

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 19 May 2008

Public Authority: British Broadcasting Corporation (BBC)
Address: MC3 D1, Media Centre
White City
Wood Land
London
W12 7TQ

Summary

The complainant requested from the BBC information related to the use and effectiveness of television detector vans. The BBC refused to disclose the information relying on sections 31 and 42. The Commissioner has investigated and found that section 31 is engaged and that the public interest in maintaining the exemption outweighs the public interest in disclosure of the information. The Commissioner requires no steps to be taken.

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 has advised that on the 27 July 2006 he made the following request for information from the BBC about the use of television detector vans:

"1. All internal BBC documents (including emails, telephone transcripts, faxes, minutes, reports and letters etc) which touch upon the use of and effectiveness of the vans as part of the campaign against TV licence evasion. I am interested in documentation which stretches back to the beginning of 2004."

2. How many instances of non payment and or fraud have these kinds of vans uncovered since the beginning of 2004. Could you please provide a breakdown of these figures on an annual basis?

3. All internal documents (including emails, telephone transcripts, faxes and minutes, memos, reports and letters etc) which touch upon the suggestion that some and or all of the vans deployed in the campaign against evasion and or fraud are unable to detect transmission?

4. All correspondence (including emails, telephone transcripts, letters, faxes etc) between the BBC and TV Licensing which relate to the use and /or effectiveness of television detector vans. This will also include the issue of vans being unable to detect transmission.

5. The amount of money spent by the BBC on campaigns against TV licence evasion / fraud since January 2004.

3. The BBC responded on 17 August 2006 asking the complainant for further clarification as to the information sought in his requests one and four.

4. The complainant responded on 17 August 2006 clarifying the information being sought.

“Question one is about the use of an effectiveness of vans. So I am looking for all internal documentation (including emails, minutes, reports, letters, faxes etc) which touches upon the deployment of vans in terms of numbers and geographical spread, the kind of equipment these vehicles contain and their effectiveness in combating actual evasion. So how many cases of non payment and or evasion have been uncovered by the vans during the period concerned. How does this compare with other campaigns against evasion? How many of these ‘detections’ have turned out to be false or have attracted complaints. How does the BBC feel about the use of these vehicles? What legal advice does it hold on the use of these vans? I am also interested in documentation which deals with detector vans which are in use but which (for whatever reason) are unable to detect evasion or non payment.

Question 4 is interested in correspondence (including emails, telephone transcripts, faxes, letters, memos etc) which touches upon exactly the same issues. You will note the reference to the ‘issue of vans being unable to detect transmission’. This is an issue relevant to both questions.

5. The BBC provided a full response to the information request on 24 August 2006. Following the complainant’s clarification of the information being sought in respect of the first point of the request the BBC split this request into eight parts and responded as follows:

1.1. ‘All internal documentation which touches upon the deployment of vans in terms of number and geographical spread’. The BBC confirmed the

information was held but informed the complainant that it was considered exempt under section 31(1) (a) (b) (d) and (g) of the Act.

1.2 *'The kind of equipment these vehicles contain'*. The BBC gave an explanation about the nature of the detection equipment but refused to disclose the remaining information under section 31(1) (a) (b) (d) and (g).

1.3 *'How many cases of non payment / and or evasion have been uncovered and for the effectiveness of the vehicles in combating evasion.'* The BBC confirmed it held this information but refused to disclose by virtue of section 31(1) (a) (b) (d) and (g).

1.4 *'How does this compare with other campaigns against evasion'*. The BBC informed the complainant that it was withholding documentation in relation to the effectiveness of the vehicles under section 31 but provided some information which relates to how TV Licensing uses detector vans.

1.5 *'How many of these 'detections' have turned out to be false or have attracted complaints.'* The BBC stated that no detections have turned out to be false and that it has never had a complaint in relation to the use of detection equipment.

1.6. *'How does the BBC feel about the use of these vans?'* The BBC provided a response to this.

1.7 *'What legal advice does it hold on the use of vans'*. The BBC confirmed that it had sought legal advice on the use of the vans and that this advice is held. The BBC stated that the legal advice is exempt under section 31 and 42 of the Act and that in all circumstances the public interest favoured maintaining the exemption.

