

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date 30 July 2007

**Public Authority:** British Broadcasting Corporation (BBC)  
**Address:** MC3 D1  
Media Centre  
Media Village  
201 Wood Lane  
London W12 7TQ

### Summary

---

The complainant asked for the total cost of On the Air, an animated series produced by Flickerpix, and a breakdown of this cost. The BBC refused to provide the information on the basis that the information was held for the purposes of journalism art and literature. Having considered the purposes for which this information is held the Commissioner is satisfied that it falls within the scope of the Act but that it is exempt from disclosure under section 43.

### 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. On 8 October 2006, the complainant made a request to the BBC for:
  - Information pertaining to the total cost of making BBC Northern Ireland's 10 part animated series On the Air.
  - A breakdown of this sum, indicating the fee paid to Flickerpix, a Belfast based animation company, and any other associated costs such as the employment of researchers.
3. The BBC responded on 09 October 2006. It advised that the request "*falls outside the scope of the Act because the BBC and the other public service broadcasters are covered by the Act only in respect of information held for purposes other than*

*journalism, art, or literature*". Consequently, the complainant was informed that the BBC is not obliged to supply information held for the purposes of creating its output (i.e. its programmes) or information that supports and is closely associated with these creative activities.

4. The BBC further advised the complainant that no internal review procedure was available to him, although he was advised of his right to make a complaint to the Commissioner.

## The Investigation

---

### Scope of the case

5. On 16 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 whether the information in question was held for purposes other than journalism, art and literature, and following this whether the information should be provided to him under the Act.
6. It should be noted that the Commissioner is only able to make a decision under section 50 of the Act where the information is held for purposes other than journalism, art and literature. In this case the public authority only holds information relating to the fee paid to Flickerpix, the independent production company which made the animation series, and therefore the Commissioner has not considered whether the breakdown of this sum is held for purposes other than journalism, art and literature.

### Chronology

7. On 18 January 2007, the Commissioner contacted the BBC and requested further arguments supporting the BBC's claim that the requested information is not held for purposes other than journalism, art and literature.
8. The BBC replied on 5 March 2007 and re-iterated its view that the requested information is held for the purposes of journalism, art and literature. The BBC advised that Part VI of Schedule 1 of FOIA specifies that the BBC is only subject to the FOIA in respect of "information held for purposes other than those of journalism, art or literature". The BBC's view is that this does not mean that the information need itself be journalism, art or literature to fall outside the scope of the Act; they maintain that the Act only applies where the dominant purpose for holding the information is other than for those purposes. Finally the BBC stated that financial information relating to programme costs is a part of the production process and therefore has an obvious impact on creativity.
9. The BBC provided additional arguments, without prejudice to their position on the derogation, detailing the exemptions on which it would seek to rely in the event that the Commissioner decided that the derogation did not apply in this case.

These were section 43 (commercial interests) and section 41 (information provided in confidence).

10. The BBC also highlighted their view that when making a decision in relation to the Schedule 1 derogation it is necessary to take a purposive approach. They contend that the purpose of the Schedule 1 derogation focuses partly on protecting freedom of expression and partly on protecting the position of the BBC relative to its commercial rivals.

## Analysis

---

### The Schedule 1 derogation

11. Part VI of Schedule 1 of the Act states that the BBC is a public authority 'in respect of information held for purposes other than journalism, art and literature'. This is commonly referred to as the Schedule 1 derogation. Similar provision exists in relation to Channel 4 and S4C – as a group these organisations are called public service broadcasters (PSBs).
12. In order to determine the purpose for which information is held the Commissioner will apply a dominant purpose test. This means that where information is held for a number of purposes he will weigh these purposes against each other to determine the dominant purpose for which that information is held.
13. In this case the requested information relates to the cost of producing a programme, On the Air. On the Air is a 10 part animated series created and produced by an independent production company (IPC), Flickerpix, and obtained for a fee by the BBC. Therefore the BBC only hold information relating to the overall fee paid to Flickerpix and not the remainder of the requested information.

### The BBC's view

14. The BBC believes that the Schedule 1 derogation applies broadly and therefore its scope includes information such as programme content but also extends to include multi-purpose information, such as financial information related to the cost of programme making. The BBC consider that the dominant purpose for holding information is the critical factor in making a determination on whether information is held for the purposes of journalism, art and literature, or some other purpose.
15. The BBC state that:  
  
'Financial information relating to programme costs is part of the production process and has an obvious impact on creativity. For example, the Vicar of Dibley would not have been the same without Dawn French or the distinctive location used as the fictional village of Dibley'
16. In support of this view the BBC cite three sources:

- (a) The Commissioner's view in his Provisional Decision in the case of *Sugar v Information Commissioner*, EA/2005/0032 that this sort of budgetary information deals with the 'sustenance...of the creative journalistic purpose that the designation is meant to protect'.
- (b) Evidence given by Mr Richard Sambrook, Director of News at the BBC, in relation to appeal EA/2005/0032 to the Information Tribunal. He stated that
- 'Questions about how you make (various) selections or the resources that are available to make selections, might be characterised on the one hand as management, but they are absolutely core to journalism and determine both the quality, nature and character of journalism.'
- (c) A letter from the Home Office to the Department for Culture Media and Sport of 13 January 2000 which states:
- 'the Government has sought to ensure that...including them [the public service broadcasters] in the Bill does not place them at a commercial disadvantage to their commercial rivals. The Bill therefore provides that the inclusion of the public service broadcasters does not relate to information held for journalistic, artistic or literary purposes.'
17. The BBC's view is that when construing their treatment under Schedule 1 of the Act it is necessary to take a purposive approach, considering not simply the nature of the information requested but also the purpose of legislators when including the Schedule 1 derogation.
18. In summary, the BBC's position is that the Schedule 1 derogation should be interpreted widely, to protect the BBC's freedom of expression and their position relative to commercial rivals.
19. In relation to the specific information requested they maintain that the information is not held for purposes other than journalism art and literature.

### **The Commissioner's view**

20. The Commissioner has noted the arguments put forward by the BBC.
21. In the Commissioner's view the purpose of the derogation is to protect journalistic, artistic and literary integrity and to preserve a "creative space" in which programme makers can continue their core activities free from outside interference.
22. The Commissioner accepts that the requested information (the fee paid to Flickerpix) supports the creation of programme content. It is self evident that in the majority of cases some form of financial support is necessary to produce programme content. The BBC and the Commissioner agree on this point and as such he has not considered it further.

23. The Commissioner's view is that the requested information is held by the BBC for operational purposes in addition to journalistic, literary and artistic purposes.
24. Financial information serves a number of direct purposes, for example, it is used to budget, monitor expenditure, identify opportunities to improve efficiency, and comply with legal obligations.
25. The fee paid to Flickerpix constitutes financial information and therefore serves a number of purposes in addition to that accepted by the both the BBC and Commissioner, i.e. that it supports the creation of programme content.
26. In addition the fee paid to Flickerpix indirectly supports strategic goals identified in the Amended Agreement between the Department for Culture Media and Sport (DCMS) and the BBC dated 4 December 2003, following this referred to as the Amended Agreement. The 2006 Agreement between the DCMS and BBC replaced the Amended Agreement on 1 January 2007.
27. The requested information therefore serves multiple purposes. Where information is held for a number of purposes the Commissioner's approach is to consider whether the dominant purpose for holding that information is a purpose specified in the Schedule 1 derogation.
28. In this case the fee paid to Flickerpix serves the following purposes:
  - (i) It supported the delivery of programme content;
  - (ii) It enabled the BBC to monitor its expenditure against its agreed budget for that year;
  - (iii) It enabled the BBC to predict with some certainty the cost of purchasing a further series or similar programme;
  - (iv) It contributed to meeting the BBC's quota for programmes created by IPCs (paragraph 5K of the Amended Agreement refers);
  - (v) It contributed to meeting the quota for programmes commissioned outside of the M25 area (paragraph 5H of the Amended Agreement refers).
29. If the 2006 Agreement had been in force at the time that On the Air was commissioned and broadcast of the it would also have contributed towards the quota for productions commissioned via a Window of Creative Competition (paragraph 54 of the 2006 Agreement refers) whilst similar provisions to those specified under (iv) and (v) above are also present in the 2006 Agreement. Paragraphs 49, 50, 51, 52, 53, 54, and 55 of the 2006 Agreement detail the relevant obligations placed on the BBC in respect of this type of broadcast.
30. The final factor which the Commissioner has weighed, in coming to a decision on whether the derogation applies, is whether the decision to pay a fee to Flickerpix for this animation series constituted a creative decision.
31. A creative decision would relate to the inception, planning and delivery of new content. For example, the original idea for an animated series would be part of the creative process and could be characterised as a creative decision. Similarly

the decision to use presenter X instead of presenter Y would be a creative decision but the determination of the level of remuneration for presenter X would not.

