

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 30 May 2007

Public Authority: British Broadcasting Corporation
Address: MC3 DI
Media Centre
Media Village
201 Wood Lane
London
W12 7TQ

Summary

The complainant requested information concerning loans made between subsidiaries of the public authority. In response to this, the public authority stated that its subsidiaries are not covered by the Act. The Commissioner finds that wholly owned subsidiaries of the public authority are not subject to the Act and, therefore, information held by these subsidiaries cannot be accessed via the Act. The Commissioner also finds that recorded information falling within the scope of the request is not held by the public authority.

The Commissioner's Role

1. The Commissioner's duty 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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 7 April 2005, the following information request was made:

"Please provide details of all ongoing loans made to BBC America through BBC Worldwide Ltd."

3. The public authority responded to this on 5 May 2005. In this response, the public authority explained that its subsidiaries are not subject to the Act due to section 6(1)(b)(ii). This section provides that companies wholly owned by any public authority listed only in relation to particular information are not subject to the Act.

4. This response also stated that an internal review of the handling of this request would not be carried out as the request was for information that the public authority believed was clearly outside the scope of the Act.

The Investigation

Scope of the case

5. The complainant contacted the Information Commissioner on 4 July 2005 to complain about the handling of his information request. The complainant cited two grounds for his complaint about the handling of the above information request.
6. Firstly, the complainant disagreed with the public authority that its subsidiaries are not subject to the Act. The complainant believed that these subsidiaries are subject to the Act.
7. Secondly, the complainant disagreed with the decision of the public authority to not carry out an internal review of the handling of this request. The complainant believed that this demonstrated deficiencies in the internal review procedure of the public authority.
8. The complainant also raised issues related to an information request made within the same correspondence as that above. This request had initially been refused under section 12 as the public authority stated that to comply with this request would exceed the cost limit. This refusal was later over turned at internal review and the information requested was supplied to the complainant. As the complainant received the information requested, issues related to this information request have not been considered by the Commissioner and are not covered in this notice.

Chronology

9. The Commissioner contacted the public authority on 1 September 2006. In this letter, the Commissioner raised the issue of the complaint with the public authority and clarified that the section 12 issue would not be considered as it had been resolved previously.
10. The public authority was asked to respond providing clarification of its relationship with the subsidiaries named in the complainant's information request. Specifically, the public authority was asked to clarify whether its subsidiaries are extensions of the public authority as covered by the Act, or are separate entities.
11. The public authority responded on 16 November 2006. In its response, the public authority commented as follows about its subsidiaries:

"BBC Worldwide is a wholly owned subsidiary of the BBC. BBC Worldwide exploits the BBC's content assets, brands and intellectual property around the

world, bringing value to the BBC for the benefit of the licence fee payers. The BBC re invests the earnings from its commercial activities into public service broadcasting. BBC America is a digital cable and satellite channel based in the USA. It is wholly owned by BBC Worldwide Ltd.”

12. The public authority went on to assert that its subsidiaries, as separate entities from the public authority, are not subject to the Act as the derogation relating to information held by the public authority for the purposes of journalism, literature and art means that it is only listed in relation to particular information. The public authority believed that section 6(1)(b)(ii) provides that any company wholly owned by it is not subject to the Act.
13. The public authority also addressed the issue of whether it held information about loans made between its subsidiaries. The public authority stated that it did not hold any such information.

Findings of fact

14. BBC Worldwide is listed by Companies House as a private limited company.
15. The website of the public authority describes BBC America as wholly owned by BBC Worldwide.
16. The listing for the public authority in Schedule 1 of the Act provides that the public authority is covered in respect of information held for purposes other than those of journalism, art or literature.

Analysis

Section 17(7)

17. Within the grounds for his complaint, the complainant specified the refusal of the public authority to carry out an internal review of its handling of his request. The public authority stated that it would not carry out an internal review of its handling of this request as the information requested was clearly outside the scope of the Act.
18. The Commissioner notes the assertion of the public authority that as the request was made for information most likely to be held by organisations that fall outside the scope of the Act an internal review was not appropriate. The public authority did, however, have the option of carrying out an internal review concerning whether it held information about its subsidiary that fell within the scope of the request.
19. The Commissioner finds no breach of the Act here. Section 17(7) requires that a public authority advise of any internal review procedure that it has in place, or advise that it has no such procedure. The Commissioner considers that, in notifying the complainant that it would not carry out an internal review in relation

to this request, it in effect advised the complainant that, in relation to this information request, it did not provide an internal review procedure.

