

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 March 2013

**Public Authority:** British Broadcasting Corporation

**Address:** Room BC2 B6  
Broadcast Centre  
White City  
Wood Lane  
London  
W12 7TP

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about television licence detection. The BBC withheld some of the requested information under section 31(1)(a)(b)(d) and (g) with subsection 2(a) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the BBC has correctly applied section 31(1)(a)(b)(d) and (g) with subsection 2(a) FOIA to the withheld information in this case.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 21 October 2012, the complainant wrote to the BBC and requested information in the following terms:

"Please answer the following questions and provide data for them.

1. From 2009-Today, how many removal of implied rights of access notices have you received?
2. From 2009-Today, how many warrants have you obtained to search a premises?
3. Please list the equipment that you use to detect TV Signals

coming from a persons TV.

4. How many working TV Detector Vans are currently used by the BBC?

5. From 2009-Today, how many persons have been issued a fine/penalty for receiving a Live TV Signal but not having a TV Licence?

6. From 2009-Today, how many complaints have the BBC received, that claim the BBC uses harassing tactics to for fill their investigations?"

5. On 16 November 2012 the BBC responded. In relation to point 1 and 6 of the request it provided the complainant with some information, but said that to comply with these parts of the request in full would exceed the cost limit under section 12 FOIA. In relation to part 2 and 4 of the request it withheld information under section 31(1)(a)(b)(d) and (g) with subsection 2(a) FOIA. It provided the complainant with information in relation to part 3 and 5 of the request.
6. The complainant requested an internal review in relation to the BBC's responses to parts 2, 3 and 4 of the request on 16 November 2012. The BBC sent the outcome of its internal review on 29 November 2012. It said that the complainant had indicated that he was dissatisfied with its responses to parts 2, 3 and 4 of the request. In relation to parts 2 and 4 it said it had applied section 31(1)(a)(b)(d) and (g) with subsection 2(a) FOIA and upheld this. In relation to part 3 of the request, the BBC confirmed that it considered this had been answered in full.

## **Scope of the case**

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7. The complainant contacted the Commissioner on 5 December 2012 to complain about the way his request for information had been handled.
8. The Commissioner wrote to the complainant to confirm that he would investigate the BBC's application of section 31(1)(a)(b)(d) and (g) with subsection 31(2)(a) FOIA to parts 2 and 4 of the request. However he asked for further clarification as to whether the complainant wanted the BBC's response in relation to part 3 of the request to be investigated and if so why the complainant considered that this had not been fully responded to.
9. As the complainant did not provide the Commissioner with any further clarification in relation to part 3 of his request, the Commissioner has considered whether the BBC correctly applied section 31(1) (a)(b)(d)

and (g) with subsection 2(a) FOIA to withhold the information requested at parts 2 and 4 of the request .

## **Reasons for decision**

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### **Parts 2 and 4 of the request**

10. Section 31(1) of FOIA provides that –

“Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice-

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders,
- (d) the operation of the immigration controls,
- (g) any civil proceedings which are brought by or on behalf of a public authority and arise out of an investigation conducted, for any of the purposes specified in subsection (2), by or on behalf of the authority by virtue of Her Majesty's prerogative or by virtue of powers conferred by or under an enactment,”

Section 31(2) provides that –

“The purposes referred to in subsection (1)(g) to (i) are-

- (a) the purpose of ascertaining whether any person has failed to comply with the law,”

11. The Commissioner uses a three step test to indicate whether prejudice would or would be likely to occur from the disclosure of the information in question.

1. Identify the prejudice in the exemption
2. consider the nature of the prejudice in question
3. consider the likelihood of the prejudice in question occurring.

12. The BBC has stated that in respect of section 31(1)(a) and (b), disclosure of the requested information would prejudice the prevention and detection of crime, in this case, licence fee evasion, and the apprehension and prosecution of licence fee evasion. Section 31(1)(d) is engaged as the BBC's duties in respect of licence fee collection fall

within the definition of the collection of any tax or duty or of any imposition of a similar nature. Section 31(1)(g) with subsection 31(2)(a) is therefore engaged as disclosure of the information would be likely to prejudice the exercise by the BBC of its functions for the purpose of ascertaining whether any person has failed to comply with the law.

13. The BBC has explained that its responsibility to enforce the licensing regime arises as a consequence of its powers to issue TV licences and to collect and recover licence fees under sections 364 and 365 of the Communications Act 2003. This responsibility was expressly confirmed by the Home Office in 1991, the year in which the BBC became the statutory authority for the licensing regime. It is a criminal offence to install or use television receiving equipment to receive television programmes without a valid licence. TV Licensing investigates and prosecutes unlicensed use of television receiving equipment.

### **The nature of the prejudice**

14. The BBC has said that the requested information in this case forms part of the methodology and strategy of the BBC's enforcement of the licence fee. It is the view of the BBC that this information is exempt under sections 31(1)(a)(b)(d) and (g) and 31(2)(a) of the FOIA as, once disclosed, the information could assist a person in attempting to evade detection and therefore prejudice the enforcement strategy.
15. The BBC has referred to arguments which have been considered in previous cases. The BBC said that the Tribunal in EA/2010/0087 accepted that "uncertainty" as to the likelihood of enforcement action being taken was a key part of the overall enforcement strategy:

The deterrent is connected with public perception about detection and enforcement tactics, and uncertainty as to the likelihood of enforcement action being taken. Disclosure of the precise numbers of search warrants obtained over a number of years would clearly undermine that uncertainty. Disclosure would therefore have a detrimental affect on the BBC's enforcement strategy. [38]

Given part of the BBC's strategy lies in maintaining a level of uncertainty, this strategy would be undermined, so that at the very least their enforcement and prevention strategies would be prejudiced. [44.c]

16. It also said that undermining uncertainty (as to the likelihood of enforcement action being taken) serves to undermine the enforcement strategy itself. In describing how this would occur, the Tribunal identified that disclosing the number of search warrants "would provide

a piece of information that potential evaders would also factor in when considering whether to pay the licence fee. It would or would be likely to have the effect of enabling those who would evade the licence fee to feel that they could make an assessment of the likelihood of being caught." [44.b]

17. The BBC argued that a similar situation exists in the present case. It is the view of the BBC that the requested information in this case would be used by potential evaders when assessing the likelihood of detection and considering whether to pay the licence fee. The Tribunal in EA/2010/0087 was satisfied that "uncertainty encourages compliance" [60]; in the present case, disclosure of the information would undermine 'uncertainty' by indicating the likelihood of surveillance and enforcement action being taken; in either case, disclosure would 'provide a piece of information' that potential evaders 'would factor in' to their considerations.
18. The BBC has provided the Commissioner with further submissions in support of the above, these submissions are contained in the Confidential Annex attached to this Notice.
19. The Commissioner considers that uncertainty does encourage compliance and therefore disclosure which would remove that uncertainty which would be likely to affect the rate of compliance.

### **The likelihood of the prejudice**

20. To support its assertion that disclosure would prejudice its law enforcement activity in relation to the licence fee, the BBC has explained that there is strong evidence of a body of the public who object to having to pay the licence fee and seek to avoid paying it. It believes there is a willingness among these people to share information about how to avoid payment, including online discussions about the detection and enforcement tactics deployed in order to collect the licence fee. It provided the Commissioner with evidence of this which has not been detailed in this Notice.
21. The BBC argued that there is a clear link between the disclosure of the information and the prejudice it has described. On the basis of the evidence it has presented, it is of the view that this prejudice would be likely to occur.
22. The Commissioner considers that based upon the evidence provided by the BBC, which was discussed in detail by the Tribunal in EA/2010/0087, he considers that disclosure of the requested information would be likely to lead to the prejudice claimed occurring.

23. The Commissioner therefore finds that section 31(1) (a), (b), (d) and (g) are engaged.

**Public interest test**

24. Section 31 is a qualified exemption and the Commissioner must therefore decide if the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

**Public interest arguments in favour of disclosing the requested information**

25. The BBC recognises that there is a public interest in accountability and transparency, particularly where this contributes to increasing awareness and understanding of the BBC's use of its statutory powers in respect of the licensing regime. It said that disclosing the requested information would help ensure that the licensing authority is exercising its functions appropriately and proportionately, i.e. that people will not be unfairly subjected to detection and that the use of search warrants is proportional. Releasing the information would reinforce the legitimacy of the process that the BBC undertakes and provide the public with some assurances about how appropriately detection equipment and search warrants are used.
26. However, it said that the use of surveillance for the purposes of detection is strictly regulated by the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (British Broadcasting Corporation) Order 2001. The Order is the only legal mechanism by which the BBC can undertake surveillance for the purposes of detection, and the Order does not make allowance for the BBC to undertake either "directed" or "intrusive" surveillance, only for surveillance as defined in s2 of the Order. It is also important to note that the BBC's compliance with this legislation is monitored by an independent body, the Office of Surveillance Commissioners (OSC). Each use of detection must be authorised, and the most recent OSC report in 2010 noted that all authorisations it examined were of a high standard. The BBC additionally has a number of policies in place to ensure that it is compliant with the legislation, including a RIPA policy which is subject to an annual audit conducted by a BBC department independent of Television Licensing. As such, there are already sufficient safeguards to ensure that the BBC is exercising its functions appropriately and proportionately and that people are not being unfairly subjected to detection.
27. The BBC also recognises that there is a public interest in the license-fee paying public having the opportunity to scrutinise how public funds are used, allowing the public to make their own assessment of the

appropriateness of this use and whether value for money is being obtained. It is in the public interest that the TV Licensing system is efficiently run. However, this public interest is satisfied to a greater extent by existing procedures and publications. For example, the BBC is required to satisfy the National Audit Office ('NAO') as to the value for money of the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. Further, the BBC Trust has the specific function under Article 24(2)(m) of the BBC Charter of ensuring that arrangements for the collection of the licence fee are efficient, appropriate and proportionate.

