

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 29 June 2010

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

Summary

The complainant made a request to the BBC for schemas and associated documentation for databases used by TV Licensing to send letters to unlicensed addresses. The BBC refused to disclose the information and applied section 31(1) (a) (b) (d) and (g) of the Act. It also stated that the information would be exempt under section 43(2) of the Act. During the course of the Commissioner's investigation, the BBC applied section 12(1) of the Act and argued that complying with the request would require it to exceed the 'appropriate limit'. The Commissioner's decision is that the BBC is entitled to refuse to comply with the request for schema or schemas under section 12(1) of the Act. The Commissioner also finds that the BBC should offer the complainant advice and assistance under section 16 of the Act as to how his request may be narrowed. The Commissioner also finds that the BBC breached sections 1(1)(a), 10(1) and section 17(5) of the Act in its handling of the request.

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 25 March 2008 and requested the following information:

“Please could you send me a list of all databases held on your behalf in relation to TV licensing, and the schema or schemas for each such database together with any documentation that is easily available for those schemas.”
3. The BBC responded to the complainant on 21 April 2008 and stated that complying with the request would require it to exceed the ‘appropriate limit’ of 18 hours. It therefore applied section 12(1) of the Act and invited the complainant to narrow his request.
4. The complainant wrote to the BBC on 2 May 2008 and requested details of its estimate that complying with the request would require it to exceed the appropriate limit in order to assist him with narrowing his request.
5. The BBC responded on 4 June 2008 and stated that, owing to the large number of databases used for TV Licensing purposes, it was unable to provide realistic advice and assistance as to how the complainant may wish to narrow his request.
6. The complainant responded to the BBC on 4 June 2008 and refined the request to:

“...databases used for sending out letters to apparently unlicensed addresses or individuals.”
7. The BBC responded to the refined request on 26 June 2008 and stated that the requested information was being withheld under section 31(1) (a) (b) (d) and (g) of the Act. It added that the requested information would also be likely to be exempt under section 43(2) of the Act. The BBC also concluded that, in the circumstances of the case, the public interest in maintaining each of the exemptions outweighed the public interest in disclosing the information.
8. On 4 July 2008 the complainant wrote to the BBC and requested an internal review of its response to the request. He also stressed that he was not seeking information which

specifically refers to access credentials for the databases, such as login identifications or passwords.

9. The BBC provided its internal review response on 25 September 2008 and upheld the original decision to withhold the information.

The Investigation

Scope of the case

10. On 19 October 2008 the complainant contacted the Commissioner to complain about the way his request dated 4 June 2008 had been handled. The complainant specifically asked the Commissioner to consider the application of section 31 to the withheld information. The Commissioner notes that there are three elements to the complainant's request relating to databases used by the BBC to send letters to addresses it believes do not have a TV Licence:
 - A list of the relevant databases;
 - The schema for those databases; and
 - And documentation easily available for those databases.
11. During the course of the Commissioner's investigation the first element of the request – for a list of the relevant databases - was resolved informally and therefore this is not addressed in this Notice.
12. The complainant also raised other issues that are not addressed in this Notice:
 - Delays in the provision of the internal review response.

This is addressed in the 'Other matters' section of this Notice because it is not a requirement of Part 1 of the Act.

- The BBC's failure to provide advice and assistance to the complainant about how he may narrow his request when applying section 12 in its initial response of 21 April 2008.

Rather than complaining to the Commissioner about the BBC's refusal of the 21 April 2008 request, the complainant made a

new and refined request dated 4 June 2008. He subsequently pursued an internal review of that request and then submitted his complaint to the Commissioner regarding the BBC's handling of it. The Commissioner assessed the complaint regarding the 4 June 2008 request as valid. His investigation has therefore focused on the refined request. When assessing the BBC's handling of that request he has considered whether it failed to provide adequate advice and assistance. However as circumstances had moved on by the time the Commissioner received the complaint he has not considered the request dated 21 April 2008 further in this Notice.

