

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 January 2014

Public Authority: The British Broadcasting Corporation

Address: 2252 White City
London W12 7TS

Decision (including any steps ordered)

1. The complainant has requested information relating to the television licenses of the Royal Palaces and Westminster.
2. The Commissioner's decision is that The British Broadcasting Corporation (the BBC) has correctly applied section 40(2) of the FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 3 December 2013, the complainant wrote to the BBC and requested information in the following terms:

"I would like to know if the Royal Palaces, including Westminster have licences for all of their Televisions, and if you scrutinise and check in the same way as for residential or commercial premises."

5. The BBC responded on 3 January 2013 requesting further clarification in relation to the definition of 'Royal Palaces' and 'Westminster', specifically, a list of postcodes for the addresses that were relevant to the request. It also stated that even if the relevant postcodes were defined, it may still be unable to provide the information due to the Data Protection Act 1998 (DPA).
6. The BBC also provided extracts from the BBC TV Licensing Crown Immunity Policy.

7. The complainant wrote again to the BBC on 5 January 2013 asking:

"Are you proactively making, and then following up on licensing requests to these premises, and how many requests were made in the last 2 years to how many 'properties' within the palaces/government residences?"

The postcodes are:

SW1A 1AA; PE35 6EN; SW1A 1BA; AB35 5TB; SL4 1NJ; EH8 8DX; EC3N 4AB; TW9 3AB; GL8 8PH;

SW1A 1BS; SE1 7JU; TW9 1PQ; TW8 8JF; PH2 6BD; SW1A 0AA; SW1A 2AA; SW1A 2AB; SW1A 2DY"

8. The complainant also stated: *"I am appealing the response as you have not furnished me with the information I requested in respect of the postcodes I presented. You made a broad point about BBC policy rather than address my specific question. You did answer my question regarding dispensations and you responded that there had been none.*

Therefore I would have expected to know how many licenses have been purchased in the past two years for the relevant properties.

I am attaching a spreadsheet from the Royal Borough of Kensington and Chelsea and we can ascertain that there are 38 staff, et al apartments in Kensington Palace, therefore, you should have been able to advise me that there were 38 licenses for that property and its constituent parts, or persistent attempts by you to investigate where there is no license, at those properties. This is the information I am entitled to and you have actively avoided providing, and this is a breach of the act."

9. The BBC responded on 22 February 2013. It stated that in relation to the second point it had clarified TV Licensing's obligations under the Communications Act and outlined the general steps it takes in relation to addresses where it believes a TV Licence is needed.
10. However, the BBC acknowledged that it could have provided greater assistance by clarifying that any information in relation to investigations undertaken to determine the licensable status of an address would be withheld under section 40(2) of the FOIA.
11. The BBC further stated that the request regarding how many licenses have been purchased in the past two years for the relevant properties had not been in the previous request, but stated that this would also be exempt from disclosure under section 40(2).

12. With regard to the spreadsheet sent to the BBC, it stated that it considered this to be an illustrative example rather than a request for information as the post code it related to was not included in the list of postcodes referenced in the original request. It further stated that information relating to licences held at these addresses would also be exempt from disclosure for the reasons outlined previously.
13. On 26 February 2013 the complainant wrote to the BBC stating: "*I would like to escalate the matter to a senior Manager as is the final process before the ICO.*

I initially asked for license details for all royal palaces including government buildings, therefore John Bercows (Speakers) cottage accommodation attached to House of Commons (Palace of Westminster).

You requested postcodes for these addresses and I responded with the same, although I did omit W8 4PX, which is Kensington Palace and I would appreciate that this forms part of the request.

As your colleague has indicated that individual properties are 'attached' to individuals this would be exempt from the act, then I should appreciate statistical information which is none specific to individuals but to the collective entity of a postcode. Therefore out of the 37 properties that make up the postcode W8 4PX, and have been identified as none Royal occupied domestic and working domains, it should be appropriate to say for example that 90% of these 37 properties have a license. You do not need to allude to individual domains but generically to the postcode which carries those domains.

Similarly there are (and this information is in the public domain) 188 staff bedrooms and 92 offices, in Buckingham Palace (SW1A 1AA) so in theory there should be approximately over 200 licenses give or take for National average reasons for none possession. Thus a percentage of licenses per abode does not breach the code as it is none specific and is not attributed to individuals."

14. The BBC acknowledged the correspondence and indicated that it was treating part of it as a new request, specifically:

"I should appreciate statistical information which is none specific to individuals but to the collective entity of a postcode..."

