

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 March 2010

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

Summary

The complainant requested information from the BBC regarding the number of search warrants obtained by the BBC over a ten year period in relation to its enforcement of the TV Licence. The BBC refused to disclose the information under section 31(1)(a)(b)(d) and (g) of the Act. The Commissioner's decision is 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

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 wrote to the BBC on 3 July 2008 and requested the following information:

"I am seeking to gather information on the use of search warrants in relation to TV Licensing enforcement, and would request that you make available, for each of the last 10 years, broken down by year, the

number of search warrants obtained by the BBC or its agents to look for television reception equipment."

3. The BBC responded to the complainant on 30 July 2008 and stated that the requested information was being withheld under section 31(1) (a) (b) (d) and (g) of the Act. It also concluded that, in the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosing the information.
4. On 30 July 2008 the complainant wrote to the BBC and requested an internal review of its response to the request.
5. The BBC provided its internal review response on 11 September 2008 and upheld the original decision to withhold the information.

The Investigation

Scope of the case

6. On 23 September 2008 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

7. The Commissioner corresponded with the complainant about the possibility of agreeing an informal resolution of his complaint. The Commissioner explained his preliminary view that the BBC was correct to withhold the requested information and that the public interest in maintaining the exemption outweighed the public interest in disclosure.
8. The Commissioner referred the complainant to a previous Decision Notice (case reference FS50154106) relating to a request for statistics on TV Licensing enforcement activity. In that Decision the Commissioner decided that information about the frequency of use of television detector vans was exempt under section 31(1) (a) (b) (d) and (g). The Commissioner explained that he considered the previous Decision Notice addressed substantially similar arguments as those presented by the BBC in this case. However, the complainant did not agree with the Commissioner's view and requested that a formal Decision Notice be issued.

9. On 27 January 2010 the Commissioner wrote to the BBC and invited it to confirm whether it wished to submit further arguments in support of its decision to withhold the requested information, or whether it wished to rely upon the same detailed arguments as it had provided during the Commissioner's investigation of the previous case referred to at paragraph 8.
10. On 8 February 2010 the BBC confirmed that it considered the arguments it had put forward in relation to the application of section 31(1) (a) (b) (d) and (g) in the previous case to be sufficient to address the similar considerations involved in this case.

Analysis

Exemptions

Prejudice to law enforcement

11. Section 31(1) of the Act provides that information is exempt if its disclosure would, or would be likely to, prejudice (a) the prevention or detection of crime, (b) the apprehension or prosecution of offenders, (d) the assessment or collection of any tax or duty or any imposition of a similar nature, and (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.
12. The Commissioner considers that each of the exemptions claimed by the BBC relates to its overall responsibility to collect and enforce the TV licence fee. He therefore notes that the arguments provided by the BBC are relevant to the application of all four exemptions, and has gone on to consider the exemptions together.
13. In its original response to the request and internal review response, the BBC stated that disclosing the number of search warrants it has obtained would be likely to prejudice its law enforcement activity in relation to the licence fee. However, during the Commissioner's investigation it confirmed that it wished to rely upon an argument that disclosure would prejudice this activity. The Commissioner has therefore gone on to consider this higher threshold of likelihood to the claimed prejudice. 'Would be likely to prejudice' means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote, whereas 'would prejudice' places a

much stronger evidential burden on the public authority and must be more probable than not.

14. Following the Information Tribunal decision in Hogan v ICO (EA/2005/0026, EA/2005/0030), the Commissioner uses a three step test to indicate whether prejudice would or would be likely to occur from the disclosure of the information in question. The steps are:
 1. Identify the prejudice in the exemption;
 2. consider the nature of the prejudice in question; and
 3. consider the likelihood of the prejudice in question occurring.

The applicable prejudice within section 31

15. 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 functions. This is owing to the fact that a person would use the information to evade payment of the licence fee.
16. The BBC has 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 under sections 364 and 365 of the Communications Act 2003. 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. It is a criminal offence to install or use television receiving equipment to receive television programmes without a valid licence. TV Licensing investigates and prosecutes unlicensed use of television receiving equipment, and uses search warrants to assist in this activity.