Chronology

13. The Commissioner wrote to the BBC via email on 14 December 2009 to request further details of the database schemas relevant to the request, copies of the withheld information, and arguments in support of the application of section 31(1) of the Act. He requested that a response be provided by 15 January 2010.
14. In the absence of a substantive response from the BBC, the Commissioner issued an Information Notice dated 2 February 2010 requiring it to provide information to assist his investigation within 30 calendar days. The Information Notice required the BBC to provide a series of information, including copies of the withheld database schemas for the Commissioner to consider. The Information Notice also included additional queries to those contained in the Commissioner's email of 14 December 2009.
15. On 10 February 2010 the BBC provided a response relating to the enquiries listed in the Commissioner's letter of 14 December 2009. The BBC provided the Commissioner with copies of the withheld schemas for 'LASSY' (Licence Administration Support System), one of the databases used to send letters to unlicensed addresses. However, the BBC did not provide the schemas for any other databases falling within the scope of the request. The Commissioner wrote to the BBC on 15 February 2010 to stress that the BBC should ensure it responded to the outstanding queries in the Information Notice of 2 February 2010 within the required timeframe.
16. The BBC wrote to the Commissioner on 3 March 2010 with further information and arguments in support of its decision to withhold the requested information under section 31(1) (a) (b) (d) and (g) of the Act. However, it did not provide the

Commissioner with copies of any more of the withheld database schemas falling within the scope of the request. The BBC stated that it would take a significant amount of time, in excess of two and a half days of work, to collate the schemas in order to provide them to the ICO. However, the BBC provided a list of the databases which are held on its behalf to send letters to addresses which it believes do not possess a TV Licence. It added that it did not wish to withhold this list of databases:

- LASSY – Licence Administration Support System
- FLOSSY – Free Licence for Over Seventy Fives System
- CMDW – Campaign Management Data Warehouse
- CADH – Customer and Address Data Hub
- CMS – Campaign Management System

17. The Commissioner wrote to the BBC on 31 March 2010 and asked it to disclose the list of databases to the complainant in order to answer the first element of his request. The BBC wrote to the complainant on 7 April 2010 and disclosed this information to him.
18. In view of the withheld 'LASSY' database schema provided by the BBC to assist the Commissioner's investigation, the Commissioner contacted the complainant on 27 April 2010 to explain that the schema was of a technical nature and amounted to lengthy passages of database code. He asked the complainant to confirm whether this was the type of information he was seeking to obtain through his request. The Commissioner also asked the complainant to define the type of information he was seeking through his request for "any documentation that is easily available for those schemas".
19. The complainant responded on 27 April 2010 and confirmed that the Commissioner's description of the database schemas was the type of information he was seeking to obtain. He also explained that the element of the request for additional documentation which is "easily available" was intended to avoid the BBC having to conduct exhaustive searches for information which might be only remotely related to the schemas. However, he stated that he considered a reasonable definition of additional documentation which is easily available would include documentation which was normally held alongside the schemas, normally read by anyone who needed to understand the schemas, or which was routinely updated by anyone making an alteration to the schemas themselves.

20. The Commissioner wrote to the BBC on 28 April 2010 and requested further information to assist his investigation. Specifically, the Commissioner reiterated that he required copies of the withheld database schemas falling within the scope of the request in order to consider the BBC's decision to withhold them under section 31(1) (a) (b) (d) and (g) of the Act. In view of the BBC's comments in its letter of 3 March 2010 about the length of time it would take to collate the withheld information, the Commissioner asked the BBC to clarify whether it believed section 12(1) of the Act to applied and, if so, to provide a detailed and reasonable costs estimate for the Commissioner to consider. Additionally, the Commissioner sought to establish whether the BBC shared the complainant's interpretation of the request for documentation related to the schemas.
21. The BBC responded to the Commissioner on 15 May 2010 and confirmed that it believed the refined request engaged section 12(1) of the Act because providing the requested information would require it to exceed the 'appropriate limit' of £450. The BBC provided a total estimate of 70 days to retrieve the schemas for the five databases falling within the scope of the request. In relation to the element of the request for "any documentation that is easily accessible for those schemas", the BBC confirmed that it shared the complainant's definition of the categories of information which would be relevant to the request. However, it also confirmed that it does not hold information relevant to this limb of the request.
22. The Commissioner wrote to the BBC on 20 May 2010 and requested a more detailed breakdown of its estimate that it would require 70 days of work to retrieve the requested database schemas. The Commissioner also sought clarification about how the BBC's estimate was relevant to the steps it would have been required to take in order to comply with the request on 4 June 2008, the date the request was received by the BBC.
23. Further to the Commissioner's letter of 20 May 2010, the BBC proposed a teleconference to discuss the arguments supporting its view that the request engages section 12(1) of the Act. On 16 June 2010 the Commissioner participated in a teleconference with staff from the BBC's Information Policy and Compliance department, TV Licensing and its contractors Capita. The BBC explained that its costs estimate of 70 days was based upon the steps which would be required in order to retrieve the database schemas at any point, including the

date on which the request was received. The BBC also explained its estimate of the cost of complying with the request, and stated that it would provide a more detailed breakdown to the Commissioner for further consideration.

