licensing database.
77. The Commissioner clarified with the complainant that he meant the second objective reading of the request and considered the case on that basis.
78. However, in these kind of circumstances, he would expect the BBC to clarify what was requested when it was not clear. Section 1(3) of FOIA allows the public authority to clarify a request for information before it answers it. The section 45 Code of Practice provides more detail about how to go about clarifying a request for information. The Commissioner considers that the BBC should have reverted back to the complainant

before it answered the request in this case. This would have allowed it to issue a better refusal notice and/or internal review response. He hopes the BBC will learn from how it handled this request.

Right of appeal

79. 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,
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

80. 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.

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

Signed

**Pamela Clements
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SK9 5AF**