

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 June 2014

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 information relating to the reasons why some prosecutions for not having a TV licence failed. The BBC withheld this information under section 31, the exception relating to various law enforcement functions.
2. The Commissioner's decision is that the BBC is entitled to rely on the exception provided by section 31(1)(a) to withhold the requested information in its entirety. This provision exempts information, the disclosure of which, would prejudice the prevention and detection of crime. As the Commissioner is satisfied the information is exempt under section 31(1)(a), he has not gone on to consider the application of any of the other exemptions cited.
3. The Commissioner does not require the public authority to take any further action in this matter.

Request and response

4. On 25 October 2013, the complainant wrote to the BBC and requested information in the following terms:

"Recent articles in the national press have highlighted that in 2012, some 25,000 TVL prosecutions failed.

Given that this necessarily involves a large wastage of money, please disclose:

- (1) The reasons for those failures.
- (2) The cost of those failures.”

5. The BBC responded on 22 November 2013. In respect of the first part of the request the BBC explained that although it did not hold, what it referred to as, official statistics relating to prosecutions for licence evasion, it did hold information that was relevant to the request. However it refused to provide this information, citing the exemptions provided by section 31(1)(a), (b), (d), and (g) via 31(2)(a). These exemptions protect the following interests:
 - Section 31(1)(a) –the prevention and detection of crime,
 - Section 31(1)(b) –the apprehension or prosecution of offenders,
 - Section 31(1)(d) – the assessment or collection of any imposition of a similar nature,
 - Section 31(1)(g) via 31(2)(a) – ascertaining whether any person has failed to comply with the law.
6. In respect of part 2 of the request the BBC advised the complainant that it did not hold figures on costs as these were held by its contractor, Capita.
7. The complainant sought an internal review of the BBC’s refusal to disclose the reasons why prosecutions failed on the 26 November 2013. Following an internal review the BBC wrote to the complainant on 5 February 2014. It maintained its original position.

Scope of the case

8. The complainant contacted the Commissioner on 25 April 2014 to complain about the way his request for information had been handled. His complaint focussed on the BBC’s use of section 31 to withhold information about why prosecutions failed.
9. As the complainant has not challenged the BBC’s explanation that it does not hold the information on costs, the Commissioner considers the matter to be decided is whether the BBC is entitled to withhold the information on the reasons prosecutions failed under the exemptions

provided by section 31. The BBC has applied each of the section 31 exemptions cited to all the information captured by the request. Therefore if the Commissioner is satisfied that any one of those exemptions applies he will not go onto to consider the others.

10. The Commissioner has clarified with the BBC what information is captured by the request. The BBC has provided the Commissioner with a list of codes which relate to the various reasons why prosecutions did not result in a conviction together with an explanation of these codes. The BBC has also provided the statistics showing how many cases did not result in conviction against each of those codes. The Commissioner is satisfied that this information would satisfy the request.

Reasons for decision

11. Section 31(1)(a) of FOIA exempts information the disclosure of which would or would be likely to prejudice the prevention or detection of crime. However it can only be applied to information which is not exempt by virtue of section 30.
12. Therefore the Commissioner has first considered whether the statistical information captured by the request is capable of attracting the exemption provided by section 30. In broad terms section 30 provides exemptions for information which has been held for the purposes of a range of investigations, including criminal investigations. The Commissioner considers that although the information may have originally been collated from individual investigation or prosecution files, once held in its statistical form, it is too far removed from that source material to be covered by section 30. The Commissioner is therefore satisfied that the information is eligible for the protection of section 31.
13. Section 31 concerns the prevention or detection of crime. The Commissioner is also satisfied that using a television without a licence is an offence under section 363 of the Communications Act 2003. Therefore if the BBC is able to demonstrate that disclosing the information would, or would be likely to, lead to a rise in that offence being committed this would prejudice the prevention of crime and so engage the exemption.
14. Section 31(1)(a) can be engaged on the basis that disclosing the information either 'would' or 'would be likely to' prejudice the prevention of crime. Based on a number of Tribunal decisions, the Commissioner interprets the term 'would' as to mean that it is more probable than not that the prejudice would occur. The alternative limb, 'would be likely', provides a lower test. For the exemption to be engaged on the basis that the prejudice is only likely to occur, the risk of harm occurring can

be less than 50%, but there must still be real and significant risk of the prejudice occurring.

