

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 26 March 2018

Public Authority: The British Broadcasting Corporation

Address: Broadcast House
White City
Wood Lane
London
W12 7TP

Decision (including any steps ordered)

1. The complainant has requested information on TV Licensing's policies on handling personal data. The BBC responded to the request, providing some information, stating some information was not held and withheld details of its security verification procedures on the basis of section 31 of the FOIA.
2. The Commissioner's decision is that the BBC has correctly engaged section 31 of the FOIA and the public interest favours maintaining the exemption.

Request and response

3. On 26 November 2016 the complainant wrote to the BBC and requested information in the following terms:

"I should be grateful if you could provide me with all information detailing TV Licensing's policy on handling personal data. In particular, please include:

- 1) *Any document detailing what handling requirements the BBC imposes on Capita Business Services Ltd as its subcontractor;*
- 2) *Any policies concerning the acquisition of data for "unlicensed" addresses from third parties;*

3) *Any policy concerning TV Licensing's use of the exemption under section 29(3) of the Data Protection Act 1998; and*

4) *Any data retention policies."*

4. The BBC responded on 25 January 2017. For part 1 it provided redacted copies of documents with information withheld on the basis of section 31 and 40 of the FOIA. For part 2 it stated the information was not held and for part 3 the BBC provided the requested information.
5. On 6 February 2017 the complainant requested an internal review. In this he raised issues with the extent of the redactions in document 2 as well as stating his reasons for considering the public interest favoured disclosure.
6. Following an internal review the BBC wrote to the complainant on 27 April 2017. It focused on the redactions made to documents 2, 2a and 2b and having reviewed this disclosed some additional information on pages 5, 11 and 12 of the BBC Television Licence Customer Identification & Verification Policy. However, the BBC remained of the view that the remaining information should be withheld on the basis of section 31 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 14 July 2017 to complain about the way his request for information had been handled.
8. The Commissioner considers the scope of her investigation to be to determine if the BBC has correctly applied any of the provisions of section 31 to withhold the remaining information from the document disclosed under part 1 of the request.

Reasons for decision

Section 31 – law enforcement

9. Section 31(1) states 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,

(d) the assessment or collection of any tax or duty or of any imposition of a similar nature,

(g) the exercise by any public authority of its functions for any of the purposes specified in subsection (2).

10. Section 31(2) states 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,

11. In determining whether prejudice would or would be likely to occur from disclosure, the Commissioner will consider the nature and likelihood of the prejudice in question occurring.
12. The BBC has explained that the document which has been redacted is its "Customer Identification and Verification Policy". This is a policy that sets out how, in talking to or corresponding with customers and associated parties, TV Licensing ensures it is dealing with a properly authorised person. To be clear, TV licensing functions are the BBC's and the work is carried out by both the BBC and contractors. Together they use the name "TV Licensing" which is a trademark belonging to the BBC. Any reference to TV Licensing in this notice should be considered as also being a reference to the BBC.
13. The Policy governs the security threshold that needs to be satisfied in order to access a licence holder's account via different mediums such as phone, email, web form and letter. The document notes alternative options available to satisfy the security threshold upon failure at the first attempt. It also goes on to address what information is required in order to gain access and authorisation to an account, including when the account holder is absent.
14. The BBC makes the point that this information, if disclosed, would be highly prejudicial to the effectiveness of the enforcement system as would-be evaders could fraudulently carry out transactions on other licence fee payers' accounts, and gain unauthorised access to personal data of licence fee holders. It states that these procedures are in place to:
- ensure the security of customer's personal data;

- protect the value of the licence on behalf of individual licence holders, for example by avoiding refunds being made to the wrong person; and
 - protect the licence fee system on behalf of the public at large, ensuring the effective collection of fees from those liable to pay.
15. The BBC has stated that in respect of section 31(1)(a) and (b), disclosure of the requested information would be likely to prejudice the prevention and detection of crime and the apprehension or prosecution of offenders, in this case, its ability to prevent and detect offences and apprehend offenders under section 55 of the Data Protection Act 1998 (DPA) and under section 363 of the Communications Act 2003.
 16. Section 31(1)(d) is engaged as the BBC's duties in respect of licence fee collection fall within the definition of the collection of any tax or duty or of any imposition of a similar nature. The BBC primarily funds its public works through raising the TV Licensing fee from Licence fee holders and diminishing the BBC's ability to apprehend or prosecute offender would also be likely to prejudice the collection of the licence fee by diminishing the deterrent effect on would-be evaders, including helping potential offenders assess how easily they could evade security measures.
 17. Section 31(1)(g) with subsection 31(2)(a) is therefore engaged as disclosure of the information would be likely to prejudice the exercise by the BBC of its functions for the purpose of ascertaining whether any person has failed to comply with the law.
 18. The Commissioner has gone on to consider not just whether the section 31 exemption can be engaged but whether it is engaged in this case and where the balance of the public interest lays.
 19. The BBC argues that disclosure of the withheld information and with it, disclosure of the knowledge of TV Licensing's identification and verification procedures, would be likely to prejudice TV Licensing's ability to safeguard the personal data it holds. In addition to this the BBC believes disclosing details of these procedures would be likely to facilitate the commission of offences under section 55 of the DPA, by assisting those who may want to secure unauthorised access to third parties' personal data. The BBC considers that disclosing even partial information about customer identification and verification processes could significantly assist those considering carrying out unlawful activities including data blagging or identity theft and obtaining the unauthorised disclosure of licence fee payer's personal data.
 20. In addition to this the BBC consider the information withheld from the procedures could be used to evade the licence fee. For example, if a

person can convince TV Licensing on the telephone they are in fact a different person they could secure the transfer of this person's licence to their own address, evading proper payment of the fee.

21. The BBC has stated that its functions in this regard come from the fact it is charged with the collection of the licence fee and the enforcement of the requirement to have a licence. The licence fee is the principal source of funding for the public service broadcasting activities of the BBC and these activities and their funding are established by the BBC's Royal Charter and also in statute. The BBC's licencing powers reside primarily in the Communications Act 2003 (CA2003) and the Communications (Television Licensing) Regulations 2004. Section 363 of the CA2003 makes it an offence for a person to use or install a television receiver unless that use or installation is licensed. Sections 364 and 365 of the CA2003 impose duties on the BBC to issue and revoke TV licenses in accordance with restrictions imposed by the Secretary of State.
22. The BBC also points out that it holds personal data on around 26 million people and as such it is required to abide by the data protection principles set out in the DPA. Of specific relevance in this case is the seventh data protection principle which requires that data controllers take appropriate technical and organisational measures to prevent unauthorised or unlawful processing of personal data. Linked to this is section 55 of the DPA which makes it an offence for an individual to obtain, or procure the unauthorised disclosure of personal data.
23. The Commissioner accepts that disclosing information that might undermine the BBC's verification of customers in order to comply with the data protection principles could not only impact on its security of customer data but also have an effect on the licensing regime by allowing for licences to be incorrectly registered.
24. She has considered whether the specific information which is the subject of this request would have this impact. The commissioner has reviewed the information in the document and appendices and notes that it does contain details of the basic security checks TV Licensing conducts as well as the alternative verification methods deemed acceptable in the event the initial checks cannot be conducted successfully. This is broken down by the different scenarios a customer may be calling for. Whilst the Commissioner notes that some of the verification information is not likely to be surprising as it is information which is often asked as part of standard customer checks in various different business; the policy document and appendices does go into much more detail on the types of customers that may be calling, the reasons for the contact and the level off detail that is required. It does also go into detail on the alternative acceptable levels of verification in each scenario and the Commissioner

accepts this information would be of practical use to those seeking to commit possible offences under section 55 of the DPA such as blagging.

25. The BBC has argued that the disclosure of the information 'would be likely' to prejudice the functions set out in section 31. To support this the BBC has stated that there is a real possibility of an increase in attempts to fraudulently contact TV Licensing either to commit identity fraud or to evade payment of TV licences by switching the address of licences and this is proven by the fact attempts have been made to do this in the past. It therefore stands to reason that putting clear information in the public domain on what information the BBC would require to pass security checks would increase the likelihood of this happening.
26. The Commissioner considers that this is relevant in this case and whilst she does consider some of the information to be that which could be reasonably assumed by customers or those looking to commit offences as being required for security checks and verification, it is the level of detail in the documents which sets this apart. The Commissioner does not consider that this level of information, particularly on alternative methods of identification, would be known and certainly not in relation to each different scenario a customer may contact TV Licensing about. She therefore accepts the prejudice argued in this case would be likely to occur.
27. The Commissioner therefore finds that sections 31(1)(a), (b), (d) and (g) are engaged. Section 31 is a qualified exemption and the Commissioner must therefore consider the public interest test before reaching a conclusion.

