

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2017

Public Authority: The British Broadcasting Corporation ('the BBC')

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

Decision (including any steps ordered)

1. The complainant requested information on television licensing. The BBC responded with a full answer. The Commissioner's decision is that the BBC does not hold any further information and that appropriate advice and assistance was provided in this case. The Commissioner does not require the BBC to take any steps.

Request and response

2. On 30 August 2017 the complainant requested information concerning TV Licences:

'Please can you provide any information that would help the Public understand whether they require a TV Licence to view live streamed content via the Internet from TV services that are not accessible within the UK via satellite TV, cable TV or terrestrial TV.'

3. On 27 September 2017 the BBC responded:

'Please note that "TV Licensing" is a trade mark used by companies contracted by the BBC to administer the collection of television licence fees and enforcement of the television licensing system. The majority of the administration of TV Licensing is contracted to Capita Business Services Ltd ('Capita'). Over-the-counter services are provided by PayPoint plc ('PayPoint') in the UK, and by the Post Office in the Isle of Man and Channel Islands. Marketing and printing services are contracted

to Proximity London Ltd. Media services are contracted to Media Planning Limited trading as Havas Media UK. The BBC is a public authority in respect of its television licensing functions and retains overall responsibility.

As you are aware, the Act gives a general right of access to all types of recorded information held by public authorities; and we are not required to create new information to respond to a request, or give a judgement or opinion that is not already recorded.

Please be advised that recorded information relevant to your request is published on the TV Licensing website at the following web-links:

<http://www.tvlicensing.co.uk/check-if-you-need-one/topics/Live-TV-and-how-you-watch-it>

4. The complainant requested an internal review on 27 September 2017 as the information appeared to contradict previously supplied information and he was not happy that the duty to provide advice and assistance had been engaged.
5. The BBC sent the outcome of its internal review on 20 October 2017 upholding its position and providing further clarification. Under section 21 of FOIA, it explained that all the information held by the BBC on the matter is publically available on the Television Licencing website:

'The hyper-link provided to the applicant confirmed the following;

Do I need a TV Licence to watch live TV programmes from outside the UK or Channel Islands?

You need a TV Licence to watch or record live TV programmes on any channel or device, no matter where they are broadcast or distributed from. This includes satellite or online streamed programmes from outside the UK or Channel Islands, such as sporting events and foreign shows.

As such, the BBC does not hold any additional or supplementary information to assist the applicant.'

6. The BBC also considered that the duty under section 16 (to provide reasonable advice and assistance) had been met.

Scope of the case

7. On 20 October 2017 the complainant wrote to the Commissioner. He argued:

'I have asked the BBC in two ways whether a TV Licence is required to access foreign TV channel via Internet Streaming. Until March 2016, the answer, "No", was provided on the TV Licensing website. This has subsequently been replaced by other text that implies that the answer is "Yes". I originally asked for information pertaining to this change and was told that there had been no change to the law. I raised this, second request, to confirm the implication of that response that the present answer was wrong, and have been told that the present answer is correct. Please can you investigate how the BBC has dealt with this seemingly simple request?'

8. The Commissioner understands that this request follows a previous request by the complainant to the BBC on the subject of Television Licences and as indicated above the complainant is concerned that the responses have changed. However, it is not within the remit of the Commissioner to compare responses from a public authority on two similar requests or to make a judgement on whether one response is more accurate than another. The Commissioner will only consider if the public authority has complied with FOIA with regard to each specific complaint that has been brought to her attention under section 50 of FOIA.
9. Therefore the Commissioner has considered that the scope of the case is whether sections 1, 16 and 21 of FOIA were applied correctly by the BBC.

Reasons for decision

Section 1

10. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
11. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities.
12. In other words, in order to determine such complaints the Commissioner must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).

13. As is the practice in a case such as this, the Commissioner asked the BBC a number of questions to confirm/establish if further information is held.
14. In response to the Commissioner's questions about the location of the information, the BBC confirmed that it did not hold any further recorded information falling within the scope of the request:

'The Television Licensing Unit (TVL) is responsible for all matters related to the Television Licence and applicable rules and regulations. TVL conducted the appropriate searches. The information requested was available within the public domain.'

15. Having considered the BBC's responses to the Commissioner's investigations, the Commissioner is satisfied that, on the balance of probabilities, the BBC does not hold any further recorded information within the scope of the request.

Section 21

16. Section 21 of the FOIA says that information is exempt from disclosure under the FOIA if it is already reasonably accessible by other means.
17. It is quite clear to the Commissioner, from the BBC's responses to the complainant and its submission to her, that the information requested is already publicly available on the Television Licensing website and that the BBC has provided the complainant with both the web page link and the specific question and answer.
18. Therefore, the Commissioner is satisfied that the information is reasonably accessible to the complainant.

Section 16

19. Section 16(1) of the FOIA provides that a public authority should give advice and assistance to any person making an information request. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice (the "code")¹ in providing advice and assistance, it will have complied with section 16(1).

¹ <http://www.justice.gov.uk/downloads/information-access-rights/foi/foi-section45-code-ofpractice.pdf>

20. The Commissioner has considered the provision of advice and assistance by the BBC in this case. The BBC explained that it did not hold information of the type requested, directed the complainant to a web link on the Television Licensing website and then provided the specific part of the web link that responded to the request.
21. The Commissioner considers that this satisfies the requirements of the Secretary of State's Code of Practice issued under section 45 of the Act, and therefore the duty at section 16 of the Act.

Right of appeal

22. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

23. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
24. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

**Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**