32. Having considered the nature of the information, the purposes for which this information is held, its relationship to strategic obligations and goals, and its relationship with the creative process, the Commissioner's conclusion is that this information is held for purposes other than journalism, art and literature.

### **Exemptions**

33. The BBC provided additional arguments, without prejudice to their position on the Schedule 1 derogation, as to the exemptions which it would seek to rely on, in the event that the Commissioner found that the Schedule 1 derogation did not apply in this case. These were sections 43 and section 41.

### **Section 43 – Commercial interests**

34. Section 43(2) states that where disclosure of the requested information would prejudice the commercial interests of any person it is exempt information. However section 43 is a qualified exemption and therefore the public interest test under section 2 of the Act must be applied. Therefore, the Commissioner must first consider whether disclosure would prejudice the commercial interests of any person and then, if prejudice exists, consider where the balance of the public interest lies.
35. In the first instance it is necessary to consider whether the requested information is actually held by the BBC. The BBC state that the programme was acquired from Flickerpix and that the only cost to the BBC was the total fee paid to Flickerpix. A breakdown of the costs is therefore not available and we have not considered this aspect of the request further.
36. The parties to the request, i.e. the persons whose commercial interests could be prejudiced, are the BBC and Flickerpix, the independent animation company that created the programme. The BBC paid a fee to Flickerpix who in return provided the programme for broadcast.
37. In relation to the first element of the test under section 43, whether prejudice exists, the BBC have provided arguments which support their view that disclosure would prejudice the commercial interests of the BBC. They have not provided any arguments in relation to the potential prejudice to the commercial interests of Flickerpix and the Commissioner has not considered their interests any further.
38. The BBC put forward three arguments:
- |                       |   |
|-----------------------|---|
| Prejudice Argument 1. | Market distortion and increased bids from competitors                             |
| Prejudice Argument 2. | Market distortion and increased bids from independent production companies (IPCs) |
| Prejudice Argument 3. | Deal drain  |

## **Prejudice Argument 1 – Market distortion and increased bids from competitors**

39. Argument 1 is summarised by the BBC as follows but includes a number of different elements.

*'...disclosing the fee paid by the BBC will have the effect of providing the BBC's competitors with valuable pricing information about the value of rights to these types of programmes. This disclosure of information could have the effect of distorting the market for independently produced programmes, increasing the likelihood of the BBC's competitors coordinating their bids against the BBC for those programmes.'*

40. The BBC describes the market for IPCs as fiercely competitive with a high premium on quality and original ideas due to their scarcity. Where original, high quality ideas become available on the market the BBC maintain that a bidding war between rival broadcasters ensues and the loser in such a bidding war will have difficulty replacing the goods, i.e. the TV programme.
41. The BBC maintain that despite its status as a public corporation when commissioning goods from IPCs they operate in a wholly competitive market place within which they must compete with other broadcasters, commercial radio, print media and competitors in new and emerging technology, such as Google. The contention is that a level playing field exists in this sector already. It should be noted here that generally the BBC commissions programmes independently via a separate division of the production unit and as such there will frequently be competition between IPCs productions and in-house productions for a commission.
42. Further to this, the BBC contend that information about the fees paid to IPCs is not widely known, i.e. those directly involved in negotiating and bidding for individual deals either at the BBC or an IPC would be privy to the fees agreed and paid but this circle is small and an IPC would not know what another IPC received as a fee, nor would the BBC be aware of the fee in bidding wars that they lose. The BBC state that in-house production staff would not be privy to bid information from IPCs.
43. The BBC acknowledge that occasional and sporadic disclosures of the fees do occur in breach of confidentiality provisions within the relevant contracts. However the BBC go on to state that if disclosures of this sort were to be institutionalised via the Freedom of Information Act (i.e. become the norm) this would reduce the uncertainty that currently exists about the fees paid in previous auctions won by the BBC and therefore reduce the uncertainty of competitors engaging in future bidding wars.
44. The BBC publish tariff ranges on their website <http://www.bbc.co.uk/commissioning/tv/business/tariffs.shtml>. However the BBC contend there is a key difference between this information and actual fee paid to a particular IPC. If the actual fee were disclosed this would provide the level of