15. On 20 March 2013 the BBC confirmed that it was carrying out an internal review into its original response, and that it had mistakenly acknowledged the email as a new request, rather than a request for an internal review.

16. The BBC sent the outcome of its internal review on 22 May 2012 upholding its original position. In addition it also stated that it considered section 31 of the FOIA to be applicable to part of the request, namely:

"statistical information which is none specific to individuals but to the collective entity of a postcode".

Scope of the case

17. The complainant contacted the Commissioner on 23 July 2013 to complain about the way his request for information had been handled. However, the Commissioner had insufficient information to pursue the matter at that time.
18. The complainant advised that he did not have copies of all the relevant correspondence and the required information was subsequently provided by the BBC on 11 September 2013
19. The Commissioner considers the scope of this case to be to determine if the BBC correctly applied sections 40(2) and 31 to the withheld information.

Reasons for decision

20. Section 40(2) of FOIA states that personal data is exempt from disclosure if its disclosure would breach any of the data protection principles contained within the Data Protection Act (DPA). The BBC argued that disclosure of the withheld information would be unfair and thus breach the first data protection principle which 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.'

21. Clearly then for section 40(2) to be engaged the information being withheld has to constitute 'personal data' which is defined by the DPA 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.'

22. Post codes identify groups and tiers of addresses. They are comprised of two parts. The first half is known as the outbound postcode and identifies the post town. The second half is the inbound and will identify a limited number of addresses and in some cases an individual address. Since there is a risk that individuals could be identified from a full postcode the Commissioner considers it responsible to err on the side of caution.
23. The BBC has provided the Commissioner with a copy of the withheld information. Having reviewed this, the Commissioner considers that, along with information already publically available, a third party would be able to identify individual addresses, and therefore individuals themselves. The number of addresses are sufficiently few in each postcode area to enable individuals to be identified by a straightforward process of elimination.
24. The BBC further explained that it had considered if it could disclose the information in a different format for example as a percentage, but concluded that it would not. It stated that some of the postcodes submitted by the requestor relate to single addresses. It would therefore be identifiable from the statistical information that the occupier of that residence does or does not hold a TV licence. Where a single postcode relates to multiple addresses, the BBC considered that this data may be used to derive personal information about the occupants of those postcodes. The BBC referred the Commissioner to his decision notice FS50169424¹ which supported their position.
25. Having found that the withheld information constitutes personal data, the Commissioner must therefore consider whether disclosure of this information would breach the first data protection principle and thus be exempt from disclosure on the basis of section 40(2).

¹ http://www.ico.org.uk/~//media/documents/decisionnotices/2008/FS_50169424.ashx

26. In deciding whether disclosure of personal data would be unfair, and thus breach the first data protection principle, the Commissioner takes into account a range of factors including:
- The reasonable expectations of the individual in terms of what would happen to their personal data. Such expectations could be shaped by:
 - what the public authority may have told them about what would happen to their personal data;
 - their general expectations of privacy, including the effect of Article 8 of the European Convention on Human Rights;
 - the nature or content of the information itself;
 - the circumstances in which the personal data was obtained;
 - particular circumstances of the case, e.g. established custom or practice within the public authority; and
 - whether the individual consented to their personal data being disclosed or conversely whether they explicitly refused.
 - The consequences of disclosing the information, i.e. what damage or distress would the individual suffer if the information was disclosed? In consideration of this factor the Commissioner may take into account:
 - whether information of the nature requested is already in the public domain;
 - if so the source of such a disclosure; and even if the information has previously been in the public domain does the passage of time mean that disclosure now could still cause damage or distress?
27. Furthermore, notwithstanding the data subject's reasonable expectations or any damage or distress caused to them by disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
28. In considering 'legitimate interests' in order to establish if there is such a compelling reason for disclosure, such interests can include broad general principles of accountability and transparency as well as case specific interests. In balancing these legitimate interests with the rights of the data subject, it is also important to consider a proportionate approach, i.e. it may still be possible to meet the legitimate interest by

only disclosing some of the requested information rather than viewing the disclosure as an all or nothing matter.