The nature of the prejudice

17. 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 has explained that search warrants are only applied for in cases where there is evidence that it is extremely likely that a television is in use at an unlicensed address. Search warrants are obtained via application to the courts, and cannot be granted unless there are reasonable grounds for the application. In its original response to the request, the BBC stated that search warrants are obtained as a last resort where there is evidence of evasion. The Commissioner notes that evidence of evasion would relate to the BBC's belief that an unlicensed property is using a television following deployment of television detection equipment to verify the situation at the address.
20. The BBC explained that information about the frequency of its TV Licensing enforcement activity is not common knowledge. It relies on the public perception that the detector vans could be used at any time in order to identify TV Licence 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 the licence fee. The Commissioner notes that search warrants would be obtained when the BBC has gathered evidence of evasion at an unlicensed property following use of detection equipment, and therefore they also form part of the overall deterrent provided by public perceptions about the level of TV Licensing's enforcement activity.
21. During the Commissioner's investigation of the previous decision referred to at paragraph 8, the BBC stated that to release information about the number of detection devices and how often they are used could alter public perception of the effectiveness of the BBC's enforcement activity. If the deterrent effect is lost, the BBC believes that a significant number of people would decide not to pay the licence fee. This decision would be influenced by their knowledge about the frequency of detection activity and therefore their chances of success in evading the licence fee. As stated at paragraph 10, the BBC

explained that it wishes to rely upon the same arguments in relation to this case.

22. The Commissioner considers that the arguments applied by the BBC in relation to information about the number and frequency of use of television detection equipment are also relevant to the circumstances of this case. The complainant has requested information about the number of search warrants obtained by the BBC over a ten year period in relation to TV licence fee enforcement. The Commissioner notes that applications to the court for search warrants assist the BBC's investigation and prosecution of unlicensed use of television receiving equipment and will only be obtained when there is evidence of evasion of the licence fee. The Commissioner therefore considers that the BBC's ability to apply for and obtain a search warrant is linked to its use of television detection equipment and contributes to the wider deterrent upon which the BBC relies in order to discourage evasion of the licence fee.

The likelihood of the prejudice

23. To support its assertion that disclosure would prejudice its law enforcement activity in relation to the licence fee, the BBC has explained that there is strong evidence of a body of the public who object to having to pay the licence fee and seek to avoid paying it. It believes there is a willingness among these people to share information about how to avoid payment, including online discussions about the detection and enforcement tactics deployed in order to collect the licence fee.
24. The Commissioner notes that the BBC Trust's 'Review of TV Licence Fee Collection – March 2009' reports an estimated evasion rate of 5.1% in the United Kingdom for 2007/08, with an estimated £181.9 million loss of income to the BBC.
25. The BBC has explained that the disclosure of the requested information would influence the public's perception of detection tactics and would therefore impact upon public behaviour regarding the voluntary paying of the licence fee. It therefore argued that disclosure of the information would prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, the collection of the TV Licence fee, and the ability of the BBC to ascertain whether any person has failed to comply with the law.
26. In response to the BBC's arguments, the complainant has argued that, even if there was a prejudice as a result of disclosure, the prejudice would reduce significantly over time. As the request is for statistics

covering a ten-year period, he argued that information relating to ten, five or even three years ago would provide substantially less risk of prejudicing TV licence law enforcement activity.

27. The BBC responded to the complainant's argument in its internal review response. It argued that, in the absence of a change in policy regarding applications for search warrants or other detection tactics during the ten years covered by the request, there was no reason why it considered the prejudice would decline over that period.
28. The Commissioner recognises the importance the BBC places upon the deterrent effect provided by public perceptions of TV Licensing's detection and enforcement tactics. In light of the evidence that a significant number of people seek to avoid payment of the licence fee, he also accepts that disclosure of the number of search warrants obtained by the BBC would change this perception because it outlines the extent to which those detection and enforcement tactics are employed. The Commissioner also accepts that a change in this perception would lead to an increase in the evasion rate in payment of the licence fee by individuals. For these reasons the Commissioner accepts that disclosure would prejudice the prevention or detection of crime, the prosecution of offenders, the collection of tax and the ability of the BBC to ascertain whether any person has failed to comply with the law.
29. The Commissioner also accepts that this prejudice would occur in relation to disclosure of the requested information over the full ten-year period. In view of the fact there has not been a substantial change in policy regarding the grounds on which search warrants would be sought or granted by the courts, he does not accept the complainant's argument that the prejudice would be reduced within this period.
30. The Commissioner therefore finds that section 31(1) (a), (b), (d) and (g) are engaged.

Public interest test

31. 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.