1.8 *'I am also interested in documentation which deals with detector vans which are in use but which (for whatever reason) are unable to detect evasion and or non payment.'* The BBC informed the complainant that all the vans in use are able to detect the use of television receivers.

6. In response to the second part of the complainant's request the BBC confirmed the information was held but that it was being withheld under section 31 (1) (a) (b) (d) and (g). In response to the third part of the request the BBC stated no information is held as all detector vans are able to detect transmissions.
7. In response to the fourth part of the request which the BBC had sought further clarification on, it explained that the documentation held in respect of point four was included in the response to points 1.1 to 1.8. In response to point five of the request the BBC provided a cost breakdown for TV licensing going back to 2003. In relation to all the information considered exempt under section 31 (1) (a) (b) (d) and (g) the BBC carried out a public interest test and concluded that in all circumstances the public interest favoured maintaining the exemption.

8. The complainant requested an internal review of this decision on 28 August 2006 specifically asking the BBC to reconsider its application of the exemption at sections 31 and 42 of the Act.
9. The BBC conducted an internal review and communicated its findings to the complainant on 5 October 2006. The internal review upheld the original decision to withhold some of the requested information under section 31 and 42 of the Act.

The Investigation

Scope of the case

10. On 9 October 2006 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 that there are strong public interest grounds for disclosing the requested information.

Chronology

11. On 7 November 2007 the Commissioner began his investigation by writing to the BBC. The Commissioner asked for a copy of all the information being withheld and for further explanation regarding the application of the exemptions being applied.
12. The BBC responded on 17 March 2008 providing the Commissioner with a detailed explanation regarding the application of section 31 to the withheld information and a copy of the withheld information. The BBC also explained that it had reviewed its application of section 42 and now found that this only applied to two elements of the requested information in conjunction with the application of section 31.

Findings of fact

13. The information being withheld consists of 32 documents which include the following information:
 - Authorisations of detection of television receivers from outside residential or other premises;
 - Internal emails and file notes which relate to the request and other similar requests;
 - Other internal TV licensing documents.
14. The information is being withheld under section 31(1) (a) (b) (d) and (g) and in addition parts under section 42.

Analysis

Exemption: Section 31 'Law Enforcement'

15. Section 31(1) provides that information is exempt if its disclosure under the Act would, or would be likely to prejudice (a) the prevention or detection of crime, (b) the apprehension or prosecution of offenders (d) and the assessment or collection of any tax or duty or 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). The purpose specified in subsection (2), claimed by the BBC is, (a) the purpose of ascertaining whether any person has failed to comply with the law.
16. The BBC has stated that the information is exempt from disclosure as it would prejudice the prevention or detection of crime; the prosecution of offenders; the assessment or collection of tax; and the ability of the BBC to exercise its function. This is due to the fact that a person would use the information to evade the licence fee. The BBC explained that there are three types of information covered by the request which could aid a person to evade the licence fee. These are:
 - Information relating to how often television detector vans are used
 - Information relating to the internal policies for authorising the use of detector vans; and
 - Information relating to the technology used by the television detector vans to detect television.
17. The BBC 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. 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. The BBC's enforcement activities are in place to ensure that people pay their licence fee and they rely upon a number of deterrents. This process begins with TV Licensing's database of 29 million homes and business addresses which tells it which of these have TV licences. Typically a number of letters will be sent to unlicensed addresses reminding people of the importance of being properly licensed and giving them information on the way to pay. Households may also receive telephone calls asking whether a TV licence is needed at the address. To those who delay or try to evade payment, TV Licensing communicate the possible consequence of evasion such as the use of detection equipment and potential prosecution.
18. If there is no response to these communications then the address will be selected for a visit from an enquiry officer. Visiting can provide TV Licensing with information on whether addresses are unoccupied or derelict and whether or not there is TV receiving equipment on the premises which is capable of watching or recording TV programmes as they are being shown on TV. The BBC further explained that individuals are entitled to withdraw the implied right of access to all TV Licensing staff from their private address and officials can only enter a household with the consent of the occupier. Where a person has withdrawn the

right of access, television detection equipment will be used to verify the situation at the address.