The BBC's position

29. The BBC confirmed that it considered that several of the data protection principles, including the first principle; that data be processed fairly and lawfully, would be breached if the withheld information were to be disclosed.
30. It further explained that the first data protection principle would be contravened by disclosure of the withheld information for the following reasons:
 - The TV Licensing database is a relational database between the Licence status, address and the parties associated with the address. The address classification is an assessment made by TV Licensing from a variety of sources including, but not limited to, the Royal Mail's Postal Address Finder ('PAF') and individual licence fee holders.
 - Data contained in the TV Licensing Database is collated for the specific purpose of administering the Licence Fee. The TV Licensing Privacy Policy states that the BBC will not share TV Licence holders' personal data with any third party without their express permission. Therefore, disclosure of addresses containing personal data to the requestor would be clearly outside those individuals' reasonable expectations that providing their information to the BBC for the purpose of a TV licence would not result in their information being disclosed to third parties such as the requestor.
 - In addition, the BBC's Privacy Policy states that personal information will not be shared with third parties without the individual's consent. Thus, given the statements in both the BBC and TV Licensing Privacy Policies, the BBC considers that such a disclosure would result in a breach of the first data protection principle, fairness.
 - Further, when the responsibility for TV Licensing passed from the Home Office to the BBC one of the terms of that transfer was that the TV Licensing Database must only be used for the administration of the television licensing system.
31. The BBC reminded the Commissioner that he has previously written to them setting out his view on the first principle of the Data Protection Act 1998, citing the case of *House of Commons v ICO & Norman Baker MP*

(EA/2006/0015 & 0016) (this case concerned allowances that were claimed by, and paid to, public officials in respect of the performance of their public duties).

32. In this case, the Information Tribunal accepted the approach of the Commissioner's Guidance on the principle of fairness that recognises in determining fair processing, regard can be had as to whether the personal data relates to the private or public life of the data subject to whom it relates. The BBC submitted that the *Baker* case reinforces the position that to disclose the personal data of a private individual, would be unfair and against principle one of the Data Protection Act 1998.
33. Furthermore, the Commissioner's guidance on section 40 suggests that in considering information third parties should expect to have disclosed about them, regard should be had to their expectation of how information provided for TV licensing purposes only, would be processed, and whether they would reasonably expect it to be disclosed to the requestor.
34. The BBC considered a number of factors in assessing whether disclosure would be unfair/unlawful. It has also explained the information data subjects are given regarding use of their data via the TV Licensing's Privacy Policy (paragraph 20 above). The BBC submitted that individuals would reasonably expect the BBC only to use the data for the purposes of licence fee administration; namely, the BBC's processing of their data to fulfil its statutory responsibility, as the relevant licensing authority, to collect and enforce the TV Licence fee. In other words, the personal information contained in the database is not processed for any purposes other than those required to perform its statutory duty.
35. The BBC further explained that where personal information is gathered from sources other than PAF, the BBC's submission is even more pertinent as there will be a greater expectation that the information is not shared.
36. In the BBC's view, it would therefore be inconsistent with the fair processing obligations set out in the Data Protection Act 1998 to release the requested information on the number of TV licences held. People living in addresses located within the postcodes specified by the requestor have a reasonable expectation that this data is disclosed in a manner that is not inconsistent with TV Licensing's Privacy Policy. Equally, it would not be fair or reasonable to disclose personal information relating to the private lives of the individuals, to either the requestor or to the general public.
37. The BBC also noted that disclosure of this data could hinder its ability to obtain accurate address data as members of the public may be reluctant

to supply new address information if there is a risk that this may be disclosed for any purpose other than licence fee administration. Disclosure would also erode the public's trust in the BBC and consequently may be detrimental to public perceptions of its administration of the licence fee.

38. The BBC considered that to release the requested information into the public arena without any control over its future use could result in the data being used in many other ways that would not meet the data subjects' legitimate expectations when they provided the data to the BBC.
39. The BBC noted that "it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure." Notwithstanding, that section 40 is not subject to the public interest balancing test, the BBC does not consider that there is a compelling argument in the public interest here and indeed it is difficult to see what useful purpose would be served by disclosure of the personal data in question. The BBC can only conclude that there is no legitimate interest that would justify an intrusion into the private lives of these individuals.
40. In light of the BBC's submissions, the Commissioner accepts that TV licence holders would have a reasonable – and weighty – expectation that the details about their licence held by the BBC would not be disclosed. In any event, disclosure of this material would reveal something about the residents of the particular properties. The Commissioner is also of the opinion that, beyond a very generic public interest in public authorities being transparent, it is difficult to see how disclosure of the withheld information would meet any specific public interest. The Commissioner has therefore concluded that disclosure of the withheld information would be unfair and thus is exempt from disclosure on the basis of section 40(2) of FOIA.
41. Given the above, that the BBC correctly applied section 40(2) to all the withheld information, the Commissioner has not gone on to consider the application of section 31.

Right of appeal

42. 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: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

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

43. 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.
44. 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
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