24. On 16 June 2010 the BBC wrote to the Commissioner and provided a more detailed breakdown of its estimate that complying with the request would require 70.5 days of work.

Analysis

Substantive Procedural Matters

Request for database schemas

Section 12 – cost of compliance exceeds appropriate limit

25. The second element of the complainant's request was for copies of the schemas for databases used to send letters to addresses which the BBC believes do not possess a TV Licence. During the Commissioner's investigation into the BBC's application of section 31(1) (a) (b) (d) and (g) to the complainant's request for schema or schemas, the BBC stated that it was unable to provide the Commissioner with copies of the withheld database schemas because to do so would require it to exceed the appropriate limit. It therefore confirmed that it wished to rely on section 12(1) of the Act to withhold the database schemas. The Commissioner acknowledges that he has discretion about whether or not to consider exemptions that are cited late by public authorities. However section 12(1) is not an exemption and given the potential impact on the public authority's resources, he considers it appropriate to consider the late reliance on section 12(1). The BBC subsequently provided the Commissioner with an estimate of the costs of complying with this element of the request.
26. Section 1(1) of the Act provides applicants with a general right of access to information held by public authorities. This right is broken down into two parts: firstly the right to know whether information is held by a public authority – section 1(1)(a); and secondly, if information is held, to have that information provided – section 1(1)(b).

27. Section 12(1) of the Act provides that public authorities do not have to comply with a request where the estimated cost of responding to that request exceeds the appropriate limit as specified by The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Fees Regulations'). Furthermore, section 12(2) confirms that a public authority must comply with the requirements of section 1(1)(a) of the Act unless the cost of simply confirming whether information is held would exceed the appropriate cost limit.
28. Section 3 of the Fees Regulations provides that the appropriate limit for public authorities not listed in Part I of Schedule 1 of the Act, such as the BBC, is £450. This equates to 18 hours of work.
29. Section 4(3) of the Fees Regulations sets out the basis upon which an estimate can be made:

"(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

- (a) determining whether it holds the information,
- (b) locating the information, or a document which may contain the information,
- (c) retrieving the information, or a document which may contain the information, and
- (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour."

The BBC's estimate

30. The BBC has explained that a database schema does not contain data. It defines the structure of the information in a database, giving the descriptions, organisation and relative position of differing classes of data. For example, a schema would outline the tables, the fields in each table, and the

relationships between the fields and tables. Each of the databases is tailored to TV Licensing's unique needs and therefore has a unique schema.

31. The BBC has stated that it does not document records of schemas for the databases, and therefore it did not hold the requested information in a readily available format when the request was received. In order to comply with the request the BBC would be required to take a series of steps of a technical nature to locate and retrieve schemas for each of the five databases relevant to the request. TV Licensing's developers would undertake this work on behalf of the BBC.
32. The BBC has provided the Commissioner with details of the steps it would be required to take in order to retrieve schemas for each of the requested databases. It has also provided an estimate concluding that it would be required to undertake a total of 70.5 days of work in order to comply with the request. This total comprises the following estimates to locate and retrieve schemas for each of the five databases:
 - CADH – 5 days
 - FLOSSY – 5 days
 - LASSY – 0.5 days
 - CMS – 30 days
 - CMDW – 30 days

CADH and FLOSSY databases

33. The BBC has stated that the steps required to retrieve schemas for CADH and FLOSSY are broadly comparable and estimates that each schema would take five days to retrieve. This estimate is based upon the following steps:
 - 0.25 days - Determine the precise level of granularity to document when retrieving the schema.
 - 0.25 days - Export the Data Definition Language, which defines the data structures in a database, using database application development tools for Oracle. The developer will then connect to the schema, select objects or schema types from the list available and select file outputs.
 - 2 days – The files will produce approximately 260,000 object types (bits of information) and the database application development tools will need to run for approximately two days. This process will need to be

monitored in case the application stops for any reason, e.g. issues with the connection to the database schema.

