

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 8 January 2008

Public Authority: British Broadcasting Corporation ('BBC')
Address: Room 2252
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BBC White City
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White City
London
W12 7TS

Summary

The complainant requested a range of financial information about the costs incurred in relation to BBC Northern Ireland. The BBC refused to disclose information about salaries of BBC staff on the basis that it was exempt on the basis of section 40. The Commissioner has decided that whilst it would breach the Data Protection Act to disclose the exact salaries of the BBC employees concerned, disclosure of their respective salary bands would not.

With regard to the remainder of the requested information, the BBC refused to provide this information on the basis that it was held for the purposes of journalism, art or literature. Having considered the circumstances of this case the Commissioner has concluded that the BBC has misapplied the Schedule 1 derogation and that this information falls within the Act. However, the Commissioner has concluded that some of this information is exempt from disclosure on the basis of section 40 and 43, although some of this information is not exempt from disclosure and should therefore be provided to the complainant.

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'). In the particular circumstances of this complaint, this duty also includes making a formal decision on whether the BBC is a public authority with regard to some the information requested by the complainant. This Notice sets out his decision.

The Request

2. On the 19 April 2005 the complainant requested the following information from the BBC:
- (i) *How many news and continuity presenters receive more than £40,000 annually; how many receive more than £50,000 annually; how many receive in excess of £60,000. How many news and continuity presenters in total.*
 - (ii) *How many presenters (and artists) in entertainment programmes receive more than £40,000 annually; how many receive more than £50,000 annually; how many receive more than £60,000 annually; how many received more than £70,000 annually, or above.*
 - (iii) *How many producers of news, current affairs, light entertainment, sport, receive more than £40,000 annually; how many receive more than £50,000 annually; how many receive £60,000 - £70,000 and above annually.*
 - (iv) *Who is the highest paid member of staff in the BBC and what is he/she paid annually.*
 - (v) *What was BBC's taxi bill covering all areas of the Corporation for 2004. Please give breakdown, news, sport, current affairs, light entertainment etc.*
 - (vi) *What was BBC's hospitality bill (alcohol, light refreshments etc.,) covering all areas of the Corporation for 2004. Please give breakdown in relation to hospitality extended to all programme guests.*
 - (vii) *(a) What are guests who appear on the John Daly show paid. (b) Do they receive travel and accommodation costs, if so, how much in total covering the period 2004. (c) In the current series were, Keith Duffy, Louis Walsh etc paid, if so how much.*
 - (viii) *(a) What salary is Controller Anna Carragher paid? (b) How many trips did she make outside Northern Ireland last year. Please list number of trips and destinations. Please also include cost of trips, flights, accommodation, taxis etc.*
 - (ix) *What is the projected saving in BBC Northern Ireland of planned (100 is figure mentioned) job cuts?*
 - (x) *Do BBC pay fees of staff/management in relation to private car parking, fitness or health clubs or any body or organisation outside of BBC. If so, to whom, and how much.*
 - (xi) *What is the total annual cost of make-up applied to staff (separately) and those appearing on TV programmes. Do BBC staff, and in particular*

presenters, receive financial aid towards/or a clothing allowance. If so how many, and how much was spent in total last year.

- (xii) *What was the total budget for all news programmes in 2003. What is the current budget for all news programmes.'*
3. The BBC responded to this request on 5 May 2005. Information in relation to questions (viii)(b), (ix) and (x) was provided in full. Information in relation to questions (v) and (vi) was provided for non 'output-related' departments only. Information relating to salaries of producers and Anna Carragher (who at the time of the request was Controller of BBC Northern Ireland) and the highest paid member of staff at BBC Northern Ireland (i.e. questions (iii), (iv) and (viii)(a)) was withheld under section 40 of the Act. The BBC refused to provide all of the other requested information as it 'fell outside the scope of the Act because the BBC, Channel 4 and S4C are covered by the legislation only in respect of information held for purposes other than journalism, art or literature'. The BBC confirmed that it was not obliged to supply this information as it is held for the purpose of creating its output or information that supports and is closely associated with these creative activities.
 4. The BBC further advised the complainant of his right to an internal review in respect of the decisions regarding questions (iii), (iv) and (viii)(a). He was informed that no internal review procedure was available in relation to the information which was not covered by the Act. He was also informed of his right to make a complaint to the Commissioner.
 5. The complainant contacted the BBC on 30 May 2005 requesting an internal review of the relevant requests.
 6. Having not received an acknowledgement of his request for an internal review, the complainant contacted the BBC again. The BBC subsequently wrote to the complainant on 22 June 2005 and suggested that it had not actually received his letter of 30 May 2005 and asked him to confirm once again that he wanted an internal review to take place. (It is not clear to the Commissioner whether an internal review was actually carried out by the BBC).

The Investigation

Scope of the case

7. On 8 July 2005 the complainant contacted the Commissioner to formally complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the BBC's application of the Schedule 1 derogation and the BBC application of the exemptions.
8. Following its initial decision to refuse to disclose the information covered by requests (v) and (vi), the BBC subsequently decided disclose this information to the complainant on a 'without prejudice' basis.

9. The Commissioner's has therefore focussed on the BBC's decision to withhold the information covered by requests (i) to (iv), (vii)(a),(b) and (c), (viii)(a), (xi) and (xii).

Chronology

10. On 12 September 2006 the Commissioner wrote to the BBC and asked it to provide further arguments to support its position that some of the information not disclosed to the complainant fell within the scope of the derogation.
11. Having received no response to this letter the Commissioner wrote to the BBC again on 3 January 2007 asking for a response to the points raised in his letter of 12 September 2006. The Commissioner also asked the BBC to provide, without prejudice to its position on the derogation, details of any exemptions it may rely on to withhold the information should the Commissioner conclude that the derogation did not apply.
12. The BBC responded on 2 March 2007 and provided the Commissioner with detailed arguments to support its application of the derogation and details of which exemptions it considered to apply to the information requested by the complainant.
13. The Commissioner contacted the BBC again on 17 September 2007 in order to seek clarification on a number of issues in relation to the BBC's application of some of the exemptions.
14. The BBC provided this clarification in a letter dated 9 November 2007.

Findings of Fact

15. For the sake of clarity the Commissioner has classified the withheld information into the following categories:

People Costs Information

- Information about the salary and identity of highest earner at BBC NI (request iv)
 - Salary information about producers at BBC NI (request iii)
 - Anna Carragher's salary (request viii a)
16. The BBC considers this information to be exempt on the basis of section 40 of the Act.