19. The BBC went on to explain that detection equipment is complex to deploy as its use is strictly governed by the Regulation of Investigatory Powers Act (RIPA) and the Regulation of Investigatory Powers (British Broadcasting Corporation) Order 2001. RIPA and the Order outline how the relevant investigatory powers are to be used by the BBC and ensure compliance with human rights.
20. Requests for authorisations for the use of detection equipment must be made in writing to the Head of Sales and Marketing or anyone holding a more senior role within the TV Licence Management Team of the BBC (who are persons designated for this purpose by the Order). The Order sets out the criteria which the authoriser must consider to assess an application of the use of detection equipment, namely that its use is:
 - Necessary for the purpose of preventing or detecting crime constituting an offence under part 4 of the Communications Act 2003 or for the purpose of assessing or collecting sums payable to the BBC under regulations made under section 365 of the Communications Act 2003 and
 - Proportionate to what is sought to be achieved.
21. The BBC explained that the number of detector vans in operation, the location of their deployment and the frequency is not common knowledge. It relies on the public perception that the vans could be used at any time to catch evaders. This perception has built up since the first van was launched in 1952 and has been a key cost effective method in deterring people from evading their licence fee.

Information relating to how often detector vans are used

22. The BBC state that to release information which relates to how often detector vans are used will change the public's perception of the effectiveness of detector vans. If the deterrent effect of television detector vans is lost, the BBC believes that a significant number of people would decide not to pay their licence fee, knowing how the deployment and effectiveness of vans will affect their chances of success in avoiding detection.
23. To support this assertion the BBC said that it is also aware that a growing number of individuals deliberately evade the licence fee due to dissatisfaction with the BBC. In 2006-07 it received 126 complaints from people who objected to paying their licence fee up from 60 in 2005-06. The BBC also stated that there are a number of blogs and forums dedicated to people who are dissatisfied with having to pay the licence fee. These sites are used by members to share information on the TV licensing system and how to evade payment. Discussions are frequently concerned with trying to determine whether detector vans can actually detect individual televisions.

24. The result of disclosing this information, the BBC claim, would be that it would lose out on funding and would be forced into a position where it would have to spend more of the licence fee on other enforcement activities.

Technical Equipment used in Television Detector Vans

25. The withheld information also contains details of the technical equipment used in detector vans, the BBC state that part of ensuring the effectiveness of detector vans is to keep the technology associated with how it detects television sets a secret. This is because revealing the technical elements of the detection devices would leave open the possibility of people analysing them to find weaknesses to evade detection equipment, and subsequently the licence fee.

Internal Policies

26. The BBC state that disclosure of the information relating to authorisations for the deployment of vans would also prejudice the prevention or detection of crime; the prosecution of offenders; the assessment or collection of tax; and the ability of the BBC to exercise its functions if they were released as they outline key aspects of the BBC's television detector van process such as;
- Further information relating to how addresses are selected for visits by detector vans.
 - Flowcharts of the decision making process.
27. Many of the specific documents relating to the BBC's internal policies also contain information relating to how often detector vans are used and the technical equipment used in the detector vans. The BBC believes that releasing this information would provide significant information which could be used by individuals to evade the licence fee.
28. The Commissioner has viewed the withheld information and is satisfied that disclosure of the information would be likely to have the adverse effects discussed above. In reaching this decision the Commissioner has applied the test for 'would or would be likely to prejudice' as set out in the Tribunal decision EA/2005/005 *John Connor Press Associates vs. the Information Commissioner*. The Tribunal confirmed that "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk." (Para15). This was further expanded in the Tribunal decision *Hogan vs. the Information Commissioner EA/2005/0026* and *Bexley vs. the Information Commissioner EA/2006/0060*.
29. In these cases the Tribunal considered what was meant by "would be likely to prejudice" and when a prejudice based exemption might apply. The Tribunal found that 'prejudice must be real, actual and of substance', it went on to explain that there are two alternative ways in which disclosure can be said to prejudice and that one of these must be shown. Where prejudice 'would be likely to occur' the likelihood need not be more probable than not, though it should be real and significant; where prejudice 'would' occur, the change should be greater – more probable than not.

