

**FREEDOM OF INFORMATION ACT 2000 (SECTION 50)**

**DECISION NOTICE**

**Dated 15<sup>th</sup> February 2006**

<b>Name of Public Authority:</b>	<b>British Broadcasting Corporation</b>
<b>Address of Public Authority:</b>	<b>MC3 DI Media Centre Media Village 201 Wood Lane London W12 7TQ</b>

**Nature of Complaint**

The Information Commissioner (the "Commissioner") has received a complaint that on 10 January 2005 a request was made under the Freedom of Information Act 2000 (the "Act") to the British Broadcasting Corporation ("BBC") for the following information:

The minutes of the meeting of the Board of Governors held on 28 and 29 January 2004.

The complainant alleges that:

The BBC failed to provide him with that information in accordance with their obligations under Section 1(1) because they applied the Section 36(2)(b) (ii) (Prejudice to effective conduct of public affairs) exemption from disclosure inappropriately.

**The Commissioner's Decision**

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure or where the complaint is frivolous or

vexatious, subject to undue delay, or has been withdrawn, the Commissioner has a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is as follows:

Section 36(2) (b) (ii) states that *“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act.....would, or would be likely to inhibit - the free and frank exchange of views for the purposes of deliberation,.....”*

The Commissioner agrees that this exemption applies and has decided that the public interest in maintaining this exemption currently overrides the public interest in disclosing the requested information. A further explanation of this decision is provided in the attached Statement of Reasons.

The Commissioner has noted that the meeting on 29 January 2004 was not minuted.

### **Action Required**

In view of these matters the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he does not require any remedial steps to be taken by the BBC.

### **Right of Appeal**

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the “Tribunal”). Information about the appeals process can be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4131  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served:

Reference: FS50066295

Dated the 15<sup>th</sup> day of February 2006

Signed.....

Graham Smith  
Deputy Commissioner

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **Statement of Reasons**

The British Broadcasting Corporation (the "BBC") is a body covered by Schedule 1 Part V1 of the Freedom of Information Act 2000 (the "Act") in respect of information held for purposes other than those of journalism, art or literature. The information sought, which relates to the minutes of a meeting of the BBC's Board of Governors held to consider their response to the Hutton report, is not covered by any of those purposes and therefore falls within the scope of the Act. The BBC said that, given the particular nature of the meeting on 28 January 2004, it was essential that those present had felt able to speak their minds in complete confidence and that they would not have been able to do that had they believed that the meeting was not taking place with that understanding. The BBC also felt that release of the minutes of this meeting would be likely to inhibit free and frank discussions at similar meetings in the future.

*Section 36(2) (b) (ii) states that "Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act...would, or would be likely to inhibit- (ii) the free and frank exchange of views for the purposes of deliberation, or....."*

Section 36 requires that the exemption be applied by a qualified person expressing a reasonable opinion. The exemption is also a qualified exemption and therefore subject to the public interest test. The BBC took the view that the public interest in maintaining the exemption outweighed the public interest in releasing the information.

### **The reasonable opinion of a qualified person**

The Commissioner is satisfied that the person making the decision in this case was the qualified person as required by the legislation: the BBC is itself the qualified person, in the form of the Chairman or any member of the Board of Governors. The Commissioner also needs to be satisfied that the qualified person has expressed a reasonable opinion. A reasonable opinion can be defined as one that, given the circumstances of the case, could be said to fall within a range of acceptable responses and be considered neither outrageous nor absurd. The Commissioner is satisfied that the opinion of the qualified person that the information should not be released was a reasonable one in the circumstances.

### **The public interest test - Prejudice to effective conduct of public affairs**

The Commissioner is in no doubt that the response of the BBC to Lord Hutton's report into the circumstances surrounding the death of Dr David Kelly is a matter of public interest about which the public has a right to be informed, and he notes that the BBC has considered the public interest arguments in favour of disclosure of the information sought. However, in order for information to be released under this exemption, the arguments in favour of disclosing the information must outweigh those in favour of withholding it. In that context the Commissioner has noted that the BBC Board of Governors and a number of key individuals released press notices relating to what had taken place at or around the time of the meeting. Information also reached the public domain in various other ways such as newspaper articles. Therefore, although the minutes of the meeting were not released, information relating to the outcomes of the meeting was in the public domain.

The Commissioner has considered very carefully the minutes of the meeting of 28 January 2004. He has noted that those minutes are headed 'confidential'. It is his view that those attending the meeting believed their discussion in relation to the impact of the Hutton report on the BBC to be a confidential one. The Commissioner is of the opinion that those attending the meeting would either not have said some of what they said, or would have expressed their views in a more guarded manner, if they had expected those views to be made formally available beyond the confines of the meeting. He recognises that the purpose of the meeting was to consider how to respond to a major event in the history of the BBC and accepts that, in order for that response to be formulated, confidentiality was essential so that participants could express themselves candidly in what were highly unusual circumstances.

The Commissioner has considered whether, even allowing for that, the public interest in this matter is sufficiently strong to justify him overriding confidentiality and recommending release. He has come to the conclusion that it is not. The matters under discussion at the meeting were ones of great sensitivity, relating to figures prominent in public life carrying out tasks of considerable public importance. The requirements of the meeting were such that, in order to achieve an appropriate outcome, it was necessary to refer to those individuals and their actions frankly. This was only possible because it was understood that any such references were made in confidence. It is the Commissioner's view that the public interest would not have been best served if individuals had not felt free to speak their minds at that meeting, given the importance of what was at stake. Releasing the information sought in this case would therefore be likely to have the effect of inhibiting discussion at any future meetings where matters of comparable significance are under discussion because individuals would be much less likely to speak frankly if they thought their comments would enter the public domain. Appropriate

decisions are less likely to be made in situations where those involved feel unable to fully speak their minds. This would not, in the Commissioner's view, be in the public interest.

The Commissioner has considered whether it would be appropriate for either a redacted version of the minutes, or a summary of them, to be released. He has come to the conclusion that it would not. In his opinion it would not be possible to edit the minutes in such a way as to produce a meaningful document. Equally, it is the Commissioner's view that any summary of the discussion would be unlikely to provide any more information than has already entered the public domain in relation to this matter.

### **Summary of the Commissioner's decision**

The Commissioner has accepted that the decision not to release the minutes of the meeting was based on the reasonable opinion of a qualified person in accordance with the requirements of the Act. He has further decided that, although there is a clear public interest in information about what took place at this meeting, the release of the information contained in the minutes, beyond that which is already in the public domain, would be likely, in the Commissioner's view, to have the effect of inhibiting free and frank discussions at any such similar meetings in the future. In circumstances of such importance and sensitivity, that would not be in the public interest. Therefore the balance favours non-disclosure in this unusual case.