Talent Costs Information

- Salary information about news and continuity presenters (request i)
- Salary information about presenters of entertainment programmes (request ii)

17. The BBC considers this information to fall within the scope of the derogation. In the alternative, the BBC has argued that this information is exempt on the basis of sections 40, 41 and 43 of the Act.

In-house Programme Costs Information

- Total make-up costs and clothing costs (request xi)
 - Total budget for news programmes in 2003 and current budget (request xii)
18. The BBC considers this information to fall within the scope of the derogation. In the alternative the BBC has argued that this information is exempt on the basis of section 43.

Contributor Costs

- Amounts paid to guests on John Daly Show travel and accommodation costs for guests of John Daly Show (request vii a, b and c)
19. The BBC considers this information to be another type of in-house production cost and therefore also within the scope of the derogation and exempt by section 43, and in addition also section 40.

Analysis

The Schedule 1 derogation

20. Part VI of Schedule 1 of the Act states that the BBC is a public authority 'in respect of information held for purposes other than journalism, art and literature'. This is commonly referred to as the Schedule 1 derogation. Similar provision exists in relation to Channel 4 and S4C – as a group these organisations are called public service broadcasters (PSBs).
21. In order to determine the purpose for which information is held the Commissioner will apply a dominant purpose test. This means that where information is held for a number of purposes he will weigh these purposes against each other to determine the dominant purpose for which that information is held.
22. In this case the requested information that the BBC believes is covered by the derogation is the information about talent costs, in-house production costs and contributor costs.

The BBC's view

23. The BBC believes that the Schedule 1 derogation applies broadly and therefore its scope includes information such as programme content but also extends to include multi-purpose information, such as financial information related to the cost of programme making. The BBC argue that although this financial information (including details of talent costs, in-house production costs and contributor costs)

is not in itself journalism, art or literature, this financial information is part of the production process and therefore has an obvious impact on creativity.

24. In support of this view the BBC cite three sources:

- (a) The Commissioner's view in his Provisional Decision in the case of *Sugar v Information Commissioner*, EA/2005/0032 that this sort of budgetary information deals with the 'sustenance...of the creative journalistic purpose that the designation is meant to protect'.
- (b) Evidence given by Mr Richard Sambrook, Director of News at the BBC, in relation to appeal EA/2005/0032 to the Information Tribunal. He stated that

'Questions about how you make (various) selections or the resources that are available to make selections, might be characterised on the one hand as management, but they are absolutely core to journalism and determine both the quality, nature and character of journalism.'

- (c) A letter from the Home Office to the Department for Culture Media and Sport of 13 January 2000 which states:

'the Government has sought to ensure that...including them [the public service broadcasters] in the Bill does not place them at a commercial disadvantage to their commercial rivals. The Bill therefore provides that the inclusion of the public service broadcasters does not relate to information held for journalistic, artistic or literary purposes.'

25. In summary, the BBC's position is that the talent cost, in-house production cost and contributor cost information is not held for purposes other than journalism, art of literature and therefore is outside the scope of the Act.

The Commissioner's view

26. The Commissioner has noted the arguments put forward by the BBC.

27. In the Commissioner's view the purpose of the derogation is to protect journalistic, artistic and literary integrity and to preserve a "creative space" in which programme makers can continue their core activities free from outside interference.

28. The Commissioner accepts that details of talent costs, in-house production costs and contributor costs support the creation of programme content. It is self evident that in the majority of cases some form of financial support is necessary to produce programme content. The BBC and the Commissioner agree on this point and as such he has not considered it further.

29. However, the Commissioner's view is that the requested information is also held by the BBC for operational purposes in **addition** to being held for journalistic, literary and artistic purposes. The Commissioner believes that financial information serves a number of direct purposes; for example, it is used to budget,

- monitor expenditure, identify opportunities to improve efficiency, and to comply with legal obligations.
30. In the particular circumstances of this case, the Commissioner has found it useful to understand the Royal Charter which constitutes the BBC when considering these purposes. It should be noted that the Royal Charter in existence on the date of the complainant's request for information (19 April 2005) ran from 1 May 1996 to 31 December 2006 and is known as the 1996 Charter. A new Royal Charter came into force on 1 January 2007 and is known as the 2006 Charter.
31. The Commissioner has noted the following provisions of the 1996 Charter:
- Article 7(1)(b) states that it shall be the functions of the Governors to *“satisfy themselves that all the activities of [the BBC] are carried out in accordance...with the highest standards of probity, propriety and value for money in the use of the Licence Revenue and moneys paid...”*
 - Article 18(1) states that the BBC's accounts shall be audited annually. Article 18(2) provides that the BBC *“shall...prepare an Annual Report...and attach thereto an Account or Accounts of the Income and Expenditure of the Corporation and...shall include in such Report such information relating to its finance, administration and its work generally...”*
32. Although drawing directly upon the 1996 Charter to determine for what purposes the requested information was held by the BBC in this case, the Commissioner has also considered the 2006 Charter to assist future cases. The 2006 Charter has similar provisions to the 1996 charter albeit with a new structure to reflect changes in corporate governance, via the BBC Trust, and the formalisation of the Executive Board as the executive body of the BBC with responsibility for the functions listed in paragraph 38 of the 2006 Charter; notably these include the operational management of the BBC, and the conduct of the BBC's operational financial affairs.
33. Under the 2006 Charter, the BBC Trust is the guardian of the licence fee revenue and the public interest. To fulfil this role the Commissioner understands the general functions of the BBC to include the following:
- (i) assessing the performance of the Executive Board in delivering the BBC's services and activities and holding the Executive Board to account for its performance;
 - (ii) representing the interests of licence fee payers and exercising rigorous stewardship of public money; and
 - (iii) to ensure that the Executive Board conducts the BBC's operational financial affairs in a manner best designed to ensure value for money.
34. Therefore the Commissioner believes that, as a result of both Charters, the BBC holds financial information to enable:

- (i) the Governors (and now BBC Trust) to perform their role as 'guardians' under the Royal Charter by assessing the performance of the Executive Board; and
 - (ii) the Executive Board to manage the BBC's financial and operational affairs in a manner best designed to ensure value for money.
35. Talent costs, in-house production costs and contributor costs constitute financial information and therefore serve a number of purposes in addition to that accepted by both the BBC and the Commissioner, i.e. that it supports the creation of programme content.
36. Where information is held for a number of purposes the Commissioner's approach is to consider whether the dominant purpose for holding that information is a purpose specified in the Schedule 1 derogation.
37. In this case the Commissioner considers that this information served the following purposes:
 - (i) It supported the delivery of programme content.
 - (ii) It enabled the BBC to monitor its expenditure against its agreed budget for that year.
 - (iii) It enabled the BBC to predict with some certainty the future costs of engaging talent.
 - (iv) It enabled the BBC to predict with some certainty the future costs of producing programmes in-house.
 - (v) It contributed to meeting the BBC's obligations to publish annual accounts.
 - (v) It contributed to the ability of the Governors (now the BBC Trust) and the Executive Board to perform their respective functions and operational duties under the Royal Charter.
38. The final factor which the Commissioner has weighed in coming to a decision on whether the derogation applies is whether the decision on the cost of in-house programmes and the cost of engaging talent constitutes a creative decision.
39. A creative decision would relate to the inception, planning and delivery of new content. For example, the decision to use presenter X instead of presenter Y would tend to be a creative decision, based on the reputation and standing of the entertainer in the industry, but the determination of the level of remuneration for presenter X or Y would not be characterised as a creative decision.
40. As such, the Commissioner does not consider that the requested information constitutes a creative decision.
41. After carefully balancing these competing purposes, the Commissioner finds that the information about talent costs, in-house production costs and contributor costs was, or was more likely to have been, held by the BBC for predominantly operational purposes (including financial, management and administrative purposes) and not for journalism, literature or art. As a result, Schedule 1 is not applicable to this information and the BBC is a public authority with regard to this information.

Exemptions

42. The remainder of this decision notice will deal with the application of the relevant exemptions to each type of information requested.

People Costs Information

43. The BBC has argued that the people costs information (i.e. requests iii, iv and viii a) are all exempt by virtue of the exemption contained at section 40 of the Act. The Commissioner will consider in turn whether section 40 of the Act has been correctly applied to each piece of information.

Request viii a – Anna Carragher's salary

44. Section 40(2) provides an exemption for information which is the personal data of any third party, where disclosure would contravene any of the data protection principles contained in the Data Protection Act 1998 ('DPA').

45. In order to rely on the exemption provided by section 40, the information being requested must therefore constitute personal data as defined by the DPA. The DPA defines personal information as:

*'...data which relate to a living individual who can be identified
a) from those data, or
b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

46. The Commissioner accepts that the salary which Ms Carragher was paid by the BBC clearly falls within the description of personal data as defined by the DPA because it is information which directly relates to a living individual.
47. The Commissioner notes that this request specifically asked for Ms Carragher's exact salary. However, in the analysis below the Commissioner has also given consideration to whether disclosure of the salary band within which Ms Carragher fell would be exempt by virtue of section 40. Therefore, the Commissioner is essentially making two decisions; firstly, is disclosure of Ms Carragher's exact salary exempt on the basis of section 40 and secondly, is disclosure of the BBC salary band within which Ms Carragher's salary fell exempt on the basis of section 40.
48. The BBC has argued that disclosure of Ms Carragher's salary is exempt from disclosure because to do so would breach the first, second and sixth data protection principles.
49. 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 DPA schedule 2 is met.
50. In considering whether disclosure of Ms Carragher's salary details would be unfair and therefore contravene the requirements of the first data protection principle, the Commissioner has taken the following factors into account:
- Ms Carragher's reasonable expectations of what would happen to her personal data;
 - The level of Ms Carragher's seniority within the BBC;
 - Whether Ms Carragher specifically refused to consent to the disclosure of the requested information;
 - Whether disclosure would cause any unnecessary or unjustified damage to Ms Carragher; and
 - The legitimate interests of the public in knowing how much Ms Carragher earned weighed against the effects of disclosure on Ms Carragher.
51. The BBC's position is that Ms Carragher would not expect any details of her salary to be disclosed for a number of reasons. The BBC has highlighted the fact that whilst its Annual Report includes the amount it has spent on wages and salaries in total, it only includes the amounts paid to the senior management board (the Executive Board) and the Board of Governors. There is therefore an understanding amongst BBC employees that unless they sit on either of the two Boards, details of their salaries will not be placed in the public domain. Furthermore, the BBC has noted that although there is no explicit commitment to keep salary information confidential, any information about an individual's salary is communicated to the individual in a letter marked 'personal' or 'staff private' and that monthly payslips are marked 'personal'. Therefore, the BBC contends that individual employees, including Ms Carragher, will have no expectation that details of their salaries will be disclosed to the general public.
52. On the basis of the above the Commissioner accepts that Ms Carragher would have had an expectation that information pertaining to her BBC salary would not be placed in the public domain. However, simply because an individual has an expectation that information held about them will not be disclosed, this does not necessarily mean that this expectation is reasonable or conclusive. The Commissioner's guidance on section 40 suggests that when considering what information third parties should expect to have disclosed about them, a distinction should be drawn as to whether the information relates to the third party's public or private lives. Although the guidance acknowledges that there are no hard and fast rules, it states that:
- 'Information which is about the home or family life of an individual, his or her personal finances, or consists of personal references, is likely to deserve protection. By contrast, information which is about someone acting in an official or work capacity should normally be provided on request unless there is some risk to the individual concerned.'*

53. On the basis of this guidance the Commissioner considers that public sector employees should expect some information about their roles and the decisions they take to be disclosed under the Act.
54. This approach is supported by a recent Information Tribunal decision (*House of Commons v Information Commissioner and Norman Baker MP* EA2006/0015 and 0016). This decision involved a request for information about the details of the travel allowances claimed by MPs. In its decision the Tribunal noted that:
- 'where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives'*. (Tribunal at paragraph 78).
55. The Commissioner also believes that a distinction can be drawn between the levels of information which junior staff should expect to have disclosed about them compared to what information senior staff should expect to have disclosed about them. This is because the more senior a member of staff is the more likely it is that they will be responsible for making influential policy decisions and/or decisions related to the expenditure of significant amounts of public funds.
56. The Commissioner understands that the BBC employs around 22,000 people. Within this number of employees are a number of senior managers who whilst they are responsible for making influential policy decisions and spending public funds, they are not members of either the Executive Board or the Board of Governors and therefore do not have their salaries disclosed. The Commissioner considers Ms Carragher to be such a person because at the time of the complainant's request she was the Controller for BBC NI.
57. On the basis of the above, the Commissioner believes that such senior employees at the BBC should have the expectation that some information about their salary may be placed in the public domain and that these senior employees are not limited to those who sit on the management board. Whilst the Commissioner accepts that it may be reasonable for Ms Carragher to expect that details of her exact salary would not be disclosed, he does not accept that it is reasonable or conclusive for Ms Carragher to expect that details of her salary band would not be disclosed. Such a disclosure would be consistent with disclosure of similar details by other public bodies.
58. The Commissioner understands that Ms Carragher has not explicitly refused to give her consent to the disclosure of any details relating to her salary.
59. On the basis of the above, the Commissioner is satisfied that disclosure of the Ms Carragher's salary band would not be unfair or unlawful.
60. In order to comply with the first data protection principle it is necessary to satisfy one of the conditions for processing in schedule 2 of the DPA. In this case the Commissioner considers that the most relevant condition is six. 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.'