- 1.5 days – Because connection issues will prevent the database tools from running for a full two days, the 'run' would need to be split into a series of smaller runs which would display the schema as it is being retrieved. This will involve a developer designing each run after assessing the overall schema and deciding which sections should be run at a time.
- 1 day – To transfer the large schema document into a PDF or paper format in order for it to be provided.

LASSY database

34. The BBC has explained that the LASSY schema would be retrieved within 0.5 days by running the database's 'Entity' report. This will produce a text file of this schema, and a developer would need to monitor the file run in order to check for errors.

CMS and CMDW databases

35. The BBC has explained that similar steps would be required in order to produce schemas for both the CMS and CMDW databases. As extensive customisations have been made to the original schema products, it would be necessary to assess the developments that have taken place before being able to produce schemas. The BBC has also explained that there are six separate schemas for the various elements of the CMS database, and each of these would need to be retrieved. Owing to the complexity of these databases, the BBC estimates that it would take 30 days to retrieve each of the schemas. This estimate is based on the following steps:

- 15 days – A large number of data transformations are carried out between the separate elements of the databases, and the BBC states that more than one thousand attributes would need to be documented. In order to do this, a developer would have to determine where there is dependency within the tables and also how the relationships and dependencies between the data and the tables are joined.
- 5 days – Following the documentation of all of the dependencies, keys, relationships and tables, the

developer would then have to plan and devise the retrieval of the schemas.

- 10 days – The developer would then need to retrieve the redesigned schemas and ensure that they accurately reflect the database structures. The BBC estimates that this would take approximately ten days owing to the complex nature of the databases.

The Commissioner's position

36. During the course of his investigation, the Commissioner requested detailed explanations and clarification to assist his consideration of the BBC's application of section 12(1) of the Act. However, the Commissioner notes that some aspects of the BBC's submissions relating to its section 12 costs estimate did not provide a sufficient level of detail to enable him to draw reasonable conclusions about the purpose and estimated cost of each step of the estimate. In view of the technical nature of the information requested and the specialist nature of the activities outlined in the BBC's costs estimate in this case, the Commissioner considers that the BBC should have sought to provide a clearer explanation of the purpose of each aspect of the estimate and, particularly, how each aspect relates to the activities permitted under the Fees Regulations listed at paragraph 29.
37. The Commissioner notes that public authorities wishing to rely upon section 12(1) of the Act must provide a sufficiently detailed level of explanation and clarification about the steps they are required to take in order to comply with the request. Where a public authority fails to properly explain why certain steps are required or does not provide a costs estimate which is reasonable and convinces the Commissioner that complying with the request would exceed the appropriate limit, the Commissioner would not hesitate to order that section 12 is not engaged and that the public authority should comply with the request. This is particularly likely in cases where the public authority's costs estimate is relatively close to the appropriate limit.
38. Having considered the BBC's submissions in this case, the Commissioner is sceptical as to whether certain elements of the costs estimate relate to activities which are permitted under the Fees Regulations. For instance, the Commissioner does not accept that the estimated 0.25 days for the BBC to determine the level of granularity required when documenting

the CADH and FLOSSY databases would relate to locating, retrieving or extracting the database schemas. The Commissioner considers that this activity would be more relevant to the BBC clarifying what particular information is required by the complainant. Section 1(3) provides that public authorities may revert to the applicant where there is a lack of clarity about what specific information is required. However, whilst public authorities may do so, clarifying the request is not one of the activities that can be included when estimating the cost of compliance for the purposes of section 12(1).

39. Additionally, the Commissioner does not accept that the Fees Regulations permit the BBC's estimate to include two days per database for a developer to monitor the database application development tools for Oracle as the schemas for the CADH and FLOSSY databases are retrieved. While the Commissioner has no reason to doubt the BBC's statement that the automated runs of the database tools would take approximately two days to retrieve the schemas for each database, he does not believe that the Fees Regulations would entitle the BBC to include the full period of two days in its costs estimate. The Commissioner does, however, accept that the BBC would be entitled to include any time a developer would spend checking the automated process is running correctly and starting or stopping the various smaller runs.
40. The Commissioner does, however, accept the BBC's arguments in relation to the database application development tools for Oracle being prevented from running automatically for two full days while retrieving a schema owing to connection problems. This means that a developer would be required to spend time splitting the overall run of the database tools for each of the CADH and FLOSSY databases into a series of smaller runs. The BBC estimates that it will take 1.5 days for a developer to assess the overall schema for each database, design each individual run and decide which section should be run at a time.
41. The Commissioner notes that these activities relate to the process of locating and retrieving the requested information because, without splitting the runs into smaller segments, the connection problems mean the BBC would not be able to retrieve the schema in its entirety. Therefore the Commissioner is satisfied that the Fees Regulations permit this activity to be included in the costs estimate for the purposes of section 12(1). Additionally, in view of what is

likely to be the technical and specialist nature of processes associated with working on the database schemas, the Commissioner considers that the BBC has provided a reasonable estimate of 1.5 days for a developer to design these smaller runs for each of the CADH and FLOSSY databases.

42. The Commissioner notes that the estimate of 1.5 days to carry out this process for each of the CADH and FLOSSY databases equates to an estimated total of 3 days. Therefore, the estimated time to perform these steps alone would require the BBC to exceed the appropriate limit of £450 which equates to 18 hours or, in relation to the BBC's estimate, approximately 2.5 days when based on a rate of £25 per hour. Additionally, the Commissioner notes that other individual elements of the BBC's estimate also significantly exceed the appropriate limit. Although some of these elements attract the Commissioner's scepticism, as explained at paragraphs 38 and 39, he is satisfied that one element of the estimate alone would require it to comfortably exceed the appropriate limit. Therefore the Commissioner has not drawn conclusions regarding the remaining elements of the BBC's estimate.
43. In view of the above, the Commissioner considers that the BBC is entitled to refuse to comply with the request for the schema or schemas on the basis of section 12(1) of the Act.

Section 16 – advice and assistance

44. Section 16(1) of the Act requires public authorities to provide advice and assistance, so far as it would be reasonable to expect the public authority to do so, to applicants who propose to make or have made requests for information.
45. Section 16(2) of the Act states that a public authority, in relation to the provision of advice and assistance, will have complied with the requirements of section 16(1) of the Act if it has conformed with the code of practice issued under section 45 of the Act.
46. Paragraph 14 of the section 45 code of practice sets out what advice and assistance should be offered to applicants whose requests are refused on the basis of section 12(1) of the Act. This paragraph suggests that public authorities should consider providing an indication of what information is available within the cost limit and also consider advising the

applicant that by reforming or re-focussing their request, information may be available within the cost limit.

47. On the basis of the information provided to him the Commissioner considers that, had the request of 4 June 2008 been refused by the BBC under section 12(1) of the Act, it would have been possible to provide the complainant with advice and assistance to help him narrow or refine his request in order to bring the time for compliance within the appropriate limit. In particular, the Commissioner notes that the BBC's costs estimate for retrieving the schema for the LASSY database is 0.5 days. In view of the above, the Commissioner finds that the BBC breached section 16(1) of the Act.

Request for additional documentation

48. The third element of the complainant's request was for "any documentation that is easily available for those schemas [used to send letters to apparently unlicensed addresses]." As outlined at paragraphs 18 to 21 above, during the course of the Commissioner's investigation both the complainant and the BBC confirmed to the Commissioner that they shared the same reading of this request.
49. The BBC has confirmed to the Commissioner that it does not hold any information falling within the scope of this element of the request. It explained that the relevant database schemas are complex, bespoke data structures and that staff work on them directly without reference to external documentation. The BBC added that any documentation of updates to the schemas is built into the schemas themselves.
50. In view of the explanations provided by the BBC, the Commissioner is satisfied that the BBC does not hold additional documentation falling within this element of the request. In failing to advise the complainant of this fact within twenty working days of the request, the BBC breached sections 1(1)(a) and 10(1) of the Act.

Procedural Requirements

51. Part I of the Act includes a number of procedural requirements with which public authorities must comply.
52. Section 12(2) of the Act provides that section 12(1) does not exempt a public authority from its obligation to confirm or

deny whether requested information is held under section 1(1)(a), unless doing so would in itself require the public authority to exceed the appropriate limit.

