



Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 27 July 2006

Public Authority: British Broadcasting Corporation

Address: Media Centre
201 Wood Lane
White City
London
W12 7TQ

Summary Decision and Action Required

The Information Commissioner's (the 'Commissioner') decision in this matter is that the British Broadcasting Corporation (the 'BBC') have dealt with the Complainant's request in accordance with Part I of the Act. That being so, 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.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Commissioner has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the BBC has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000 (the 'Act').

1.2 Where a complainant has made an application for a decision, unless:

- a complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.



2. The Complaint

2.1 The Complainant has stated that on 4 January 2005 the following information was requested from the BBC in accordance with section 1 of the Act:

“a copy of a report written by Mr John Smith, Chief Operating Officer of the BBC, into Mr Alan Yentob’s expenses”.

2.2 The BBC withheld the information requested on the basis that it was exempt under sections 40(2) and (3) of the Act because they considered the information to be the personal data of the individual concerned and that its disclosure would breach the first data protection principle of the Data Protection Act 1998. The Complainant alleges that the BBC have incorrectly applied the legislation.

3. Relevant Statutory Obligations under the Act

3.1 **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.”

3.2 So far as is relevant to this case **section 40** provides that –

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

Section 40(2) provides –

“(2) Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is-

- (a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene –



(i) any of the data protection principles...”

4. The Commissioner's Decision

4.1 The Commissioner's decision in this matter is that provision of the vast majority of the information in Mr John Smith's report to the complainant would breach sections 40(2) and (3)(a)(i) of the Act because the first data protection principle pertaining to fairness would be breached by disclosure. The BBC have thus correctly applied those sections of the Act to that information. The Commissioner has also concluded that the BBC are not required to release the very small amount of information in the report which is not of a personal nature, and is not already in the public domain, since it would be virtually meaningless and out of context.

Background

4.2 The complainant asked the BBC to provide him with a copy of a report written by Mr John Smith, Chief Operating Officer, into the expenses of Mr Alan Yentob. The BBC refused the request, saying that the information was exempt under section 40 of the Act relating to personal data, that disclosure would contravene the first data protection principle and, thus, that sections 40(2)(a) and (3)(a) of the Act applied. This conclusion was confirmed by the internal review conducted by Mr Richard Sambrook.

Complainant's view

4.3 While the complainant accepted that some of the information in Mr Smith's report could be exempt from disclosure, he did not believe that section 40 could be held to apply to the entirety of the contents of the report. He contended that the section 40 exemption was not absolute and that a public interest test should be applied. He said that he believed that transparency in the use of public funds was a central feature of the Freedom of Information Act. He said that Mr Yentob's expenses have generated significant public debate, and it has been claimed that this report wholly exonerates Mr Yentob. The complainant did not therefore believe that there were any grounds under the Act for the information to be withheld.

The BBC's position

4.4 The BBC said that they had withheld the report under section 40 of the Act on the ground that disclosing it would be unfair to Mr Yentob as that term is understood in the Data Protection Act 1998. They said that the report was of an investigative nature, to establish whether there had been any breach of BBC rules. The report had recorded allegations raised by various individuals including former BBC staff about Mr Yentob's use of expenses budgets and related matters and whether there was any factual basis for the allegations. They said that it is established BBC policy that allegations made by staff or former staff about other staff members should be



kept confidential and private and that, having concluded that there was no dishonesty on Mr Yentob's part, it would be unfair to him, and to the other individuals who had approached the BBC privately, to publish the allegations. It would only serve to give further publicity to allegations, most of which were not upheld, and to subject Mr Yentob to further press coverage, causing him stress and impacting on his reputation and character when he had already endured a great deal of unfair press speculation during the investigative process. The BBC said that, in evaluating the complainant's request, they had considered the public interest in the accountability of staff in public bodies for the expenses they claimed in carrying out their job. They did not consider, however, that the public interest in the disclosure of the report was sufficiently strong to override the prejudice which would be caused to Mr Yentob's privacy by releasing a document which formed part of a disciplinary process. They said that section 40 is an absolute exemption and therefore not subject to the public interest test in section 2 of the Act, and that the public interest is only one factor to be considered as part of the analysis required by the Data Protection Act. The BBC said that they also took into account guidance issued by the Information Commissioner's Office which says that internal disciplinary matters would not normally be disclosed.

Commissioner's comments

- 4.5 Sections 40(2) and (3)(a)(i) of the Act exempt personal information if that information is the personal data of a third party, and disclosure of the information would breach any of the data protection principles. Sections 40(2) and 3(a)(i) together confer absolute exemption under the Act and, as such, no public interest test need be applied.
- 4.6 In determining whether in this case the disclosure of the information contained in Mr John Smith's report would breach sections 40(2) and (3)(a)(i) of the Act the Commissioner has assessed whether the information requested constitutes personal data under the Data Protection Act and, further, whether disclosure would breach the first data protection principle pertaining to the fair and lawful processing of personal data. In particular, in this case, the BBC have asserted that disclosure would be unfair.

Personal data

- 4.7 The Data Protection Act defines "*personal data*" as data which relates to a living individual who can be identified from those data, or from those data and other information which is in the possession of, or likely to come into the possession of, the data controller. Having reviewed the information in this case the Commissioner agrees that the report into Mr Yentob's expenses falls within the definition of "*personal data*" in the Data Protection Act.

First data protection principle



4.8.1 The first data protection principle has two components.

1. Personal data shall be processed fairly and lawfully; and
2. Personal data shall not be processed unless at least one of the conditions in Schedule 2 to the Data Protection Act is met.

4.8.2 The Commissioner considers that the most relevant condition in this case is likely to be that set out in paragraph 6(1) of Schedule 2. This states that:

“The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject”.

4.8.3 When considering whether a Schedule 2 condition for processing could be met the Commissioner took into account the legitimate interests of the third party to whom the information would be disclosed, i.e the complainant and the wider public. However, having read the report and reviewed the relevant information, the Commissioner has concluded that disclosure of the information in the report would be unwarranted and would be prejudicial to Mr Yentob's rights and freedoms as a data subject and, as such, would breach the first data protection principle pertaining to the fair and lawful processing of personal data. This is because:

- the report resulted from a disciplinary investigation and it is the Commissioner's view that internal disciplinary matters would not normally be disclosed;
- much of the information in the report relates to Mr Yentob's personal life as well as his professional life and conduct: these are matters which anyone concerned would reasonably expect to remain private and not be disclosed publicly;
- Mr Yentob has not seen the report;
- the Act gives entitlement to information, not to documents, and the outcome of the investigation was publicised in a press release.

4.8.4 The Commissioner also considers that the release of the minimal amount of information in the report which is not covered by sections 40(2) and (3)(a) (i) of the Act, or is not already in the public domain as a result of the BBC's press release, would be virtually meaningless and out of context .

Conclusion

4.9 In view of the above, the Commissioner has concluded that the BBC have correctly applied sections 40(2) and (3)(a)(i) of the Act to the complainant's request for a copy of Mr John Smith's report, and that they are therefore entitled to withhold it from the complainant.



5. 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.

6. Right of Appeal

6.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

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

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 27th day of July 2006

Signed

Graham Smith
Deputy Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF