

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 16 October 2008

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

#### Summary

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The complainant requested information from the BBC regarding the number of TV detection devices, how often they are deployed and their technical specification. The BBC refused to disclose the information under section 31(1) (a) (b) (d) and (g) of the Act. The Commissioner has investigated and found that the information is exempt under section 31(1) (a) (b) (d) and (g) and that the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

#### The Commissioner's Role

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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

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2. The complainant has advised that on 6 October 2006 he made the following request for information to the British Broadcasting Corporation:

*"1. Please could you confirm or deny that a BBC department developed hand-held devices.*

*2. Do you still use TV detection devices in your pursuit of TV tax evaders, be they your mobile vans or hand-held devices?*

*3. Please could you confirm that TVL are currently using these devices?*

*4. Please could you confirm or deny that the existence of a fleet of TV detection vans and hand-held devices is a myth*

*5. What levels of training do your operators have to use such devices*

*6. How many do you possess?*

*7. How often are they deployed?*

*8. If TV detection devices exist, please could you provide me with their technical specifications.*

*9. If your answer is that you still use them, please could you provide photographic evidence of their existence and to satisfy my technical and professional curiosity and please could you provide the technical specifications of the devices.*

3. The BBC responded on 6 November 2006. The BBC provided answers to questions 1, 2, 3, 4, 5, and 9 but refused to disclose the information requested in questions 6, 7 and 8 under section 31(1) (a) (b) (d) and (g) of the Act. The BBC carried out a public interest test and concluded that the public interest favours maintaining the exemption.
4. The complainant requested an internal review of the decision and the BBC responded on 7 February 2007. The review upheld the original decision to withhold the information requested in parts 6, 7 and 8 under section 31 of the Act.

## The Investigation

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### Scope of the case

5. On 13 March 2007 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 the application of section 31 to the withheld information.

### Chronology

6. The Commissioner began his investigation on 22 April 2008 by writing to the BBC to request further explanation regarding the application of the exemption and for a copy of the withheld information.

7. The BBC responded on 8 July 2008 providing the Commissioner with further arguments to support its reliance on section 31 and with details of the withheld information.

#### Findings of fact

8. The information being withheld under section 31(1) (a), (b), (d) and (g) of the Act is:
  - How many detection devices the BBC possesses
  - How often are they deployed
  - The technical specification of TV detection devices (if they exist)

#### Analysis

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#### Exemption: Section 31 'Law enforcement'

9. 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.
10. 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 the number of detection devices
  - how often they are used, and
  - Technical equipment used in television detector vans and handheld devices
11. 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.
12. 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.
  13. 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 2000 (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.
  14. 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.
  15. 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 the number of detection devices and how often they are used

16. The BBC state that to release information which relates to the number of detection devices and how often they are used will change the public's perception of their effectiveness. If the deterrent effect 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 and other equipment will affect their chances of success in avoiding detection.

17. 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.
18. 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 and handheld devices

19. The withheld information also contains details of the technical equipment used in detector vans, the BBC state that part of ensuring the effectiveness of this equipment 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.
20. The complainant has argued that it due to the cost of providing detector vans it cannot be a cost effect method of deterring potential evaders. The complainant also argued that as these devices are only used as last resort following other actions such as the database of addresses, the warning letters and the visit from TV Licensing officers, the real deterrent and greatest proportion of results and prosecutions against evaders is a result of these actions and not the use of the detection equipment. However, the BBC have not argued as to which method obtains the most prosecutions but suggest that the public's perception on the use and deployment of vans is the greatest deterrent.
21. The Commissioner has viewed the withheld information and is satisfied that disclosure of the information would have the adverse effects discussed above. The Tribunal decision EA/2005/005 *'John Connor Press Associates vs. the Information Commissioner'* set out the test for 'would be likely to' prejudice stating "the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk." (Para 15).
22. This was clarified in the case of *Hogan vs. the Information Commissioner EA/2005/0026* where the Tribunal found that the prejudice test is not limited to 'would be likely to prejudice'. There is an alternative limb of 'would prejudice', and this second limb places a stronger evidential burden on the public authority to discharge. Where prejudice 'would be likely to' occur the likelihood need not be more probable than not, though it should be real and significant. For the 'would prejudice' test to apply, while it would not be possible to prove that prejudice

would occur beyond any doubt whatsoever, prejudice must be at least more probable than not. The BBC have applied the test for 'would' prejudice.

23. The Commissioner recognises the importance the BBC places on the public perception of the use of detector vans and other equipment, 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 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.
24. The Commissioner finds therefore that section 31(1) (a), (b), (d) and (g) are engaged.

#### Public Interest Test

25. 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.
26. The BBC acknowledge that disclosure of the information requested about television detection devices would help ensure that the licensing authority is exercising its functions appropriately and proportionately, that is, 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.
27. 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.
28. 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.
29. 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.



30. 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.
31. 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 detection devices in the way it does to prevent and detect crime, apprehend offenders, and assess and collect the TV licence fee.
32. The complainant has argued that it is in the public's interest that the BBC reveals the technical specification of its TV detection devices as there is no justifiable reason for it not to. He states that he believes that TV detection devices do not work in the way suggested by the BBC and cannot detect the reception of a TV broadcast but only the presence of a TV.
32. The Commissioner has considered the arguments presented by the BBC and the complainant. 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.
33. 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 devices were made public, their deterrent effect may be reduced.
34. For these reasons the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

## The Decision

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

## Steps Required

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36. The Commissioner requires no steps to be taken.

## Failure to comply

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37. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.



## Right of Appeal

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38. 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: [Tinformationtribunal@tribunals.gsi.gov.uk](mailto:Informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

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.

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 16th day of October 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).”