Public interest arguments in favour of disclosing the requested information

32. The BBC acknowledges that disclosure of the number of search warrants it has obtained would help to ensure that the BBC is exercising its Licensing Authority functions appropriately and proportionately, in particular relating to its policy of applying for search warrants to assist with enforcing the payment of the licence fee. Disclosure of the information would reinforce the legitimacy of the process the BBC undertakes and provide the public with some assurances about how appropriately enforcement and prosecution tactics are employed. In addition to providing assurances about the use of search warrants, disclosure would also provide a better understanding of the BBC's use of its statutory powers in overall relation to the collection of the licence fee.
33. The BBC also state that disclosing the requested information would serve to ensure that public funds are being appropriately and efficiently applied towards ensuring compliance with TV licensing obligations.
34. However, the BBC has pointed out that applications for search warrants are subject to strict requirements and are granted by a neutral third party (a magistrate in the case of England and Wales) who considers the evidence and the public interest in each individual case. Additionally, the BBC states that other information it issues ensures the public has an understanding of its statutory powers relating to the collection of the licence fee, which includes the BBC's policy on search warrants.
35. The BBC also states that the public interest in ensuring value for money is being obtained is to at least some extent satisfied by the National Audit Office which assesses and reports on the value for money of the BBC's collection and enforcement arrangements. Additionally, further information relating to the cost of the TV licensing system is published by the BBC, for instance in its annual report and in the TV licensing annual review.
36. The complainant has argued that the BBC's considerations outlined at paragraphs 34 and 35 appear mostly irrelevant because the focus of the request is solely on the number of search warrants obtained rather than on any subsequent prosecution or wider questions of value for money. He has also argued that the only assurance provided by the role of the courts is that an application was deemed acceptable by an individual magistrate, and that individual requests do not assure the public that the BBC's wider policy of obtaining search warrants is appropriate and proportional. The Commissioner accepts that there is

a general public interest in disclosing the requested information to enable the public to scrutinise the process, the independent consideration by the Courts and audit by the NAO do not diminish the relevance of the public interest of the public seeing the information themselves and assessing how the system works. A disclosure under FOI would supplement the independent mechanisms already in place. However, the Commissioner acknowledges that there is no compelling evidence that the systems are working unsatisfactorily and therefore elevating the general public interest in disclosure to a higher level.

Public interest arguments in favour of maintaining the exemption

37. The BBC has argued that the public interest factors in favour of maintaining the exemption are stronger than those in favour of disclosure. It states this is particularly the case in the context of the roles performed by the bodies referred to at paragraphs 34 and 35.
38. The BBC has argued there is a strong public interest in the importance of maintaining effective deterrence in relation to evasion of the licence fee. It considers the deterrent a key aspect of its collection and enforcement of the licence fee and believes disclosure of the information, whether on its own or combined with other information relating to detection and enforcement, would undermine that deterrent. As a result of the lack of effective deterrence, the cost of TV licence collection and enforcement would increase, negatively impacting upon the interests of TV licence payers.
39. The BBC also considers it is in the public interest that crimes are detected and, where appropriate, prosecuted. The BBC believes the effect of disclosure of information relating to search warrants and other detection and enforcement tactics would be to influence the behaviour of a body of the public who oppose the licence fee, and it is in the public interest that the effect of the deterrent, detection and prosecution of TV licence fee evaders is not prejudiced.
40. Finally, the BBC argues that there is a public interest in it being able to collect all of the money it is entitled to by way of the licence fee in order to ensure it receives the full level of funding for its activities. Given that disclosure is likely to affect the behaviour of those who oppose paying the licence fee, it would also negatively impact upon the amount of money that the BBC is able to collect.

Balance of the public interest arguments

41. The Commissioner has considered the public interest arguments presented by the BBC and the complainant. He has accorded significant

weight to factors in favour of maintaining the cited limbs of the section 31 exemption. These factors are to be accorded significant weight as the prejudice to the BBC's enforcement activities would be likely to impact on the licence fee settlement process and the level funding the BBC receives and the level the licence fee is set. These are matters that would be likely to affect a significant percentage of the general public. The BBC estimates that the total amount of income forgone due to evasion in 2007/08 was £181.9 million.

42. The Commissioner also finds that that the public interest in maintaining the exemption is weighty because of the public interest in the BBC keeping 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 use of detection tactics and the threat of search warrants and possible prosecution. If details of the use of detection and enforcement tactics such as search warrants are disclosed, those deterrents will be reduced. The Commissioner finds that the weighty public interest arguments in favour of maintaining the exemption outweigh the public interest arguments cited above.
43. For these reasons the Commissioner finds that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

The Decision

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

Steps Required

45. The Commissioner requires no steps to be taken.

Right of Appeal

46. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: 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 30th day of March 2010

Signed

Steve Wood
Assistant Commissioner

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

Legal Annex

General Right of Access

Section 1(1) provides that -

"Any person making a request for information to a public authority is entitled –

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Effect of Exemptions

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"

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)."