28. It argued that this public interest factor is further addressed by the detailed financial information published in the BBC's Annual Report and Accounts, and in the BBC Television Licence Fee Trust Statement for the Year Ending 31 March 2011:

[www.tvlicensing.co.uk/about/our-performance-AB6/](http://www.tvlicensing.co.uk/about/our-performance-AB6/)

[http://www.bbc.co.uk/bbctrust/our\\_work/annual\\_report/index.shtml](http://www.bbc.co.uk/bbctrust/our_work/annual_report/index.shtml)

[http://downloads.bbc.co.uk/annualreport/pdf/bbc\\_ar\\_online\\_2010\\_11.pdf](http://downloads.bbc.co.uk/annualreport/pdf/bbc_ar_online_2010_11.pdf)

[http://www.tvlicensing.co.uk/resources/library/BBC/pdf/licence\\_fee\\_trust\\_statement\\_20120716.pdf](http://www.tvlicensing.co.uk/resources/library/BBC/pdf/licence_fee_trust_statement_20120716.pdf)

In respect of this factor, the BBC again believes there are sufficient safeguards in place to ensure that value for money is being obtained, and that the disclosure of the requested information in this case adds little benefit to the information which is already routinely published.

### **Public interest arguments in favour of maintaining the exemption**

29. The BBC has a duty to enforce the television licensing system and it is essential that effective deterrents against evasion are maintained for this purpose. The BBC has put forward evidence that disclosure would prejudice the BBC's enforcement activities, and has explained how this would be likely to lead to a significant loss of revenue. It is in the public interest that the BBC is able to detect and prosecute licence fee evasion and there is therefore a strong public interest in maintaining the deterrent effect; as noted by the Tribunal in EA/2010/0087, the "level of uncertainty" is an acknowledged enforcement strategy, which



ensures that the BBC collects the licence fee as efficiently and effectively as possible.

30. It said that the public interest in keeping the costs of its enforcement activities to an absolute minimum is equally strong. Any reduction in the deterrent effect would have a negative effect on legitimate licence fee payers, which would not be in the public interest. This effect would be felt in two key ways:

- The BBC would receive less of the allocated licence fee to use to fulfil its public purposes; and
- The BBC would need to spend more of the licence fee on additional enforcement measures.

31. It said that support for this position can be found in Decision Notice FS50137475, which concerned information about detection vans. The Commissioner's conclusion was based in part on the strict regulation of the use of covert detection equipment, and also the strong public interest in the BBC being able to collect all of the money settled on it by the Department for Media Culture and Sport with regards to the licence fee, while keeping the amount spent on enforcement activities to a minimum level:

"He notes that it is in the public interest that the BBC is able to collect all the money settled upon it through the Department for Media Culture and Sport licence fee settlement process to enable it to receive the full level of funding for its activities. He also considers that it is in the public interest that the BBC's ability to do so is not prejudiced. The BBC estimates that the total amount of income forgone due to evasion in 2006/07 was £173 million.

The Commissioner also finds that it is in the public interest to ensure that the BBC can keep the cost of enforcement activities to a minimum leaving the money received from the TV Licensing system to be spent on programming...

... For these reasons the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the information."

32. It said that in dismissing the appeal in EA/2010/0087, the Tribunal also placed greatest weight on these factors:

"We place considerable weight on all of the interests listed in the paragraph above. The most weight is on (a) crime prevention – we are satisfied that the uncertainty encourages compliance; and (b)



minimising the cost of enforcement – which in turn is likely to keep the cost of the licence fee lower for the millions of people who pay it and thus abide by the law.” [60]

33. The BBC maintains its position as presented to the Tribunal in the above case and believes that the arguments presented in that case apply equally in this case. Therefore on the basis of the evidence presented in this submission the BBC does not believe that the public interest in releasing the information outweighs the public interest in maintaining the exemption.

### **Balance of the public interest arguments**

34. The Commissioner considers that there is a public interest in openness, transparency and accountability in relation to the BBC's licensing regime as it affects a significant proportion of the population. He also considers that there is a public interest in disclosure of information which would enable the public to scrutinise how public funds are being utilised by the BBC and that the licensing regime is operating at the best value for money. The Commissioner however considers that the BBC does have a number of checks and balances in place to ensure that it is operating its licence regime correctly and fairly and also the BBC does already publish financial information on this regime which goes some way to meeting the public interest arguments set out above.
35. In contrast the Commissioner considers that there is a very strong public interest in the BBC being able to enforce the television licensing system and in not disclosing information which could impede the deterrent effect. He also considers that there is a very strong public interest in not increasing the cost of the BBC's enforcement activities as this would have a negative impact on licence fee payers which is a significant proportion of the public.
36. In this case the Commissioner considers that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.

## Right of appeal

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36. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

37. 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.
38. 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 .....**

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