15. The BBC did not specify what it believed the likelihood of prejudice to be in either its original refusal notice or at the internal review stage. However in its submission to the Commissioner the BBC has stated that it believes the section 31(1)(a) is engaged on the basis that disclosing the information 'would' prejudice the prevention of crime. The significance of this is that the BBC has set itself the higher test to meet in order to engage the exemption. However if it can demonstrate that there is a high probability that the harm will occur this carries greater weight in favour of maintaining the exemption when considering the public interest test.
16. Having viewed the withheld information and considered the BBC's explanation of how disclosing it would lead to an increase in licence evasion, the Commissioner is satisfied that the exemption is engaged. However it is not possible to explain how the disclosure would lead to this prejudice within the main body of this notice without revealing the nature of the information which would itself be prejudicial. Therefore the Commissioner has had to set out his grounds for accepting that the exemption is engaged in a confidential annex which will be provided only to the BBC. The Commissioner recognises that the complainant may not find this satisfactory. Nevertheless it would be inappropriate to set out the reasons presented by BBC in the main body of this notice.
17. The Commissioner has consistently found that it would be prejudicial to disclose information about the deterrents and enforcement strategy adopted by the BBC in respect of TV licensing. Likewise the requested information in this case also relates to the BBC's enforcement practises and its disclosure would be of use to those seeking to evade paying the licence fee.
18. It is also important to recognise that a disclosure under FOIA is a disclosure to world at large. Therefore the Commissioner accepts the BBC's argument that if this information was released there is a very high likelihood of it being widely disseminated via numerous blogs and forums on the internet. The BBC has provided evidence of the existence of such websites both in its submission to the Commissioner on this case and previously to the Tribunal.
19. As a consequence the Commissioner is satisfied that the disclosure of this information would both be of assistance to those wishing to evade paying the licence fee and that as the information could well end up being published on the internet, this effect would be amplified. The Commissioner is therefore satisfied that disclosing the information

'would' result in the prejudice described by the BBC.

Public interest test

20. There is a public interest in accountability and transparency of how the BBC uses its statutory powers to enforce the TV licencing regime. With the authority to prosecute individuals must come a responsibility to perform those enforcement activities diligently and fairly. As the complainant has argued, the threat of being prosecuted can have a significant impact on individuals. There is a clear public interest in disclosing information that would inform a debate on how the BBC is using its powers in this regard. Therefore disclosing the information would reinforce the legitimacy of the enforcement process. This argument is expanded upon within the confidential annexe to this notice.
21. The Commissioner understands that the collection and enforcement of the TV licencing regime is actually carried out by contractors engaged by the BBC. They operate under the name 'TV Licencing'. The Commissioner considers that this adds weight to the public interest in disclosure. It is important to understand how the private companies trusted to carry out these important functions are actually performing.
22. As well as allowing the integrity of the enforcement process to be examined, disclosing the information could help reassure the public that its enforcement of the licencing regime provides value for money and is carried out in a proportionate manner.
23. The BBC fully recognises the public interest in these two arguments. However it has also argued that these public interest issues have already been addressed. In terms of the legitimacy of the prosecutions which are pursued by TV Licensing, the contractors used by the BBC to carry out the collection and enforcement activities, the BBC has explained that prosecutions are not pursued unless it is in the public interest to do so. It has argued that this is a key principle of the Crown Prosecutions Guidelines which the BBC has publicly committed itself to.
24. The Commissioner is not satisfied that this counter argument completely satisfies the public interest in allowing scrutiny of how the enforcement regime operates. Simply because a body makes a public commitment to act in a certain way does not necessarily safeguard against it failing to do so.
25. The BBC has also made the point that magistrates would not allow a prosecution to take place if there was not sufficient evidence and public interest in pursuing the matter. The Commissioner accepts that this

provides rigorous and independent scrutiny of the process. However the Commissioner would argue that although a magistrate may not allow a case to proceed in the absence of evidence, or if it is against the public interest to do so, this is not a safeguard against inappropriate cases being pursued by the BBC up to that point.

26. In terms of the public interest in allowing scrutiny of whether the BBC's enforcement regime offers value for money, the BBC has argued that is accountable to the National Audit Office for ensuring that it operates economically, efficiently and effectively. However this is the situation for many other public authorities and the Commissioner does not consider this in itself removes the value in the additional scrutiny that the FOIA brings.
27. The Commissioner finds that there is a public interest in disclosing information on the licencing regime. This would allow greater understanding of the legitimacy of the process and the value for money it offers. There are already systems in place that do go some way in meeting these public interest arguments but they do not necessarily address the issues raised by the request directly. Furthermore the Commissioner considers that there is a public interest in providing the full picture.
28. The Commissioner will now consider the public interest in maintaining the exemption. In finding the exemption is engaged the Commissioner has already concluded that it is more probable than not that disclosing the requested information will lead to an increase in those not buying licences. Furthermore he is satisfied that this harm will be intensified through its probable publication on the internet. The BBC estimates that an increase of 1% in the number of people not buying a licence would result in a loss of £35 million pounds in revenue. To put this into context, this would fund 10 local radio stations. Even if the Commissioner did not necessarily accept the disclosure would increase evasion by 1%, he does accept that the financial impact would be very significant.
29. On top of the direct loss in revenue, there would also be an increase to the costs in policing the licencing regime.
30. There is a very strong public interest in preventing this two fold damage to the finances of the BBC. The loss has a real potential to damage either the quality or range of output offered by the country's main public service broadcaster. It would also be unfair to the majority of honest individuals who do purchase TV licences.
31. In balancing the public interest the Commissioner finds that there is a value in disclosing information which could feed a debate on the

integrity of the enforcement regime delivered by the private sector and whether it offers value for money. However having seen the actual information and understanding the risks posed by releasing this information, the Commissioner considers that it is more probable than not that doing so would result in a significant loss of revenue for the BBC. This would damage the range of programming the BBC could offer. The Commissioner therefore concludes that the public interest favours maintaining the public interest.

32. Since the Commissioner has found that the information can be withheld under section 31(1)(a), he has not gone onto consider any of the other exemptions cited by the BBC.

Right of appeal

33. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF