

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 January 2013

Public Authority: The British Broadcasting Corporation (the BBC)

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. The complainant has requested a list of properties in Birmingham which have been identified as not requiring a television licence for the period 1995 onwards. The BBC explained that it only held information falling within the scope of this request for the period of mid-1998 onwards and in any event considered the information that it did not hold to be exempt from disclosure on the basis of section 40(2) of FOIA, the personal data exemption. During the course of the Commissioner's investigation the BBC also argued that the requested information was exempt from disclosure on the basis of section 43(2), the commercial interests exemption. The Commissioner has concluded that the requested information held by the BBC is exempt from disclosure on the basis of section 40(2) of FOIA.

Request and response

2. On 7 May 2012 the complainant wrote to the BBC and requested information in the following terms:

'Please regard this email as a request under the Freedom of Information Act.'

We require the following information to be released to us:-

- 1. List of properties in Birmingham which have been removed from the TV Licencing database as not requiring TV Licences for the years 1995-present.'*

3. The BBC responded on 7 June 2012 and explained that it had interpreted this request as referring to addresses that have been identified as not requiring a TV licence because the occupier of the address is not watching live programmes as they are shown on TV and therefore is not required by law to purchase a TV licence. This response went on to explain that the BBC was of the view that it did not hold the information requested because fulfilling this request would require the manipulation of its databases to the extent that it would in fact be creating new information in order to answer the request.
4. The complainant contacted the BBC on 8 June 2012 and asked for an internal review of this decision. The complainant argued that in its opinion the BBC did hold the requested information.
5. The BBC informed the complainant of the outcome of the internal review on 10 August 2012. The review found that fulfilling this request would not require the creation of new information and therefore it confirmed that the BBC did hold information falling within the scope of the request. This information consisted of data for the period mid-1998 to present. The BBC noted that data prior to mid-1998 was not held. However the internal review concluded that the information that the BBC did hold was exempt from disclosure on the basis of section 40(2) of FOIA. The review also noted that even if the BBC had chosen to fulfil this request, as opposed to relying on section 40(2), before it would have been able to do so it would have needed to define the 'Birmingham' area by postcodes. It suggested that there were two options for this:
 - The complainant could provide the BBC with a definition of the area by postcodes; or
 - Alternatively, the BBC could determine which postcodes represent Birmingham and state that in its response. The BBC noted that a brief internet search showed that Birmingham postcodes begin with the letter 'B' followed by digits.

Scope of the case

6. The complainant contacted the Commissioner on 22 August 2012 to complain about the way its request for information had been handled. The complainant did not provide the Commissioner with any specific reasons why it believed that section 40(2) had been misapplied by the BBC.
7. The Commissioner contacted the complainant and asked it to clarify two points. Firstly, to confirm that it was happy with the BBC's interpretation of the request as one seeking addresses that have been identified as not

requiring a TV licence because the occupier of the address is not watching live programmes as they are shown on TV and therefore is not required by law to purchase a TV licence. Secondly, in relation to the BBC's explanation that there would need to be some agreement as how the postcodes associated with Birmingham are identified, the Commissioner asked the complainant to confirm which of the two options suggested by the BBC it would prefer to adopt. If it preferred the former option the Commissioner asked the complainant to provide him with the list of postcodes in question.

8. In response the complainant confirmed that it was happy with the BBC's interpretation of its request. The complainant also explained to the Commissioner that it required all postcodes that begin with 'B' in the Birmingham area to include B73, B74, B90, B91, B92, B93 and B94.
9. The Commissioner has therefore considered whether such information, for the period mid-1998 to the date of the request, is exempt from disclosure on the basis of section 40(2) of FOIA as the BBC argued in its internal review. For the purposes of this request the Commissioner has used the following site as the source of relevant postcodes: http://en.wikipedia.org/wiki/B_postcode_area. During the course of the Commissioner's investigation the BBC informed him that it also believed that this information was exempt from disclosure on the basis of section 43(2) of FOIA because disclosure of the information would be likely to prejudice the commercial interests of both the BBC and the Royal Mail.

Reasons for decision

10. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act (DPA). The BBC argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which states that:

'Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.'

11. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA as:

'...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

12. The Commissioner accepts that the addresses of properties owned by individuals, whether they are occupied or not, do constitute the personal data of the individuals in question. The Commissioner's rationale for adopting such a position effectively mirrors that set out by the BBC in its internal review, i.e. a member of the public could use other publically available resources, e.g. the electoral register, to connect an individual to a particular address. Furthermore, the Commissioner also accepts that the addresses of properties which are owned by companies or public sector bodies but which are let to individuals also constitute the personal data of those tenants (e.g. addresses of council houses).
13. However, during the course of his investigation the Commissioner explained to the BBC that he was of the view that the addresses of properties owned by an organisation and whose occupants are not individuals but organisations, e.g. private companies or public sector bodies, cannot be personal data. The Commissioner explained to the BBC that in light of this he was of the view that the addresses of properties falling within the scope of this request that are owned by organisations (and are empty) are not personal data and nor would he accept that the addresses of any properties owned by organisations and let to other organisations, rather than let to individuals, are personal data.
14. In response to this point the BBC confirmed that the TV Licensing (TVL) Database, including the information which falls within the scope of this request, includes information relating to non-residential addresses. However, the BBC explained that these addresses are not necessarily accurately, or consistently, identified in the database as non-residential addresses. Consequently, the BBC explained that there may still be personal data linked to non-residential addresses and there is a real and significant risk that any report run on the database for business only data may result in the inadvertent disclosure of personal information.
15. In order to clarify why this was the situation the BBC provided the Commissioner with details about how the TVL Database is structured. It

explained that it was a relational database between the licence status, address and parties associated with the address. The key data entries being: address, party and product held (usually a licence but it could be a No Licence Needed (NLN) 'product' or flag). Other key fields included party contact data, concessionary indicators, date of expected occupancy for the address and address classification (such as domestic or business).

16. However, the BBC emphasised that the classification of an address as either business or residential, is not an essential priority for TVL purposes; rather it was used to tailor customer communications more effectively. Instead the essential priority for TVL is whether a licence is required at the property, regardless as to whether it is a business or non-business address. The BBC explained that the address classification is an assessment made by TVL from a variety of sources, including but not limited to 'PAF' (a product provided to the BBC under licence by Royal Mail which includes a complete set of all UK postcodes and mail delivery points), individual licence fee holders, and the way in which name appears on the licence, e.g. Plc. However the BBC explained that such classification is not 100% accurate or comprehensive, e.g. some addresses will appear as residential when they are in fact a business address. The BBC argued that the only way to capture the actual status of an address, i.e. business or residential, with 100% accuracy would be to visit every single address which was clearly not a proportionate or appropriate use of licence fee funds given that such classification is not determinative for TVL purposes.
17. Furthermore, the BBC explained that it was important to note that a single address may be both a business address and a residential address (e.g. a farmhouse that is both a home and the office of an agricultural business or where an individual operating as a sole trader has incorporated a limited company and thus uses their home address as its registered office, as is common practice).
18. Therefore, whilst some of the addresses are classified on the TVL Database as businesses and some as residential addresses, the BBC could not confirm that those classified as businesses are owned by an organisation and have the occupants who are organisations and not individuals. In other words, some addresses classified as a business may also be a residential address and thus constitute the personal data of the individuals linked to the property in question. Consequently the BBC explained that it was not possible to accurately separate out the business only addresses contained within the withheld information from the residential addresses contained within the withheld information.
19. In light of this position, the Commissioner considers it appropriate to treat all of the information falling within the scope of this request as

personal data. This is because although some of this information will include addresses classified on the TVL database as business rather than residential addresses, the BBC cannot be certain that such classification is completely accurate; therefore disclosure of the business addresses could still result in the disclosure of residential addresses. The Commissioner believes that it is appropriate for him to adopt this cautious approach in the particular circumstances of this case because if he does not, disclosure of the addresses on the database which are marked as business addresses may nevertheless relate to residential addresses and thus disclosure of these business addresses would result in the disclosure of personal data