Section 6(1)

20. In order to determine whether information falling within the scope of the complainant's information request is held by the public authority, the Commissioner considered two main issues. Firstly, whether subsidiaries of the public authority are subject to the Act and, secondly, whether the public authority itself holds recorded information about its subsidiaries and that falls within the scope of the request.
21. The complainant named 2 subsidiaries in his request; BBC Worldwide and BBC America. BBC America is a subsidiary of BBC Worldwide and does not, therefore, fall within the definition of a publicly owned company provided in section 6(1). Section 6(1) provides that a company is publicly owned and subject to the provisions of the Act if it is wholly owned by the Crown or by a public authority. As BBC America is wholly owned by BBC Worldwide, itself a subsidiary of a public authority, it is not wholly owned by any public authority. BBC America is not, therefore, a publicly owned company and is not subject to the provisions of the Act.
22. The Commissioner's analysis of the status of BBC Worldwide in relation to each aspect of section 6(1)(b)(ii) is as follows:
 - **a company...wholly owned** – the public authority has acknowledged that BBC Worldwide is wholly owned by it.
 - **by any public authority listed in Schedule 1** – the public authority is listed in Schedule 1.
 - **other than any authority which is listed only in relation to particular information** – the public authority is listed 'in respect of information held for purposes other than those of journalism, art or literature'.
23. In relation to the third point above, the Commissioner has considered whether the intention of section 6(1)(b)(ii) is to exclude the subsidiaries of the public authority from the provisions of the Act. The listing of the public authority in Schedule 1 is distinct from that for all but a small number of public authorities in that it specifies particular information in relation to which the public authority is not subject to the Act.
24. The public authority asserts that this means that they are listed only in relation to particular information. The Commissioner considers that it is clear that the public authority is not covered for all information that it holds and, therefore, accepts that the public authority would fall under the definition of being listed only in relation to particular information.
25. The Commissioner has considered the wording of section 6(1)(b)(ii). It is notable that the wording of section 6(1)(b)(ii) provides a distinct 'carve out' from the requirements of the Act for subsidiaries of those few public authorities listed only in relation to particular information.

26. The Commissioner concludes that wholly owned subsidiaries of the public authority are not subject to the provisions of the Act as the public authority is listed only in relation to particular information. BBC Worldwide is not, therefore subject to the provisions of the Act and recorded information held by it cannot be accessed via the Act.

Section 1(1)

27. Turning to the issue of whether information would be held by the public authority relating to its subsidiaries, the Commissioner considered the likelihood that the public authority would hold such information. On this point, the Commissioner concludes that it is likely that the public authority would hold substantial recorded information relating to its subsidiaries concerning its own financial and organisational relationship with its subsidiaries.
28. Further to this, the Commissioner considered the likelihood of the public authority holding information falling within the scope of the complainant's request. The request specifies information about loans made between BBC Worldwide and BBC America. As noted previously, BBC America is a subsidiary of BBC Worldwide. It is not a subsidiary of the public authority.
29. The Commissioner also notes that it has been established that BBC Worldwide is a separate entity to the public authority. It is a private limited company, unlike the public authority which is publicly funded. This suggests that decisions made by BBC Worldwide would be made independently of the public authority. It follows that a decision about a loan to be made by BBC Worldwide to its own subsidiary would be taken independently from the public authority. The public authority would not be a participant in such a transaction.
30. Having recognised that the public authority would not be a participant in any loan made between BBC Worldwide and BBC America, the Commissioner considered the representations of the public authority about whether information falling within the scope of this request is held by it.
31. In its letter to the Commissioner of 16 November 2006, the public authority states that it does not hold information falling within the scope of the complainant's request. The public authority also stated that the complainant had previously been provided with information held by it concerning loans it had made to its subsidiaries, including to BBC Worldwide, but that it did not hold information relating to loans made by its subsidiaries.
32. The Commissioner concludes that the public authority does not hold information falling within the scope of this request. In forming this conclusion, the Commissioner has taken into account firstly the representations of the public authority that it does not hold recorded information falling within the scope of this request. Secondly, the Commissioner accepts the reduced likelihood of the public authority holding information about loans made between BBC Worldwide and BBC America, rather than loans made by the public authority to its subsidiaries.

The Decision

33. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act. Firstly, the Commissioner finds that, as the public authority is listed only in relation to particular information, section 6(1)(b)(ii) provides that its wholly owned subsidiaries are not subject to the Act. Secondly, the Commissioner accepts that the public authority itself does not hold recorded information falling within the scope of the complainant's request. Thirdly, in relation to the point about the public authority refusing to conduct an internal review in this case, the Commissioner finds that the public authority did fulfil the requirements of section 17(7) by advising the complainant that an internal review would not be carried out.

Steps Required

34. The Commissioner requires no steps to be taken.

Right of Appeal

35. 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

36. 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 30th day of May 2007

Signed

**Jane Durkin
Assistant Commissioner**

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