Public interest arguments in favour of disclosure

28. The BBC has recognised the public interest in transparency, particularly where this would contribute to increasing the public's understanding of how the licensing regime is administered and to demonstrate the BBC is exercising its functions as the licensing authority appropriately and proportionately.
29. The BBC also recognises there is a public interest in the public having the opportunity to scrutinise how public funds are used, allowing the public to make their own assessment of the appropriateness of this use and whether value for money is obtained.
30. The BBC argues that this public interest it, to some extent, met by the information it publishes on the TV licensing system, particularly in its Annual Report and Accounts and in the National Audit Office's annual Licence Fee Settlement Statement.

31. In his request for an internal review the complainant listed a number of arguments he considered relevant relating to the public interest in disclosing the information withheld from these documents. Many of these arguments related to other parts of the request that were subsequently addressed in the internal review. Specifically, the complainant referred to the concerns of many members of the public as to how TV Licensing obtains the names of occupiers of unlicensed addresses. The complainant considered unredacted information should be provided to demonstrate the methods used by the BBC.

Public interest arguments in favour of maintaining the exemption

32. The BBC states that the information it is withholding relates to the security and integrity of TV Licensing's interactions with the public. It argues that disclosing this information would undermine the security and integrity of the personal data that TV Licensing holds on members of the public. This would, in turn, harm the public's trust in TV Licensing's measures to protect their data and raise the risk of unauthorised access to personal data. This would also prejudice the efficient and effective collection of the TV licence fee, which is the BBC's principal source of funding, depriving the BBC of funding for its public service activities and placing a disproportionate burden on those people who do pay their licence fee.
33. The BBC believes there are already adequate systems in place to ensure oversight of the TV Licensing systems. TV Licensing's functions are subject to external review through reports of the Comptroller and Auditor General to the House of Commission and directions given by the Treasury. In addition to this, the BBC is required to satisfy the National Audit Office as to the value for money of the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. If the requested information was disclosed the BBC would likely need to change its TV Licensing security policy controlling the access to TV Licensing account data which would lead to greater costs for the BBC and a diversion of funds from other public functions.

Balance of the public interest arguments

34. Although the BBC recognised the public interest in accountability and transparency where it could contribute to increased awareness and understanding of the BBC's TV Licensing regime; it considered that the fact it is strictly monitored balances this out. TV Licencing's functions are also subject to external review through reports of the Comptroller and Auditor General to the House of Commons and the BBC itself if inspected by an independent body (the Office of Surveillance Commissioners) to

ensure it is complying with legislation regarding detection and therefore not unfairly or unlawfully subjecting the public to detection.

35. The Commissioner does still consider there is a public interest in openness, transparency and accountability in relation to the BBC's licensing regime as it affects a significant proportion of the population. She accepts there will be a public interest in the disclosure of information which would enable the public to scrutinise how public funds are being utilised and that the licensing regime is operating at the best value for money.
36. That being said, the Commissioner does consider the BBC has shown it has safeguards in place and oversight to ensure it is effectively operating the licensing regime and the BBC does provide information on this on a voluntary, and regular, basis. This does go some way to meeting the public interest arguments in disclosure.
37. In contrast, the Commissioner recognises the importance of the BBC being able to effectively safeguard the data it holds and ensure that not only is the personal data of licence holders held securely and in compliance with the seventh data protection principle but that there is no increased risk of identity theft or fraud by improper access to the information. It is in the public interest to maintain the integrity of the data held by TV Licensing and the Commissioner considers this argument to be strong.
38. In terms of the argument that unauthorised access to licence holder's data will impact on the enforcement of the licensing regime as there is a real risk that attempts would be made to switch the addresses of licences to avoid payment; the Commissioner cannot dismiss this argument as the BBC states there is evidence that attempts have been made to do this but she is not convinced this is likely to be a frequent occurrence. That being said she accepts there are likely to be increased attempts to unlawfully access licence holder data if the withheld information is disclosed as it will provide more information on the security procedures employed by TV Licensing. Whether attempts are made to access data to evade paying the licence fee or for other reasons such as identify theft; the Commissioner does not consider this would be in the public interest.
39. Taking all of this into account the Commissioner considers that the public interest in favour of disclosure has been somewhat met by the safeguards and oversight in place and the voluntary disclosure of information. She also recognises the information itself is not necessarily directly of relevance to the public interest arguments raised by the complainant. The complainant believed information should be disclosed

if it related to TV Licensing's policies and processes of data gathering but in fact the information being withheld relates to data security. There are strong arguments for maintaining the exemption to preserve the BBC's ability to safeguard the data it holds on licence holders and to ensure the licensing regime can be effectively managed.

40. Therefore the Commissioner finds that the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption.

Right of appeal

41. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

42. 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.
43. 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

Jill Hulley
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