20. The Commissioner recognises that some of the addresses falling within the scope of the request are likely to be 'genuine' business addresses and thus could be disclosed without any personal data being disclosed. However, for the reasons discussed, i.e. the nature in which the TVL database is structured, it is not possible for the BBC to identify such addresses easily or indeed accurately. Therefore the Commissioner has two options; either he accepts that all of the requested information is personal data or he adopts the position that none of the requested information is personal. Given that it is clear that a significant proportion of the addresses will constitute personal data, the Commissioner considers it appropriate to adopt the cautious position that all of the information is personal data, as to do otherwise would not afford the protection of section 40 to the information falling within the scope of the request that is indeed personal data.
21. Having found that the withheld information constitutes personal data, the Commissioner must therefore consider whether disclosure of this information would breach the first data protection principle and thus be exempt from disclosure on the basis of section 40(2).
22. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
 - The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;

- the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
- The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
23. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
24. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency for their own sakes as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

The BBC's position

25. With regard to the reasonable expectations of the licence holders, the BBC explained that the TVL Database is collected for the specific purpose of administering the licence fee. The TV Licensing Privacy Policy states that it would not share the TV licence holders' personal data with any third party without their express permission. The BBC therefore argued that disclosure of the withheld addresses to the complainant under FOIA would be clearly outside of the reasonable expectations of those who had provided their information to the BBC for the sole of purpose of TV Licence administration. In addition to this the BBC explained that its Privacy Policy states that personal information will not be shared with third parties without an individual's consent. The BBC

also emphasised that the information that had been requested constituted the personal data of private individuals rather than the personal data of public figures and that this distinction reinforces the expectations of the individuals that their personal data in relation to their TV licence would not be disclosed under FOIA. The BBC noted that there was no custom or practice of its using this requested information for any other purpose than administering and collecting the licence fee.

26. With regards to the consequences of disclosure, the BBC argued that release of the withheld information under FOIA could result in the data being used in many other ways that would infringe the privacy of the individuals in question (and moreover would not meet the data subjects' legitimate expectations when they provided the data to the BBC in the first instance). For example, the withheld information could be used to target marketing materials without an appropriate agreement in place stating that this would be done only in accordance with the DPA.
27. Finally, the BBC argued that there was no compelling public interest in disclosure of the withheld information and indeed it was difficult to see what useful purpose could be served by the disclosure of the personal data in question. The BBC explained, albeit in the context of the public interest test under section 43(2), that the public interest in the transparency and accountability of the BBC in respect of its uses of the licence fee is served by a broad range of oversight mechanisms both internal and external. As well as the oversight of the BBC Trust, TV Licensing is subject to an annual review by the National Audit Office of its processes for collecting the licence fee. The scope of review includes how customer data is collected, stored and used to collect revenue. TVL statutory auditors also review the technology and processes to ensure that the data supporting the income in the BBC's accounts is accurate and not materially misstated.
28. The BBC argued that it was very difficult to see how disclosure of the withheld information within the scope of this request, a limited dataset in respect of a limited geographical area, would add anything of value to the public's understanding of TV Licensing's activities beyond the transparency and accountability measures in place. The BBC also argued that there is no database comparable to the TVL Database; therefore it would not be possible for the public to assess the accuracy and completeness of the TVL Database and thus disclosure of the withheld information could not be said to be in the public interest for this reason. The BBC was therefore of the opinion that there is no legitimate interest in disclosing the information that would justify an intrusion into the private lives of the individuals whose personal data fell within the scope of the request.

The Commissioner's position

29. In light of the BBC's submissions, the Commissioner accepts that TV licence holders would have a reasonable – and weighty – expectation that the details about their licence held by the BBC would not be disclosed and this includes details as to whether their address has been classified as NLN. Similarly, in terms of the consequences of disclosure the Commissioner accepts that disclosure of these addresses could lead to the licence holders receiving unrequested marketing materials which could lead to some infringement of their privacy. In any event, disclosure of this material would reveal something about the residents of the particular properties, namely that they do not watch live television programmes and that consequently they have not had to pay for a television licence and this Commissioner also considers this to be an invasion into the privacy of the residents in question. The Commissioner is also of the opinion that, beyond a very generic public interest in public authorities being transparent, it is difficult to see how disclosure of the withheld information would meet any specific public interest. The Commissioner has therefore concluded that disclosure of the withheld information would be unfair and thus is exempt from disclosure on the basis of section 40(2) of FOIA.
30. In light of his conclusion in respect of section 40(2), the Commissioner has not considered the BBC's application of section 43(2) of FOIA.

Right of appeal

31. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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