61. The Information Tribunal in *House of Commons v Information Commissioner and Norman Baker MP* commented on how condition 6 should be interpreted and applied. The Tribunal found that the application of condition 6:

'involves a balance between competing interests broadly comparable, but not identical, to the balance that applies under the public interest test for qualified exemptions under FOIA. Paragraph 6 [i.e. condition 6] requires a consideration of the balance between: (i) the legitimate interests of those to whom the data would be disclosed which in this case are members of the public...and (ii) prejudice to the rights, freedoms and legitimate interests of the data subjects which in this case are MPs'. (Tribunal at paragraph 90).

62. The Tribunal also found that 'because the processing must be "necessary" for the legitimate interests of members of the public to apply we find that only where (i) outweighs or is greater than (ii) should personal data be disclosed'. Thus the burden of proof built into the public interest test that is applied to qualified exemptions is reversed. However, the Tribunal also noted that as a distinction can be drawn between information which relates to an individual's private life and an individual's public life, it suggested that 'the interests of the data subjects...are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives'. The Tribunal's approach to condition 6 has influenced the Commissioner's view in this case.
63. With regard to the effect of disclosing the Ms Carragher's salary, the BBC has drawn the Commissioner's attention to a number of articles in the press which contained negative comments about the salaries paid to leading presenters at BBC NI. The BBC has argued that this demonstrates that Ms Carragher could be subject to unwarranted and unwelcome press coverage including potentially personal and attacking material which may cause her distress.
64. The Commissioner acknowledges this point. However, in relation to the argument that disclosure would lead to negative press coverage the Commissioner notes that these press articles focussed on the amounts paid to presenters at BBC NI (i.e. talent costs). However, Ms Carragher's salary does not constitute talent costs, but the salary paid to a senior salaried employee of the BBC. Therefore, as there is a distinction between the two types of the information the Commissioner does not accept that is an entirely valid comparison. Furthermore, the Commissioner believes that a distinction can be drawn between the effects of disclosure of Ms Carragher's exact salary and effects of disclosure of her salary band. Clearly, disclosure of exact salary would lead to a greater infringement into Ms Carragher's privacy because it would reveal specific details of her financial situation. However, disclosure of her salary band, particularly if it was a relatively broad salary band, would have less of an infringement into her privacy.

65. The Commissioner has gone on to consider the legitimate interests of those to whom the data would be disclosed. The Commissioner believes that licence fee payers in Northern Ireland have a strong legitimate interest in access to information about the efficient and proper use of public money by the BBC. There is also a legitimate public interest in openness and transparency of public bodies in relation to the amount it pays its employees, in particular its senior managers. Given the size of an organisation such as the BBC the Commissioner does not accept that this interest is fully met by the disclosure of the salaries paid to those on the two Boards. As the Commissioner has suggested above there are clearly senior BBC employees who do not sit on the Boards but are still responsible for taking decisions involving the expenditure of significant amounts of public money, such as Ms Carragher.
66. After considering the above points the Commissioner has concluded that the legitimate interests of those to whom the information would be disclosed outweigh those of Ms Carragher with regard to disclosure of her salary band. Therefore, he believes that, in this case, condition 6(1) of schedule 2 of the DPA is satisfied. Consequently disclosure of this salary band would not breach the first principle in DPA. However, the Commissioner does accept that disclosure of the Ms Carragher's exact salary would lead to a greater infringement of her legitimate right to privacy that is not outweighed by the legitimate interests of the licence fee payers.
67. The BBC has also argued that the disclosure of the Ms Carragher's salary would breach the second and sixth DPA principles.
68. The second principle of the DPA requires that personal data shall be obtained only for one or more specified and lawful purpose, and shall not be further processed in any manner incompatible with that purpose or purposes.
69. In regard to the second principle the Commissioner does not consider that disclosure of this information in response to a request under section 1 of the Act would constitute processing incompatible with the purpose for which the information was obtained.
70. The sixth principle of the Act requires that personal data is processed in accordance with the rights of data subjects under the DPA.
71. However, after examining the information concerned and the taking into account the representations of the Trust, the Commissioner is satisfied that the disclosure of Ms Carragher's salary band would not be in breach of the sixth principle.

Request iv - information about the salary and identity of highest earner at BBC NI

72. The BBC has informed the Commissioner who the highest earner at BBC NI was at the time of the complainant's request. In considering whether this information is exempt on the basis of section 40 of the Act, the Commissioner has followed the same approach that he took in considering what information about Ms Carragher's salary should be disclosed. This is because the highest earner is also a senior manager who is responsible for spending public money and making wide

ranging policy decisions. Consequently, for the same reasons as discussed in paragraphs 44 to 71, the Commissioner has concluded that disclosure of the identity of the highest earner along with the salary band within which they fell is not exempt on the basis of section 40, although disclosure of the highest earner's exact salary is exempt.

Request iii - Salary information about producers at BBC NI

73. In request iii the complainant asked the BBC to confirm how many producers fell within certain salary bands. These salary bands referred to parameters set by the complainant rather than established BBC salary bands and were:

- Below £40,000
- £40,000 to £50,000
- £50,000 to £60,000
- £60,000 to £70,000
- Over £70,000

74. The BBC has argued that this information constitutes personal data and that disclosure of the information is exempt on the basis of section 40 of the Act because disclosure would be unfair and therefore breach the first data protection principle.

75. The BBC has argued that the number of producers falling within each of the above salary bands is personal data because there only a very small number of producers at BBC NI. Therefore, if the information was disclosed the individuals concerned would certainly be able to identify each other and an informed member of the public may also be able to draw accurate inferences from the data.

76. The Commissioner has considered these points and having reviewed the information in question accepts that it would be possible for each of the producers, and possibly knowledgeable members of the public, to identify which producer fell within which band. Therefore, the Commissioner accepts that this information constitutes personal data.

77. The BBC has explained that none of these producers are in a position to make influential policy decisions or take decisions related to the expenditure of public funds. Therefore, these individuals would not have an expectation that information relating to their salary would be disclosed and therefore to do so would be unfair and a breach of the first data protection principle.

78. The Commissioner accepts that these producers are clearly not in a senior management position such as the highest earner at BBC NI or Ms Carragher and therefore some distinction can be drawn between what information about their positions they should expect to have released about them. However, the Commissioner is of the opinion that it is reasonable to conclude that the majority of public sector salaried employees (including producers at the BBC) should have an expectation that details of their salary bands may be disclosed.

79. In reaching this conclusion the Commissioner has taken into account a number of factors. Firstly, the Commissioner is aware that under the Act the BBC has previously disclosed information about BBC salary bands and confirmation of which jobs fall within each salary band. Secondly, it is established practice by other public authorities to disclose details of the salary bands which are paid to the various positions in their organisations. Finally, the Commissioner notes that the salary bands suggested by the complainant are relatively wide and it is possible to establish by reference to the sources on the internet the average salaries for producers.¹ Furthermore, as the Commissioner has argued above, simply because an individual has an expectation that information about them will not be released, this does not necessarily make that expectation reasonable or conclusive. Therefore, the Commissioner has concluded that disclosure of requested information in relation to request iii would not be unfair.
80. As explained above in paragraph 60, in order to comply with the first data protection principle it is necessary to satisfy one of the conditions for processing in schedule 2 of the DPA. As with disclosure of details of Ms Carragher's salary, the Commissioner considers the most appropriate condition to be condition six. For same reasons outlined in paragraphs 63 to 66 the Commissioner is satisfied that condition 6(1) of schedule 2 of the DPA is satisfied. Consequently disclosure of the information covered by request iii would not breach the first principle in DPA.

Talent Costs Information

Request i - salary information about news and continuity presenters

Request ii – salary information about presenters of entertainment presenters

81. As with request iii, the complainant requested details of how many individuals fell within certain salary bands in requests i and ii. The individuals concerned are described by the BBC as talent – i.e. news presenters and presenters of entertainment shows. The salary bands in question were the same as the ones suggested by the complainant in request iii.
82. The BBC has argued that information covered by requests i and ii is exempt by virtue of the exemptions contained at section 40, 41 and 43 of the Act.
83. With regard to the applicability of section 40, the BBC's argument as to why this information constitutes personal data is the same as its argument as to why the information covered by request iii is personal data. Namely, that as there are so few presenters and artists at BBC NI to release the numbers of individuals in each band would provide such a level of detail that would be almost equivalent to providing the individuals' salaries. The Commissioner has reviewed the

¹http://www.prospects.ac.uk/cms/ShowPage/Home_page/Explore_types_of_jobs/Types_of_Job/p!eipaL?state=showocc&idno=457&pageno=2 and <http://www.connexions-direct.com/jobs4u/index.cfm?pid=57&catalogueContentID=503&render=detailedArticle>

information covered by requests i and ii and accepts that this information does constitute personal data because of the small number of people falling into the categories it would be possible for these individuals, and knowledgeable members of the public, to identify who these individuals were.

84. The BBC has argued that disclosure of this information is exempt by virtue of section 40 because disclosure would breach the first data protection principle. In its submissions to support this argument, the BBC has drawn a clear distinction between the financial information concerning salaried employees of the BBC and the financial information concerning individuals such as the talent covered by the scope of requests i and ii.
85. In the BBC's view payments made to talent are not analogous to the salaries paid to senior employees in public sector organisations. This is because the sums paid by the BBC to talent do not relate to the performance of a public function, but rather to individuals who are contracted to provide services to the BBC in an entirely private capacity. In the BBC's view disclosure of the requested information would therefore impinge on the private lives of the relevant individuals, particularly given that in the case of talent, their work forms part and parcel of their lives to such a degree that the professional and private aspects of their lives are often intertwined.
86. Furthermore, with regard to the expectations of the talent, the BBC has explained that the contracts it enters into with talent contain express confidentiality provisions which state that: 'the Broadcaster shall not at any time during the Term or afterwards disclose to anyone in circumstances whatsoever confidential information relating to the business or affairs (including programmes) of the BBC its subsidiaries and associates'.
87. The BBC has acknowledged that, strictly speaking, individuals with knowledge of talent deals are free to disclose that information. However, the Commissioner understands that in this case none of the talent covered by the scope of the request have made any public comment to such an effect. Furthermore, the BBC has explained that in fact there is very little sharing of information of this kind and that this is demonstrated by the newsworthiness of leaks to the press regarding individual talent deals. The BBC argues that if such information were commonplace it would not merit the headlines that it normally does. The BBC has also noted, on occasions where details of deals have been leaked to the press the BBC has received complaints from several agents and from talent themselves about breaches of confidentiality. Therefore, set against this context of talent costs very rarely being proactively disclosed, and the particular circumstances in which the agreements with these individuals were negotiated, the BBC believes that the individuals covered by these requests would have a clear expectation that details of their agreements would not be disclosed.
88. On the basis of the above, the Commissioner accepts that the talent involved in this case would have an expectation that details of their financial arrangements with the BBC would not be disclosed. Furthermore, and in contrast to his findings in relation the BBC's application of section 40 as discussed above, the Commissioner is also persuaded that this expectation is a reasonable one. In

reaching this conclusion the Commissioner has placed considerable weight on the fact that the relationship which talent enters into with the BBC is distinct from the relationship that salaried employees enter into with the BBC. This key distinction is based on the fact that the talent's work for the BBC is inextricably linked to their private lives and because it is not possible to separate the private and professional aspects of their lives it would be unfair to disclose how much these individuals were paid by the BBC.

89. Therefore, the Commissioner accepts that disclosure would be unfair and therefore disclosure would breach the first data protection principle. Consequently, the information covered by request i and ii is exempt from disclosure by virtue of section 40.
90. As the Commissioner has concluded that the information covered by requests i and ii is exempt by virtue of section 40 of the Act, he has not considered whether this information is also exempt on the basis of sections 41 or 43.

In-house Programme Costs Information

Request xi - total make-up costs and clothing costs

91. Section 43(2) states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person.

The BBC's position

92. The BBC has explained that all of the information falling within the scope of request xi constitutes in-production costs. That is, information which it has paid to in-house production companies to produce a variety of programmes.
93. The BBC contends that disclosure of information relating to in-house programme costs would harm its commercial interests because disclosure of this information may result in a ratchet effect among bids from independent production companies (IPCs) for licence deals in respect of similar programmes. This is because disclosure would allow IPCs to establish the minimum level of funds which were available for a particular programme or type of programme and IPCs will then have an incentive to bid beyond that level. This will prejudice the BBC's commercial interests because it will be forced to increase what it pays for those licence deals or face losing these deals. The BBC has argued that disclosure of **any** elements of a programme budget could be the basis for incurring this prejudice. This is because if further requests were made for other elements of programme costs it is directly foreseeable that entire budgets would then be disclosed. The BBC has highlighted a number of features of the market for IPCs that substantiate this argument.
94. The BBC operates within a strict commissioning regime. This regime, as detailed in its Agreement with the Department for Culture Media and Sport (see clause 52), requires the BBC to commission at least 25% of programmes through IPCs and to ensure that at least a further 25% of programming is open to competition between in-house production departments and IPCs (under clause 54 this is

known as the Window of Creative Competition – 'WOCC'). Furthermore, under clause 50 of the Agreement the BBC has to ensure that a certain proportion of broadcast content is of particular interest to persons living in that region (e.g. Northern Ireland).

95. The BBC has explained that its commissioning process ensures that bids from in-house and independent producers will always be evaluated side by side to ensure fair decision making, i.e. in-house producers are not given an advantage over external independent producers. Therefore, a competitive market effectively exists between BBC in-house producers and IPCs when bidding for commissions from the BBC. The BBC has also explained that in-house production staff whose role it is to bid for programmes would not be privy to bid information submitted to the BBC by IPCs. Moreover, very few people outside of their own companies will have knowledge of the relevant sums and although staff moving between companies may take knowledge with them, it will be current and of limited value. In addition all information is treated as confidential within the BBC and limited to those with a need to know.
96. For these reasons, the disclosure of information relating to the budget and cost of in-house programmes by the BBC alone would have the effect of creating an informational asymmetry. The BBC has argued that it is well known that the effect of such asymmetry is to change bidding strategies and to provide relative strength to the beneficiaries of the asymmetry. In support of this argument the BBC have cited Paul Klemperer's paper on Bidding Markets (http://www.competition-commission.org.uk/our_role/analysis/bidding_markets.pdf) which illustrates that a change to the relative flow of information between participants in an auction can affect the outcome of that auction. In this case where the information relates to the final cost of an in-house production it enables IPCs to ascertain with certainty what price the BBC is willing to pay in respect of a particular programme. This knowledge would then enable IPCs to increase their bids for licence deals with the BBC in order to provide the same services.
97. In order to demonstrate the likelihood of this prejudice occurring the BBC have highlighted the fiercely competitive nature of the media and entertainment industry which means that margins on programmes are very low. Consequently, a minor adjustment in the cost of an individual programme, as a result of a ratchet effect among bids from IPCs, can have a huge and deleterious effect on the broadcaster. Moreover, the BBC has highlighted the fact that since it is funded by the licence fee and has a corresponding duty to exercise careful stewardship of public money, this places it in a difficult position. In the short-term it may well be unable to afford the increased bids from IPCs. In the long term it may be that the BBC suffers an outflow of programming from IPCs and a reduction in programming quality.

The Commissioner's position

98. The Commissioner understands that the main basis of the BBC's argument as to why information covered by request xi should not be disclosed is based on the fact that disclosure of the cost of a single element of an in-house production would lead to further requests for the other costs of the programme and thus,

over time, it is possible that the entire budget of a programme would be disclosed. Once the total cost of a production was in the public domain, the BBC's commercial interests would be harmed in the way outlined in paragraphs 92 to 97.

99. In the Commissioner's opinion for this argument to be sustained the BBC has to be able to demonstrate that disclosure of the information covered by request xi would lead to further requests for costs of the component parts of a production; that the information covered by these requests will always be disclosed; and that it will be practical to combine the cost of the component parts into a useable format. If these circumstances occur, then it is possible that the total cost of a production will essentially be placed in the public domain and the prejudice outlined above may occur.
100. The Commissioner does accept that disclosure of the requested information in this case would encourage others to submit requests for details of the costs of other elements of an in-house production. This request in itself demonstrates that the public are interested in how much the BBC spends on various different aspects of a production i.e. this request asks for a variety of information including make-up costs, clothing costs, taxi costs and hospitality costs. Furthermore, the Commissioner is aware from both BBC's online register of requests it has received (<http://www.bbc.co.uk/foi/docs/responses.shtml>) and from complaints he has received about the BBC's refusal of requests, that the BBC has received a significant number of similar requests.
101. In relation to the point that disclosure of this information would enable other requesters to obtain information about the costs of other elements of an in-house production, in the Commissioner's opinion it is likely that there may be particular factors which preclude the disclosure of cost information about certain elements of an in-house production. For example, the Commissioner has issued decision notices (FS50070466 & FS50070468) in which he agrees that disclosure of talent costs, which form part of the budget for a programme, are exempt from disclosure on the basis of section 40 (indeed this decision notice also reaches this conclusion).
102. Therefore, in the Commissioner's opinion it is unlikely that *all* of the separate cost elements of an in-house production will be disclosed under the Act. Consequently, the Commissioner does not consider it likely, as the BBC has suggested, that it is directly foreseeable that entire budgets will effectively be disclosed following a number of separate requests. Therefore, in the Commissioner's opinion the BBC's argument that disclosure of certain cost elements of an in-house production would in time lead effectively to the disclosure of the total cost of an in-house production is flawed.
103. Furthermore, the Commissioner has considered whether disclosure of isolated cost information covered by requests would, in itself, be likely to prejudice the commercial interests of the BBC. Whilst the Commissioner accepts that in some cases disclosure of the overall total cost of a production may prejudice the BBC's commercial interests he does not accept that disclosure of these component cost elements would. In the Commissioner's opinion disclosure of this information

would not provide IPCs with sufficient information to allow them to formulate an alternative bid. Therefore, the ratchet effect described in paragraphs 92 to 97 would be unlikely to occur because disclosure of information covered by requests is not simply sufficient to allow IPCs to establish the price the BBC pays for certain programmes.

104. On the basis of the above the Commissioner has concluded section 43 does not provide an exemption for disclosure of the information covered by request xi.

Request xii – total budget for news programmes in 2003 and current budget

105. The Commissioner has considered whether disclosure of this information would, or would be likely to prejudice the BBC's commercial interests in the way outlined in paragraphs X to Y above. The Commissioner believes that the argument advanced by the BBC bears some similarity to those put forward in relation to the prejudice in the Information Tribunal case *John Connor Press Associates v Information Commissioner* (EA/2005/0005). In this case, the public authority, the National Maritime Museum ('NMM'), argued that disclosure of financial information relating to the commission of a piece of art would prejudice the commercial interests of the NMM. The prejudice claim arose from the fact that the NMM's bargaining position would be compromised if other artists were aware of the commission's value in this case. The Tribunal decided that prejudice might occur in this case but that this would depend on the nature of the information and the degree of similarity between the two transactions.
106. In deciding whether the section 43 exemption is engaged in relation to request xii in this case the Commissioner has also considered the previous decision notices he has issued which involved requests submitted to the BBC for the costs of other television shows. In case FS50137791 the complainant submitted a request asking for the amount of money the BBC had paid to an external production company (Flickerpix) to commission an animation series (On the Air). In his decision notice on this case the Commissioner agreed with the BBC that disclosure of the cost of the commission was exempt under section 43 of the Act. Key to the Commissioner's conclusions in this case was the argument that auctions for a specific commission cannot be viewed as a one-off; in this earlier case the Commissioner accepted that prejudice was likely because the BBC may bid for another series of On the Air, and indeed had recently decided to commission a second series.
107. Having considered the circumstances of this request carefully, the Commissioner is of the view that future transactions between the BBC and production companies (either in-house or IPC) would be very similar in nature to the BBC's commissioning of news programmes for BBC NI and that the information in question, i.e. the cost of such programmes, is key to the BBC's goal of obtaining value for money. Therefore in the Commissioner's view the argument has merit and he is satisfied that prejudice is likely.
108. A key factor in the Commissioner reaching this conclusion is the argument that the auctions for a specific commission cannot be viewed in isolation; the BBC has a clear commitment to broadcasting news programmes in BBC NI and the price

paid for such programmes in one year cannot be viewed in isolation. If the price the BBC pays its in-house production company for producing the news programmes was disclosed then the Commissioner accepts that IPCs would clearly not bid below the price the BBC paid for producing previous news programmes and therefore the affect of artificially inflating the winning bid as described in paragraph 93 would be created.

109. Section 43 is a qualified exemption and therefore subject to the public interest test under 2(2)(b) of the Act. Section 2(2) states that information is exempt information where the public interest, in all circumstances of the case, in maintaining the exemption outweighs the public interest in disclosing the information.

110. The BBC advances three broad public interest arguments in favour of the maintenance of the exemption. These are as follows:

(i) *There is a clear public interest in ensuring the BBC is able to provide quality programming and value for money in respect of its use of the licence fee. Both these objectives will be threatened if a presumption is created in favour of the general disclosure of information relating to licence deals...*

(ii) *...there is little public interest in the disclosure of licence deal information as this information only enables the public to take an informed view of whether the BBC is contracting with indies on a competitive basis if it is in the possession of licence deal information relating to commercial broadcasters. Since this information is not publicly available, information relating to the BBC is of little use.*

(iii) *...the general public interest in the transparency and accountability of the BBC in respect of its use of the licence fee is served by a broad range of oversight mechanisms, internal and external. These include the oversight of the BBC Trust, the responsibilities of which include commissioning value for money investigations into specific areas of BBC activity (Article 24(2) (i) of the Charter), the Executive Board, the responsibilities of which include conducting the BBC's operational affairs in a manner best designed to ensure value for money (article 38(1)(h) of the Charter), Ofcom and the fair trading regime and competition law in general. Indeed ... certain limited information on expenditure is provided in the Annual Report. Disclosure beyond this threatens to pose considerable harm to the BBC's commercial interests, without offering a proportionate benefit to the public.'*

111. In the Commissioner's view there are three public interest factors in favour of disclosure:

- there is a general public interest in facilitating accountability and transparency in the way public money is spent;
- there is a public interest in furthering the public's understanding of, and participation in, public debate on a topic;

- there is a public interest in facilitating accountability and transparency of public authorities for their decisions;
112. Therefore the Commissioner must balance the factors in favour of disclosure with those against. If the balance lies in favour of maintaining the exemption the information will be exempt from disclosure.
113. The Commissioner's view is that although there is a strong interest in understanding the way in which public money is spent it is not clear that disclosure in this case would be of significant benefit to the public. In order for information of this nature to be of great value to the public they would require access to information about the costs to other broadcasters of commissioning similar content. Other PSBs are subject to the Act, specifically Channel 4 and S4C, but the remainder of the broadcasting industry is not. It is possible for the public to form subjective views about the quality of a programme and therefore whether the money was well spent by, for example, combining it with publicly available information about viewing figures. However without information about other broadcaster's programme costs the requested information is of less value to the public as a whole; however it would have a particular value within the industry potentially exposing the BBC to commercial prejudice as identified above.
114. The cost of programmes broadcast by PSBs, and particularly the BBC, is of interest to the public and would aid their understanding of the industry and the difficulties that PSBs face in winning and retaining quality programming. The increased transparency would reinforce trust in the BBC as an organisation with robust controls on the way that public money is spent. However these controls are evident anyway. The BBC has a variety of mechanisms which seek to ensure value for money and high quality, for example the Window of Creative Competition is a mechanism that ensures 25% of BBC broadcasts are produced by the independent sector, and that a further 25% of broadcasts are opened to competition between the private sector and the BBC's in-house production divisions. The Trust (formerly the Board of Governors) has oversight of the way the BBC seeks to meet its corporate objectives providing a further level of internal scrutiny internally.
115. As regards transparency in the decision-making process, the Commissioner does not consider that, in the circumstances of this case, this factor carries great weight; there is already a significant amount of information in the public domain about the commissioning process and fees paid by the BBC to production companies (whether in-house or IPCs). Broadly indicative tariffs are published on the BBC's website (see <http://www.bbc.co.uk/commissioning/tv/business/tariffs.shtml>).
116. Having weighed these factors the Commissioner's view is that the balance of the public interest favours maintaining the exemption under section 43 and therefore the requested information should not be released. Overall there are real benefits from increased transparency and accountability, however these are outweighed by the damage that disclosure would be likely to cause to the BBC's commercial interests, it being more difficult to maintain quality and more expensive to procure content. Arguably these are similar factors to those affecting other public

authorities which procure goods and services in a competitive environment, for example local government and the procurement of waste management services, but such comparisons are superficial. A local authority inviting tenders for waste management services could obtain similar information about other local authorities operations in this area and competitors for services (i.e. other local authorities) would be subject to the same disclosure provisions unlike the BBC.

117. On this basis the Commissioner is satisfied that the requested information is exempt from disclosure under section 43 and that the public interest favours non-disclosure.

Contributor Costs

Request vii - amounts paid to guests on John Daly Show travel and accommodation costs for guests of John Daly Show

118. The BBC has explained that it considers this information to be a particular type of in-house production cost and exempt by virtue of the exemptions contained at sections 40 and 43 of the Act.
119. The BBC's reasoning behind why this information is exempt by virtue of section 40 is the same as why the information about talent costs information is exempt under section 40 – i.e. these individuals have a reasonable expectation that details of payments they have receive for appearing on the shows will not be disclosed and therefore to do so would be unfair (see paragraphs 83 to 89).
120. The Commissioner has considered these arguments in the context of the request vii and has concluded that it is reasonable for guests who appear on these shows to expect that details of these payments would not be disclosed. In reaching this conclusion the Commissioner is mindful of his findings in the earlier sections of this decision notice in respect of what the reasonable expectations of other individuals should be in relation their financial arrangements with the BBC.
121. However, in contrast the his findings in relation to Ms Carragher and the producers, the Commissioner notes these guests are not salaried employees of the BBC. The sums paid to these individuals do not relate to the performance of a public function which involves spending public money or taking influential policy decisions. Therefore, the Commissioner accepts that in line with his findings on the reasonable expectation of talent, the guests who appeared on these shows do have a reasonable expectation that details of payments they receive will not be disclosed. Consequently to disclose this information would be unfair and breach the first data protection principle and therefore the information covered by request vii is exempt under section 40 of the Act.
122. As the Commissioner has concluded that this information is exempt by virtue of section 40 he has not gone on to consider whether this information is also exempt by virtue of section 43.

Procedural matters

123. The complainant submitted his request on 19 April 2005 and the BBC responded on 5 May 2005. In its refusal of a number of the requests the BBC relied on the Schedule 1 derogation and therefore did not specify the exemptions under which it considered this information to be exempt from disclosure under the Act. As the Commissioner has concluded that the information covered by these requests is not covered by the Schedule 1 derogation and therefore falls within the scope of the Act, he must conclude that technically a breach of section 17 has occurred.
124. Section 17(1) requires that when a public authority refuses access to information it must specify in a notice to the applicant the exemptions on which it is refusing to the request and why, if not clear, those exemptions apply. Therefore a breach of section 17 occurred because the BBC failed to provide the complainant with a refusal notice citing the exemptions in Part II of the Act that they later relied upon.

The Decision

125. The Commissioner's decision is that the BBC failed to deal with the following elements of the complainant's request in accordance with the Act:
- The information covered by requests i, ii, vii, xi and xii is held by the BBC for a dominant purpose other than that of journalism, art or literature. Therefore the BBC has not dealt with the complainant's request in accordance with Part I of the Act in that it failed to comply with its obligations under section 1(1).
 - The BBC breached section 17 of the Act because it failed to provide a refusal notice stating which exemptions it believed applied to the information covered by the requests listed in the previous paragraphs.
 - The BBC was incorrect to rely on section 40 to withhold Ms Carragher's salary band (request viii a)
 - The BBC was incorrect to rely on section 40 to withhold the information covered by request iii.
 - The BBC was incorrect to rely on section 40 to withhold the name of the highest earner at BBC NI and details of their salary band (request iv)
 - The BBC was incorrect to rely on section 43 to withhold the information covered by request xi.
126. However, the Commissioner has decided that the following aspects of the request were dealt with in accordance with the Act:

- the exact salary of the highest earner at BBC NI is exempt from disclosure under section 40 (request iv).
- Ms Carragher's exact salary is exempt from disclosure under section 40 (request viii a).
- The information covered by requests i, ii and vii is exempt from disclosure under section 40 of the Act.
- The information covered by request xii is exempt from disclosure under section 43 of the Act.

Steps Required

127. The Commissioner requires the BBC to disclose the following information to the complainant within 35 calendar days:
- The information covered by request iii, namely, how many producers of news, current affairs, light entertainment, sport, receive more than £40,000 annually; how many receive more than £50,000 annually; how many receive £60,000 - £70,000 and above annually.
 - The information covered by request xi, namely, what is the total annual cost of make-up applied to staff (separately) and those appearing on TV programmes. Do BBC staff, and in particular presenters, receive financial aid towards/or a clothing allowance. If so how many, and how much was spent in total last year.
 - the name of the highest earner at BBC NI at the time this request was submitted and the pay band within which this person fell.
 - Ms Carragher's salary band.

Failure to comply

128. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

129. 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 8th day of January 2008

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

Relevant Statutory Obligations and Provisions

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 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

- (a) the information is exempt information by virtue of a provision conferring absolute exemption, or
- (b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of 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, or

- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).”

Section 43 provides that –

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The Data Protection Act 1998

Part I

- 1) In this Act, unless the context otherwise requires—

“personal data” means data which relate to a living individual who can be identified—

- (a) from those data, or
- (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

Schedule 1

The first principle states that:

Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless –

- (a) at least one of the conditions in Schedule 2 is met, and
- (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met.

Schedule 2

Conditions relevant for purposes of the first principle: processing of any personal data

1. The data subject has given his consent to the processing.
2. The processing is necessary— (a) for the performance of a contract to which the data subject is a party, or (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary—
 - (a) for the administration of justice
 - (b) for the exercise of any functions conferred on any person by or under any enactment
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. — (1) 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.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.

BBC resources

2006 Royal Charter

http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/royalchartersealed_sept06.pdf

2006 Agreement with Department for Culture Media and Sport

http://www.bbc.co.uk/bbctrust/assets/files/pdf/regulatory_framework/charter_agreement/bbcagreement_july06.pdf

1996 Royal Charter

http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/BBcs_royal_charter.pdf

1996 Agreement with the Department of National Heritage

http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/Agreement.pdf

2003 Amended agreement with Department for Media Culture and Sport

http://www.bbc.co.uk/foi/docs/bbc_constitution/bbc_royal_charter_and_agreement/Amendment_to_the_Agreement.pdf