

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 July 2017

Public Authority: British Broadcasting Corporation
Address: Room BC2 A4
Broadcast Centre White City
Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant has requested an unredacted copy of the BBC's No Licence Needed policy. The BBC refused the request on the basis of section 31(1)(a), (b), (d) and (g) with (2)(a) of the FOIA.
2. The Commissioner's decision is that the BBC has correctly applied the provisions of section 31 of the FOIA and the public interest favours maintaining the exemption. She requires no steps to be taken.

Request and response

3. On 24 October 2016, the complainant wrote to the BBC and requested information in the following terms:

"I would like to have an unredacted copy of the document available on your website (TV Licensing trademark) at the following URL:

<http://www.tvlicensing.co.uk/ss/Satellite?blobcol=urldata&blobheaderna me1=content-type&blobheadervalue1=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1370006350329&ssbinary=true>

Please explain the need for any redactions as fully as possible; the brief explanation provided in the document is insufficient and does not justify the extensive redactions made to the most significant part of the document."

4. The BBC responded on 18 November 2016. It stated that it considered the unredacted version of the BBC TV Licensing No Licence Needed policy was exempt from disclosure under section 31(1)(a), (b), (d) and (g) and 2(a) of the FOIA on the basis that disclosure would, or would be likely to, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, the collection of the licence fee and the BBC's ability to discharge its public functions in respect of these matters.
5. Following an internal review the BBC wrote to the complainant on 11 January 2017. It stated that it upheld the decision to withhold the unredacted version of the No Licence Needed policy under the cited exemptions.

Scope of the case

6. The complainant contacted the Commissioner on 24 January 2017 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of her investigation to be to determine if the BBC has correctly applied any of the provisions of section 31 to withhold the requested information.

Reasons for decision

Section 31 – law enforcement

8. Section 31(1) states 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 assessment or collection of any tax or duty or of any imposition of a similar nature,

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

9. Section 31(2) states 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,

10. In determining whether prejudice would or would be likely to occur from disclosure, the Commissioner will consider the nature and likelihood of the prejudice in question occurring.
11. The BBC has explained that the policy in question is the “BBC TV Licensing; No Licence Needed Policy” which outlines the BBC’s policy for places, residential or otherwise, where the occupier has declared there is no television receiving equipment being used at the address and they are making a No Licence Needed claim (“NLC”). The withheld information is contained in the four appendices that are attached to the Policy document.
12. Appendix (i) outlines TV Licensing’s process for handling NLC which involves giving the address an NLC status, cessation of mailing to the address for a period of time and making the premises available for visiting to confirm that a licence is not needed. Appendix (ii) is used to determine which addresses will make up the sample for visiting, Appendix (iii) outlines the specific situations in which NLC addresses will be excluded from visits and Appendix (iv) outlines the visiting outcomes.
13. The BBC makes the point that it is known that TV Licensing will visit a sample of NLC addresses to confirm that a licence is not needed but the Appendices contain further information about the process that is not publicly available and this information could be used by anyone who wants to ascertain the likelihood of being detected if an NLC was made.
14. 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, avoiding detection for non-payment of the licence fee, and the apprehension and prosecution of licence fee evasion.
15. 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. The BBC primarily funds its public works through raising the TV Licensing fee from Licence fee holders and the ability to effectively monitor and enforce payment of the fee would be compromised by publishing the information in the appendices on the enforcement process.
16. 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.

17. The Commissioner has gone on to consider not just whether the section 31 exemption can be engaged but whether it is engaged in this case and where the balance of the public interest lays.
18. The BBC argues that disclosure of the requested information would be likely to prejudice its capacity to raise and enforce the TV Licence fee as it provides details of the processes employed by TV Licensing to monitor households that have registered as NLCs. Disclosure would therefore assist individuals in evading payment of the TV Licence fee.
19. The BBC has stated it has powers to collect the licence fee and monitor the use of television receiving services to ensure fees are made. Primarily these powers are found in the Communications Act 2003 ("CA2003") and the Communications (Television Licensing) Regulations 2004. Section 363 of the CA2003 makes it an offence for a person to use or install a television receiver unless that use or installation is licensed. Sections 364 and 365 of the CA2003 impose duties on the BBC to issue and revoke TV licenses in accordance with restrictions imposed by the Secretary of State. Finally, the BBC's powers to use detection equipment are set out under the Regulation of Investigatory Powers Act 2000 (RIPA) and the Regulation of Investigatory Powers (British Broadcasting Corporation) Order 2001.
20. The BBC has explained that it has an intentional policy of minimising the amount of information in the public domain relating to its ability to enforce the licence fee regime. The Information Tribunal has considered this point before¹ and found that:

"The Tribunal places considerable weight on all the public interest factors we have had to consider ... and observe that when the issue relates to crime prevention, uncertainty itself encourages compliance."

The Commissioner has also considered this matter before and has issued decision notices² accepting the BBCs views that uncertainty does encourage compliance and disclosure of information about licensing enforcement would affect the rate of compliance.

¹ Bowditch v IC & BBC (EA/2012/0168)

² ICO decision notices FS50431580 & FS50476136 & FS50619819

21. As such the Commissioner accepts, as she has done in earlier decision notices, that disclosing information which goes against the BBC's deliberate policy of uncertainty could affect compliance with licencing requirements.
22. She has considered whether the specific information which is the subject of this request would have an impact on compliance with licencing requirements. The commissioner has reviewed the information in the appendices and notes that it does contain details of the process, methodology and outcomes of visits by TV Licensing. Included in this is details of how the enforcement process works in practice and there is information contained within the appendices that the Commissioner accepts would be of practical use to those seeking to avoid detection. Whilst it is publicly known that TV Licensing may visit NLC addresses to confirm that a licence is not needed, the appendices contain details of the number of visits, how premises are chosen and the range of powers available to enforcement officers.
23. The Commissioner accepts that uncertainty does encourage compliance, supported by the views of the Tribunal, and therefore disclosure would remove that uncertainty by providing an insight into the methods and tools at the BBC's disposal, making enforcement of the licensing regime more difficult.
24. The BBC has argued that the disclosure of the information 'would be likely' to prejudice the functions set out in section 31. In previous decisions relating to similar issues the BBC provided the Commissioner with evidence to suggest that there were individuals and groups who objected to paying the licence fee and sought ways to avoid paying it. The BBC had explained that it believed there was a willingness among these people to share information on how to avoid payment. Both the Commissioner and the Tribunal³ considered this evidence and accepted that it showed a clear link between disclosure of the information and the prejudice described.
25. The Commissioner considers that this is still relevant in this case and as the issue of information on the broader enforcement of the licensing regime has been considered extensively in previous cases, she accepts that the prejudice argued in this case would also be likely to occur.

³ EA/2010/0087

26. The Commissioner therefore finds that sections 31(1)(a), (b), (d) and (g) are engaged. Section 31 is a qualified exemption and the Commissioner must therefore consider the public interest test before reaching a conclusion.

Public interest arguments in favour of disclosure

27. The BBC has recognised the public interest in transparency, particularly where this would contribute to increasing the public's understanding of how the licensing regimes is administered and to demonstrate the BBC is exercising its functions as the licensing authority appropriately and proportionately.
28. The BBC also recognises there is a public interest in the 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 obtained.

Public interest arguments in favour of maintaining the exemption

29. The BBC states that it is principally funded by the licence fee. Therefore maintaining the confidentiality of the enforcement system minimises licence fee evasion and encourages the public to pay their fee voluntarily which reduces the cost to the BBC and ultimately the licence fee payer. This allows the BBC access to greater funds to produce its content and fulfil its other public functions.
30. The BBC believes there are already adequate systems in place to ensure oversight of the TV Licensing systems. TV Licensing's functions are subject to external review through reports of the Comptroller and Auditor General to the House of Commission and directions given by the Treasury. In addition to this, the BBC is required to satisfy the National Audit Office as to the value for money of the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. If the requested information was disclosed the BBC would likely need to change its TV Licensing monitoring and enforcement strategy which would lead to greater costs for the BBC and a diversion of funds from other public functions.

Balance of the public interest arguments

31. Although the BBC recognised the public interest in accountability and transparency where it could contribute to increased awareness and understanding of the BBC's TV Licensing regime; it considered that the fact it is strictly monitored balances this out. TV Licencing's functions are also subject to external review through reports of the Comptroller and

Auditor General to the House of Commons and the BBC itself if inspected by an independent body (the Office of Surveillance Commissioners) to ensure it is complying with legislation regarding detection and therefore not unfairly or unlawfully subjecting the public to detection.

32. The Commissioner does still consider 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. She accepts there will be a public interest in the disclosure of information which would enable the public to scrutinise how public funds are being utilised and that the licensing regime is operating at the best value for money.
33. That being said, the Commissioner does consider the BBC has shown it has safeguards in place and oversight to ensure it is effectively operating the licensing regime and the BBC does provide information on this on a voluntary, and regular, basis. This does go some way to meeting the public interest arguments in disclosure.
34. In contrast, the Commissioner recognises the importance of the BBC being able to effectively enforce the licensing system and having effective deterrents against evasion. The BBC has demonstrated that disclosure would be likely to prejudice its enforcement activities leading to a loss of revenue. The Commissioner accepts it is in the public interest for the BBC to continue to be able to detect licence fee evasion and this public interest argument is therefore strong.
35. As well as this the Commissioner has factored in the impact of disclosure on not just the ability of the BBC to enforce the current licensing regime by disclosing information about its detection and enforcement capabilities; but also the impact on the licensing regime going forwards and the ability of the BBC to administer the amended regime. It is not in the public interest to hinder this and make it more difficult for the BBC to detect individuals looking to evade paying for a TV license and consequently affecting the amount of money legitimate licence fee payers may have to pay.
36. In weighing up the public interest arguments the Commissioner cannot ignore the decisions made in previous cases and the comments and outcomes of the various Tribunal decisions. In *Bowditch v BBC & IC (EA/2012/01/68)* when summarising the public interest arguments which were largely the same as the ones put forward in this case, at paragraphs 28 and 29 the Tribunal found that *"taken either individually or cumulatively, these are powerful public interest arguments which cannot be displaced without the most powerful justification By minimising the cost of enforcement this keeps the costs of the licence*

fee lower for the millions of people who pay it and, in doing so, abide by the law. We have considered the countervailing public interest elements identified by the Appellant but have no doubt that the public interest in maintaining the exemption substantially outweighs the interest in disclosure."

37. Taking all of this into account the Commissioner considers that the public interest in favour of disclosure has been somewhat met by the safeguards and oversight in place and the voluntary disclosure of information. In contrast, there are strong arguments for maintaining the exemption to preserve the BBC's ability to effectively enforce the current licensing regime to ensure value for money (for the BBC and the public) and that anyone looking to circumvent the licensing regime can be detected and appropriate action taken.
38. Therefore the Commissioner finds that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.

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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

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.

Signed

Jill Hulley
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