53. Section 16(1) of the Act provides a duty for public authorities to provide reasonable advice and assistance to applicants who propose to make or have made a request for information.
54. Section 17(1) of the Act requires a public authority to provide an applicant with a refusal notice stating the basis upon which it has refused a request for information. Section 17(5) requires that such a notice which cites section 12 of the Act be provided within 20 working days of the request.
55. In handling this request the BBC failed to inform the complainant that it did not hold additional documentation falling within the scope of the third element of the request for additional documentation associated with the schemas. This constitutes a breach of sections 1(1)(a) and 10(1) of the Act.
56. Furthermore, the BBC failed to provide the applicant with a refusal notice citing section 12(1) of the Act in relation to the request for schema or schemas within 20 working days. This constitutes a breach of section 17(5) of the Act. As a result of its failure to cite section 12(1) of the Act in its refusal notice, the BBC also failed to provide reasonable advice and assistance to the applicant and therefore also breached section 16(1) of the Act.

The Decision

57. The Commissioner's decision is that the public authority dealt with the following elements of the request for information in accordance with the requirements of the Act:
 - The BBC is entitled to refuse to comply with the request for schema or schemas on the basis of section 12(1) of the Act.
58. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - The BBC breached sections 1(1)(a) and 10(1) of the Act by failing to confirm that it did not hold information

falling within the element of the request for additional documentation associated with the database schemas.

- The BBC breached section 17(5) of the Act by failing to issue a refusal notice citing section 12(1) of the Act within 20 working days of the request.
- The BBC also breached section 16(1) of the Act by failing to provide reasonable advice and assistance to the complainant as to how he may narrow his request.

Steps Required

59. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

- The BBC should contact the complainant to offer advice and assistance as to how he may narrow his request in order to bring it within the appropriate limit.

60. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

61. 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.

Other matters

62. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:

During the course of his investigation, the Commissioner has encountered considerable delay on account of the BBC's reluctance to meet the timescales for response set out in his letters. The delays were such that the Commissioner was

forced to issue an Information Notice in order to obtain details relevant to his investigation.

Accordingly the Commissioner does not consider the BBC's approach to this case to be particularly co-operative, or within the spirit of the Act. As such he will be monitoring the BBC's future engagement with the ICO and would expect to see improvements in this regard.

Paragraph 38 of the section 45 Code of Practice (the "Code") states:

"Any written reply from the applicant (including one transmitted by electronic means) expressing dissatisfaction with an authority's response to a request for information should be treated as a complaint..."

Paragraph 41 of the Code states:

"In all cases, complaints should be acknowledged promptly and the complainant should be informed of the authority's target date for determining the complaint. Where it is apparent that determination of the complaint will take longer than the target time (for example because of the complexity of the particular case), the authority should inform the applicant and explain the reason for the delay..."

Paragraph 39 of the Code recommends that complaints procedures (or 'internal reviews') should encourage "...a prompt determination of the complaint." As he has made clear in his *'Good Practice Guidance No 5'*, published in February 2007, the Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the Act, the Commissioner has decided that a reasonable time for completing an internal review is 20 working days from the date of the request for review.

In this instance, the complainant wrote to the BBC on 4 July 2008 to express his dissatisfaction with the response to his request, but an internal review response was not provided until 25 September 2008. This equated to a period of 58 working days between the initial request for a review and the internal review response being provided.

The Commissioner notes that the BBC acknowledged the internal review request and said it would respond within 30

working days. Having not received a response by this point, the complainant chased a response and received an email from the BBC on 21 August 2008 apologising for the delay. It informed the complainant that the delay was due to staff annual leave and that it aimed to respond by 15 September 2008. The BBC did not meet this target time and nor did it inform the complainant of the reason for the further delay until the internal review response was provided on 25 September 2008. The Commissioner expects that the BBC will ensure its future practice conforms to the recommendations of the Code.

Right of Appeal

63. 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 sent.

Dated the 29th day of June 2010

Signed

**Jo Pedder
Group Manager**

**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."

Time for Compliance

Section 10(1) provides that –

"Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."

Exemption where cost of compliance exceeds appropriate limit

Section 12(1) provides that –

"Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit."

Section 12(2) provides that –

"Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

Section 12(3) provides that –

"In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

Section 12(4) provides that –

"The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

Section 12(5) – provides that

"The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

Duty to provide Advice and Assistance

Section 16(1) provides that -

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

Refusal of Request

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."

Section 17(5) provides that –

"A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies

must, within the time for complying with section 1(1), give the applicant a notice stating that fact."

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)."