- detail necessary for a competitor to counter-bid in order to poach a particular programme.
45. The BBC claim that the effect of the contentions within paragraphs 39 - 44 is that, were disclosure to occur, an informational asymmetry would be created. Due to this informational asymmetry it would be possible for competitors in the market for IPCs services to gain an advantage when bidding for these services by reference to the previous bidding patterns of the BBC in relation to services of a similar nature.
  46. Even when successful in a bidding war, despite the disparity in information available, the BBC contend that they would be at a commercial disadvantage as their bid could have been artificially inflated by a competitor's knowledge of their previous behaviour when bidding for similar services. The BBCs principal competitors are not subject to the Act hence the disparity in information available.
  47. This argument bears similarity to those put forward in relation to prejudice in the Information Tribunal appeal EA/2005/0005 *John Connor Press Associates v The Information Commissioner*, insofar as the National Maritime Museum contended that the disclosure of financial information relating to the commission of a work of art would prejudice the commercial interest of the museum. The prejudice claim arose from the fact that the Museum's bargaining position would be compromised if other artists were aware of the commission's value in this case. The Information Tribunal decided that prejudice might occur in this case but that this would depend on the nature of the information and the degree of similarity between the two transactions.
  48. Having considered the circumstances of this request carefully, the Commissioner is of the view that future transactions would be very similar and the information in question key to the BBCs goal of obtaining value for money.
  49. Therefore, in the Commissioner's view Argument 1 has merit and he is satisfied that prejudice is likely. Key to arriving at this view is the fact that the auctions for a specific commission can not be viewed as a one-off; the BBC may commission one series of On the Air and then subsequently bid for a further series, if the BBCs bid price for the original series were known by rival bidders they would then be in a position to outbid the BBC and as described in paras. 46 artificially inflate the winning bid. It should be noted here that the BBC recently commissioned a second series of the programme in question.
  50. It follows that similar series may be commissioned by the BBC. It is impossible to state with great certainty the details of the series which the BBC may bid for in this scenario as the situation is to an extent hypothetical, but the BBC has obligations within its Statement of Programme Policy which require certain amounts of air time to be filled by productions from either IPCs, regional IPCs, regional commissioned programmes and so forth. In the Commissioner's estimation it is likely that similar productions will be commissioned by the BBC whether this similarity is based on the content (i.e. animated series), the IPC (i.e. Flickerpix), the regulatory framework (i.e. quotas for broadcast hours) or a combination of these factors. For example, the BBC could bid for an animated



series from Flickerpix which although different to On the Air bears sufficient similarity to make bidding information about On the Air useful to third parties, such as ITV, Sky or Channel 5.

### **Prejudice Argument 2 – Market distortion and increased bids from independent production companies (IPCs)**

51. In addition to the BBC's contention that disclosure of the fee paid to Flickerpix would have a prejudicial effect on the BBC relative to its commercial rivals, the BBC also contend that its relationship with IPCs would be prejudiced.
52. The premise for this argument is that IPCs have bargaining power, i.e. they own a scarce product in a competitive, bidding, market place.
53. Given that this is the context within which the BBC bids for programmes they argue that if IPCs were aware of the minimum level of funds available previously for a particular type of programme they will have an incentive to price beyond that level when previously they may have priced below it.
54. The BBC provides the following detail about the nature of negotiations between IPCs and broadcasters:
  - In each individually negotiated deal, both sides have strengths and weaknesses to their bargaining positions.
  - The broadcaster will know the size of the budget in question, how much can be spent on filling a particular slot/purchasing the rights to a particular programme for a specific period of time and how important that particular programme is to scheduling.
  - The IPC will know its deal history for that and similar programmes and how much it needs the particular engagement.
  - Both parties will typically know the experience of the relevant IPC, the nature of the programme sought and the length of engagement.
  - Although this does not lead to an exact symmetry of available information there is normally an equality of bargaining position.
  - Where an IPC gains knowledge of what another IPC has gained in respect of a particular production, a disparity in bargaining positions emerges. The IPC having comparably better information than the broadcaster and is likely to use this to price higher for its programmes.
55. In the Commissioner's view this model supports the BBC's contention that prejudice to their commercial interest would be a likely outcome of information disclosures of this type.
56. Were information about successful bids to be released the BBC would be at a disadvantage to IPCs because they would not be able to obtain information about IPCs financial relationship with other broadcasters, except Channel 4 and S4C.

