

Freedom of Information Act 2000 (Section 50)

Decision Notice

4 September 2006

Public Authority: British Broadcasting Corporation

Address: MC3 D1, Media Centre, Media Village,
201 Wood Lane, London W12 7TQ

Summary

On 23 February 2005 the complainant requested copies of correspondence passing between Mr Michael Grade and Lord Birt together with a schedule of documents relevant to the request. The BBC withheld the information, placing reliance upon the exemption under section 40 of the Freedom of Information Act 2000 ("the Act") and subsequently upheld its decision on review. The Commissioner considered the correspondence between the parties and further submissions made by the BBC to the effect that the information was not "held by the authority" for the purposes of section 3 (2) of the Act. The Commissioner viewed the information before deciding to uphold the decision of the BBC finding that the information was not 'held otherwise than on behalf of another person'. Section 40 and the request for a schedule were not considered.

The Commissioner's Role

1. The Commissioner's role is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This notice sets out his decision.

The Request

2. The complainant has advised that, in a letter of 23 February 2005, a request was made to the BBC for copies of all information falling within the following description dating from the appointment of Mr Grade as Chairman of the BBC on 2 April 2004:

"complete copies of all correspondence between Mr Michael Grade and Lord Birt."

The complainant specified that his request should include:

“..... letters, emails, faxes, and any other forms or correspondence. I believe that this request covers all correspondence both received and sent by (the adviser).”

The complainant went on to state that he would also require the BBC to provide ‘a schedule of documents which are relevant to this request.’

3. On 23 March 2005 the BBC served a refusal notice stating:

“Your request has been considered and it has been decided that the disclosure of this information must be withheld as exempt under S. 40(2)(a) and S. 40(3)(a) of the Act

In reaching this decision relevant circumstances have been considered particularly the personal nature of the correspondence, the expectation that it would not be disclosed and the absence of any material public interest in its disclosure.

In response to your request for a ‘schedule of documents which are relevant to this request’ the Act does not require us to create such a list.”

4. On 12 April 2005 the complainant wrote to the BBC seeking a review of its decision. On 25 May 2005 the BBC replied upholding its decision stating:

“I have viewed the correspondence between Michael Grade and Lord Birt and consider that all of the information within it is personal data and that the first Data Protection Principle (Fairness) would be breached if it were to be revealed.”

Section 40 of the Freedom of Information Act allows for the information to be withheld if it contravenes any of the data protection principles. I therefore agree with the decision that section 40 of the Freedom of Information Act applies in this case and that the information was correctly withheld.

It was also noted that the requester believes the BBC should produce a schedule of documents which are relevant to the information request. The Freedom of Information Act does not require the BBC to produce such a schedule.”

The Investigation

5. On 5 July 2005, the complainant wrote to the Commissioner stating:

“I am writing to lodge a complaint under the Freedom of Information Act and to ask you to investigate this complaint.

On February 23, I submitted a request to the BBC for copies of all correspondence between (the office-holder), and (the adviser), since April 2 2004

...

.....The BBC has refused to release this information and has upheld this decision upon internal review.

I am asking the Information Commissioner to investigate this decision, as I believe that the documents should be released in full. I set out the grounds in my letter asking for an internal review.”

6. On 11 July 2006, the BBC wrote to the commissioner setting out in detail its reasons for withholding the information.
7. The BBC argued that the information constituted personal data relating to Mr Grade and Lord Birt and that disclosure of the same, would breach the first Data Protection Principle ('fairness') and, therefore, that the information should be withheld as exempt under sections 40(2) and 40(3)(a) of the Act. The BBC argued that it had considered, in particular the personal nature of the correspondence, the expectation of the parties that it would not be disclosed and the absence of any material public interest in its disclosure.
8. The BBC further stated that after reconsidering the issues, it did not regard the information to have been held by the BBC "otherwise than on behalf of another person" for the purposes of section 3(2) of the Act.
9. The BBC submitted that it had no interest in, or control over what it considered to be private correspondence, not entered into on its behalf. It was also argued that in common with some of Mr Grade's other non-business related personal papers and correspondence, it was purely a matter of circumstance that it was in the possession of the Corporation.
10. In relation to the request by the complainant for "a schedule of documents which are relevant to this request" the BBC has again argued that the information is not 'held by a public authority' for the purposes of section 3(2) of the Act as it was held on behalf of another person and that, in any event, there would be no duty to compile such a list in view of the fact that Section 40(5) provides that the duty to confirm or deny does not arise if information is exempt from disclosure under section 40(1).
11. The Commissioner considered all correspondence passing between the complainant and the BBC, the representations of the parties and viewed the information withheld. Further clarification was sought from the BBC who confirmed that the correspondence to Lord Birt was addressed to his private residence.

Analysis

12. The Commissioner having considered the correspondence withheld by the BBC and is satisfied that it is of a wholly personal nature. He is also satisfied that it does not serve any official purpose and in all the circumstances that it is not information 'held' for the purposes of section 3(2) of the Act.

13. The Commissioner does not in light of the above finding consider it necessary to address the exemption claimed under section 40 of the Act within this decision notice or the request for disclosure of a schedule of documents.

The Decision

14. The Commissioner's decision in this case is that the BBC has dealt with the request for information in accordance with the Act.

Steps Required

15. In the light of the above circumstances the Commissioner does not require any additional steps to be taken by the BBC.

Right of Appeal

12. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the Fourth day of September 2006

Signed

**Richard Thomas
Information Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Materials Annex

Relevant extracts from the Freedom of Information Act 2000: -

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.

Section 3(2) provides that –

For the purposes of this Act, information is held by a public authority if –

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) it is held by another person on behalf of the authority