

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: **21 October 2022**

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

Decision (including any steps ordered)

1. The complainant made a request for the overall cost to the BBC of a Deprivation Study. The BBC refused to disclose the requested information under section 43(2) FOIA.
2. The Commissioner considers that the BBC was incorrect to apply section 43(2) FOIA to the withheld information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information withheld under section 43(2) FOIA.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 5 March 2022 the complainant requested information of the following description:

" Under the FOI Act, please could you tell me the total cost to the BBC of this MTM Deprivation Study:

<https://www.bbc.co.uk/aboutthebbc/documents/mtm-bbc-deprivation-study-2020-2021-final-report.pdf> .”

6. On 26 May 2022 the BBC responded. It refused to disclose the requested information under section 43(2) FOIA.
7. The complainant requested an internal review on 26 May 2022. The BBC sent the outcome of its internal review on 17 June 2022. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 20 June 2022 as he was dissatisfied with the application of the exemption.
9. The Commissioner has considered whether the BBC was correct to apply section 43(2) FOIA to withhold the requested information.

Reasons for decision

Section 43(2) – commercial interests

10. 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)’.
11. This is a prejudice based exemption, our approach to the prejudice test is based on that adopted by the Information Tribunal in Christopher Martin Hogan and Oxford City Council v the Information Commissioner (EA/2005/0026 and 0030, 17 October 2006) at paragraphs 28-34. This involves the following steps:
 - Identify the “applicable interests” within the relevant exemption
 - Identify the “nature of the prejudice”. This means:
 - o Show that the prejudice claimed is “real, actual or of substance”;

o Show that there is a "causal link" between the disclosure and the prejudice claimed.

- Decide on the "likelihood of the occurrence of prejudice".

Identify the "applicable interests" within the relevant exemption

12. The Commissioner's Guidance on Section 43 explains that:

"A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent."

13. The information withheld under this exemption is the overall cost to the BBC of a study commissioned in order to help it understand better the value that it delivers to UK households in return for the licence fee and how this could be improved.
14. The withheld information relates to the BBC's ability to commission a service – a study to assess the value of a service the BBC itself provides in return for the licence fee. The Commissioner is therefore satisfied that the withheld information relates to a commercial interest.

Identify the "nature of the prejudice"

15. The BBC has explained that its own commercial interests would be likely to be prejudiced by disclosure in this case. It has argued that the cost of the contract is sensitive and therefore disclosure would be likely to jeopardise the BBC's capacity to negotiate a similar contract with the same or another supplier in the future. The ability of the BBC to enter into commercial negotiations with third party suppliers is an important way the BBC can ensure value for money for the TV Licence fee payer. Without a degree of confidentiality about such processes, the BBC cannot operate in a competitive market in a way that delivers value for all. It is likely further studies, the same or equivalent, will be commissioned. Given these circumstances, the risk of prejudice from a disclosure of the value of the contract is real and foreseeable.
16. In this case the complainant has requested the overall cost of the contract. This would not provide details of the specific terms agreed or any detail regarding the negotiating process. The Commissioner notes that the BBC has argued that it is likely to enter into similar contracts for equivalent studies in the future, however it is likely that future contracts may not have exactly the same requirements which would

have an impact upon overall price as well as rates of inflation which may increase or decrease the pricing of suppliers. This contract is complete, the work has been carried out, based upon the BBC's arguments the Commissioner does not accept it has established a causal link between disclosure of the overall cost of this contract and the prejudice it has claimed would be likely to occur to its commercial interests when negotiating similar contracts in the future with this supplier or others.

17. The Commissioner does not accept that the prejudice claimed is 'real, actual or of substance' based upon the BBC's arguments and the exemption has therefore been incorrectly applied in this case. As the exemption is not engaged, the Commissioner has not gone on to consider the public interest arguments.

Right of appeal

18. 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@Justice.gov.uk

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

19. 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.
20. 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.....

Gemma Garvey
Senior Case Officer

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Wilmslow
Cheshire
SK9 5AF