### Prejudice Argument 3 – Deal Drain

57. The BBC's final argument is based on the fact that a confidential commercial relationship exists between the BBC and the IPC, in this case Flickerpix. Typically where a common duty of confidentiality exists a public authority will rely on section 41 of the Act. However in this case the contract was not received from another person (as required under section 41(a)) but created by the BBC and another party.
58. The contract with Flickerpix contains provisions which require that:
- 'Each party shall keep confidential information relating to the business affairs of the other party and its associated companies secure and protected against theft damage loss or unauthorised access.'
59. The BBC contends that were they forced to disclose information, that they had agreed would remain confidential, this would prejudice their relationship with IPCs. Effectively IPCs would be reluctant to engage in further business with an organisation where this may result in sensitive commercial information pertaining to the IPC being released.
60. The Commissioner is satisfied that, in view of this provision, the disclosure of confidential information would be likely to prejudice the commercial interests of the BBC.
61. The Commissioner is therefore satisfied that the exemption under section 43 is engaged and must now consider where the balance of the public interest lies, applying the test in section 2 of the Act.

### Public interest test

62. Section 2(2) of the Act states that information is exempt information where the public interest, in all the circumstances of the case, in maintaining that exemption outweighs the public interest in disclosing that information.
63. The BBC advances three broad public interest arguments in favour of the maintenance of the exemption. These are as follows:
- (i) *There is a clear public interest in ensuring the BBC is able to provide quality programming and value for money in respect of its use of the license fee. Both these objectives will be threatened if a presumption is created in favour of the general disclosure of information relating to license deals...*
  - (ii) *...there is little public interest in the disclosure of licence deal information as this information only enables the public to take an informed view of whether the BBC is contracting with IPCs on a competitive basis if it is in the possession of licence deal information relating to commercial broadcasters. Since this information is not publicly available, information relating to the BBC is of little use.*
  - (iii) *...the general public interest in the transparency and accountability of the BBC in respect of its use of the license fee is served by a broad range of oversight mechanisms, internal and external. These include the oversight of the BBC*

*Trust, the responsibilities of which include commissioning value for money investigations into specific areas of BBC activity (Article 24(2) (i) of the Charter), the Executive Board, the responsibilities of which include conducting the BBC's operational affairs in a manner best designed to ensure value for money (article 38(1)(h) of the Charter), Ofcom and the fair trading regime and competition law in general. Indeed ... certain limited information on expenditure is provided in the Annual Report. Disclosure beyond this threatens to pose considerable harm to the BBC's commercial interests, without offering a proportionate benefit to the public.'*

64. In the Commissioner's view there are three public interest factors in favour of disclosure:
- there is a general public interest in facilitating accountability and transparency in the way public money is spent;
  - there is a public interest in furthering the public's understanding of, and participation in, public debate on a topic;
  - there is a public interest in facilitating accountability and transparency of public authorities for their decisions;
65. The Commissioner must balance the factors in favour of disclosure with those against, if the balance lies in favour of maintaining the exemption the information will be exempt from disclosure.
66. The Commissioner's view is that although there is a strong interest in understanding the way in which public money is spent it is not clear that disclosure in this case would be of significant benefit to the public. In order for information of this nature to be of great value to the public they would require access to information about the costs to other broadcaster's of commissioning similar content. Other public service broadcaster's are subject to the Act, specifically Channel 4 and S4C, but the remainder of the broadcasting industry is not. It is possible for the public to form subjective views about the quality of a programme and therefore whether the money was well spent by, for example, combining it with publicly available information about viewing figures. However without information about other broadcaster's programme costs the requested information is of less value to the public as a whole; however it would have a particular value within the industry potentially exposing the BBC to commercial prejudice as identified above. The prejudice to the BBC's commercial interests is a significant factor in favour of maintaining the exemption.
67. The cost of programme's broadcast by public service broadcaster's (PSBs), and particularly the BBC, is of interest to the public and would aid their understanding of the industry and the difficulties that PSBs face in winning and retaining quality programming. The increased transparency would reinforce trust in the BBC as an organisation with robust controls on the way that public money is spent. However these controls are evident anyway. The BBC has a variety of mechanisms which seek to ensure value for money and high quality, for example the Window of Creative Competition is a mechanism that ensures 25% of BBC broadcasts are produced by the independent sector, and that a further 25 % of broadcasts are opened to competition between the private sector and the BBC's in-house

production divisions. The Trust (formerly the Board of Governors) has oversight of the way the BBC seeks to meet its corporate objectives providing a further level of scrutiny internally. In addition the BBC is subject to the normal fair trading regime that operates in the UK.