30. The Commissioner recognises the importance the BBC places on the public perception of the use of detector vans, and he also recognises that disclosure of this information would change this perception as the information outlines: the extent of their use; the conditions under which they are used; the procedures necessary to enact their use; the equipment used and its capabilities; and the areas in which they are more or less frequently deployed. The Commissioner notes that a change in this perception could increase the evasion rate in paying TV licences by individuals. For these reasons he accepts that disclosure would be likely to prejudice the prevention or detection of crime; the prosecution of offenders; the assessment or collection of tax or the ability of the BBC to ascertain whether any person has failed to comply with the law.
31. The Commissioner finds that section 31(1) (a), (b), (d) and (g) are engaged.

Public Interest Test

32. 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.
33. The BBC acknowledge that disclosure of the information requested about television detector vans 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. This is particularly important as the use of covert detection equipment has an impact on a person's privacy. Releasing the information would reinforce the legitimacy of the process that the BBC undertakes and provide the public with some assurances about how appropriately the detection equipment is used.
34. The BBC state that disclosure would also help ensure that public funds are being appropriately applied by ensuring that the TV licensing system is being effectively and efficiently run and ensuring value for money is being obtained.
35. However, the BBC pointed out that the use of covert detection equipment is strictly regulated by the RIPA and the Order. The Office of Surveillance Commissioners is an independent public body which also monitors the BBC's compliance with legislation regarding detection. The BBC also has a number of policies in place to ensure that it is compliant with the legislation including a RIPA audit. As such, the BBC state that there are already sufficient safeguards to ensure that it is exercising its functions appropriately and proportionately and that people are not being unfairly subjected to detection.
36. The BBC also explained that it 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.
37. The BBC state that releasing the information would also have a negative effect on the public interest for legitimate licence fee payers, in ensuring that their licence

fee payments are not spent on additional enforcement activities, and hence negatively affect the value for money which is being obtained 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 therefore need to spend more of the licence fee on additional enforcement measures.
38. Finally the BBC argue that it is in the public interest that the TV Licensing system is efficiently run. The BBC has reduced the cost of collection from 6.2% of the total licence fee collected in 1991/2, when it took over from the Home Office to, 4.1% for the financial year 2006/07. According to the BBC this demonstrates that the TV Licensing system is being efficiently run. A key part of this success has been the use of detection equipment as a significant deterrent element. The BBC argue that it is therefore in the public interest that it can continue to effectively use detector vans in the way it does to prevent and detect crime, apprehend offenders, and assess and collect the TV licence fee.
39. The Commissioner 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.
40. 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. The Commissioner accepts that one of the ways the BBC achieves this goal is to rely on deterrents such as the detector van. If the details of the use and deployment of the detector van made public, the deterrent effect of the van may be reduced.
41. For these reasons the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
42. The Commissioner has found that the information requested is exempt under section 31; as section 42 has been applied to the same information withheld under section 31 he has not gone onto consider the application of section 42.

The Decision

43. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

44. The Commissioner requires no steps to be taken.

Right of Appeal

45. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.

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

Dated the 19th day of May 2008

Signed

**Anne Jones
Assistant Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

Law enforcement.

Section 31(1) 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,
- (c) the administration of justice,
- (d) the assessment or collection of any tax or duty or of any imposition of a similar nature,
- (e) the operation of the immigration controls,
- (f) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained,
- (g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2),
- (h) 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, or
- (i) any inquiry held under the Fatal Accidents and Sudden Deaths Inquiries (Scotland) Act 1976 to the extent that the inquiry arises 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,
- (b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,
- (c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,
- (d) the purpose of ascertaining a person's fitness or competence in relation to the management of bodies corporate or in relation to any profession or other activity which he is, or seeks to become, authorised to carry on,
- (e) the purpose of ascertaining the cause of an accident,

- (f) the purpose of protecting charities against misconduct or mismanagement (whether by trustees or other persons) in their administration,
- (g) the purpose of protecting the property of charities from loss or misapplication,
- (h) the purpose of recovering the property of charities,
- (i) the purpose of securing the health, safety and welfare of persons at work, and
- (j) the purpose of protecting persons other than persons at work against risk to health or safety arising out of or in connection with the actions of persons at work."

Section 31(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 any of the matters mentioned in subsection (1)."

Legal Professional Privilege

Section 42(1) provides that –

"Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information."

Section 42(2) provides that –

"The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would involve the disclosure of any information (whether or not already recorded) in respect of which such a claim could be maintained in legal proceedings."