68. As regards transparency in the decision-making process, the Commissioner does not consider that, in the circumstances of this case, this factor carries great weight; there is already a significant amount of information in the public domain about the commissioning process and fees paid by the BBC to independent production companies. Broadly indicative tariffs are published on the BBC's website (see para. 44).
69. Having weighed these factors the Commissioner's view is that the balance of the public interest favours maintaining the exemption under section 43 and that therefore the requested information should not be released. Overall there are real benefits from increased transparency and accountability. But these are outweighed by the damage that disclosure would be likely to cause to the BBC's commercial interests, it being more difficult to maintain quality and more expensive to procure quality. Arguably these are similar factors to those affecting other public authorities which procure goods and services in a competitive environment, for example local government and the procurement of waste management services, but such comparisons are superficial. A local authority inviting tenders for waste management services could obtain similar information about other local authorities operations in this area and competitors for services (i.e. other local authorities) would be subject to the same disclosure provisions unlike the BBC.
70. On this basis the Commissioner is satisfied that the requested information is exempt from disclosure under section 43.

### **Procedural matters**

71. The complainant requested the information in question on 8 October 2006 and was refused the information on 9 October 2006. In their refusal the BBC relied on the Schedule 1 derogation. They did not therefore specify the exemptions on which they wished to rely, having found that the information in question falls within the scope of the Act the Commissioner must conclude that technically a breach of section 17 has occurred. Section 17(1) requires that when a public authority refuses access to information it must specify in a notice to the applicant the exemptions on which it is refusing the application and why, if not apparent, that exemption applies.
72. The Commissioner reluctantly concludes that a breach of section 17 occurred here as the BBC did not specify the exemption under section 43 when refusing the request. However the Commissioner acknowledges that the BBC did not, at this juncture, intend to rely on any exemptions under the Act as they had concluded that the requested information did not fall within the scope of the Act.

## The Decision

---

73. The Commissioner's decision is that the requested information is held for purposes other than those of journalism, art and literature. However the Commissioner is satisfied that the disclosure of the requested information would be likely to prejudice the commercial interests of the BBC and that the public interest favours maintaining the exemption under section 43. Despite the fact that the Commissioner has found in breach of s.17 there are no steps that the BBC can now take to remedy this and as such no further action is required.

## Right of Appeal

---

74. 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@dca.gsi.gov.uk](mailto:informationtribunal@dca.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 30<sup>th</sup> day of July 2007**

**Signed .....**

**Richard Thomas  
Information Commissioner**

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

## Legal Annex

### Relevant Statutory Obligations and Provisions under the Act.

#### **Section 43(2)** provides 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).”

#### **Section 2(2)** provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

#### **Section 17(1)** provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”

### **BBC resources**

2006 Royal Charter

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/charter\\_agreement/royalchartersealed\\_sept06.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/royalchartersealed_sept06.pdf)

2006 Agreement with Department for Culture Media and Sport

[http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory\\_framework/charter\\_agreement/bbcagreement\\_july06.pdf](http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/bbcagreement_july06.pdf)

1996 Royal Charter

[http://www.bbc.co.uk/foi/docs/bbc\\_constitution/bbc\\_royal\\_charter\\_and\\_agreement/BBCs\\_royal\\_charter.pdf](http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/BBCs_royal_charter.pdf)

1996 Agreement with the Department of National Heritage

[http://www.bbc.co.uk/foi/docs/bbc\\_constitution/bbc\\_royal\\_charter\\_and\\_agreement/Agreement.pdf](http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/Agreement.pdf)

2003 Amended agreement with Department for Media Culture and Sport

[http://www.bbc.co.uk/foi/docs/bbc\\_constitution/bbc\\_royal\\_charter\\_and\\_agreement/Amendment to the Agreement.pdf](http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/Amendment_to_the_Agreement.pdf)