

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 May 2014

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

Address: 2252 White City
201 Wood Lane
London
W12 7TS

Decision (including any steps ordered)

1. The complainant has requested the names of the employees who received complimentary tickets to Wimbledon in exchange for a donation to charity. The Commissioner's decision is that the BBC has correctly applied section 40(2) to the withheld information.
2. The Commissioner does not require the BBC to take any steps.

Background

3. The Wimbledon Championships is the oldest tennis tournament in the world and the BBC has broadcast coverage since 1927. It is normal business practice for broadcast rights holders to be provided with complimentary tickets to such sporting events.
4. The BBC uses this allocation for legitimate business purposes; for staff reward in recognition of exceptional work; and any complimentary tickets remaining are offered to other individuals (mostly BBC staff) in return for a charitable donation equivalent to the face value of the ticket(s).
5. In 2013 the BBC distributed 100 complimentary tickets across the two-weeks of the Wimbledon Championships in return for a face value donation to Sport Relief.

Request and response

6. On 12 July 2013, the complainant requested information under the FOIA relating to the Wimbledon tennis championships in 2013. The seventh question was:
 7. *How many tickets did the BBC distribute to staff or external companies each day by court not for production purposes broken down by complimentary, or exchanged for a donation to charity, and the names of the people who received the tickets and whether they were complimentary or in exchange for a donation to charity, and if so which charity'*
7. On 6 August 2013 the BBC responded with full answers to all 7 questions but withheld some information on the complimentary tickets allocated to individuals in return for a charitable donation under section 40(2) of FOIA.
8. On 14 August 2013, the complainant requested an internal review on *'Part 7 of my request, specifically the withholding of the names of the ten individuals who made charitable donations to obtain their tickets for the final day.'*
9. On 11 February 2014 the BBC provided the outcome of the internal review. The BBC upheld their decision to withhold the names of the four employees who acquired the 10 tickets for Centre Court on the final day of Wimbledon by making a charitable donation to the face value of the ticket. The BBC cited the exemption section 40(2) of the FOIA. However, the BBC volunteered that eight tickets were allocated amongst 3 senior managers and 2 tickets to a member of staff within the junior grades 3-11 category.

Scope of the case

10. On 22 March 2014 the complainant contacted the Commissioner to complain about the way his request for information had been handled and to argue that the names should be in the public domain. He raised an apparent inconsistency as in a similar request to the BBC (relating to tickets for Glastonbury) the BBC had provided the requested information, including the names of the 3 Executives who received free passes.
11. The Commissioner wrote to the complainant on 7 April to clarify the issue under investigation. On 15 April, the complainant replied that he would withdraw his request for the name of the junior employee.

12. Therefore, the scope of this case is to determine if the BBC has correctly applied section 40(2) of the FOIA to the names of the 3 senior managers who secured 8 tickets for Centre Court on the final day of Wimbledon by making a charitable donation to the face value of the ticket.

Reasons for decision

Section 40(2) – Third party personal data

13. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the DPA.

Is the withheld information personal data

14. Personal data is defined by the DPA as any information relating to a living and identifiable individual. The names of the individual employees are clearly personal data.

Would disclosure breach the Data Protection Principles?

15. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
16. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

17. The Commissioner has issued guidance about requests for personal data about public authority employees:
http://www.ico.gov.uk/for_organisations/guidance_index/~media/documents/library/Environmental_info_reg/Practical_application/section_40_requests_for_personal_data_about_employees.ashx
18. This guidance talks about whether the information requested relates to them as an individual or in their professional role, and is information contained in their personnel file as opposed to actions they have taken in carrying out their job. It also suggests consideration should be given to whether the employees are senior within the organisation or have a public facing role. The more senior

the individual and/or the more public facing their roles are the greater their expectation should be that information about them would be released and the more likely it would be to conclude that it would be fair to do so. The BBC has confirmed that the roles of the 3 individuals are senior roles.

19. However, the BBC has made it clear that the 3 employees did not attend Wimbledon in a public capacity in any way. They attended on the Sunday, in their own time and in a personal capacity:

'The individuals were not carrying out their professional roles on behalf of the BBC and were free to invite anyone they wanted to attend with them. The individuals were not provided with a list of fellow attendees, or told of the names of the individuals attending from external organisations for business purposes. There is no expectation on anyone who receives complimentary tickets in return for a face value charitable donation to make business contacts or to behave at the event in any other way than if they had purchased tickets through the general public sale.'

20. The senior employees expect their professional and business decisions to be disclosed, but the BBC argued that their donations to the charity should remain private and referred to the decision of the First-Tier Tribunal (*Montague v The Information Commissioner*, EA/2011/0177, 2012) that accepted the Information Commissioner's argument that a donation to charity is ordinarily to be regarded as a private matter. (Decision notice FS50353245 – Charity Commission)

21. The BBC explained that employees attending in a business capacity did not pay or donate to charity for their tickets and in this case the names had already been disclosed. However,

'It is not standard practice for the BBC to release the names of individuals who receive complimentary tickets in return for a donation to charity, and there is no proposal for it to do so... (to ask for consent) to the release of his name in circumstances where he attended an event in his own time in a personal capacity. This is quite a different situation and we do not consider that disclosure would be a justified interference with his right to privacy'

22. The Commissioner understands that the BBC would not routinely make public such information and the individuals in this case have not consented to such a disclosure.

23. The BBC were asked to explain the apparent inconsistency between this case and a previous request where the BBC released the names of *'11 members of staff for whom the BBC helped to facilitate, but did not pay for, the purchase of 29 tickets to the Glastonbury Festival'*.

The BBC explained that it considers each request on the facts of the case and in this case the 3 senior managers objected to the disclosure on the basis that they attended in a private capacity.

24. Therefore, the Commissioner accepts that the individuals who took the opportunity to obtain tickets for an event that they attended in a private capacity in their own time, have a reasonable expectation that their names would not be disclosed to the public under FOIA.

Consequences of disclosure

25. The BBC provided the Commissioner with an explanation as to the possible consequences of disclosure.

...there have been several stories published in the media about the BBC's allocation of complimentary tickets to events. This coverage will often identify the individuals involved personally and can be negative in tone. In these circumstances we believe that it would be unfair to focus on these three individuals. Although these individuals hold senior roles within the BBC, the intrusion into their private lives would be disproportionate when their attendance was not in the course of their duties, and particularly where there is no suggestion or evidence of wrongdoing to justify such interference.'

26. In addition, disclosure could have the unintended consequence of discouraging individuals in the future from taking this opportunity to attend Wimbledon.
27. The Commissioner is satisfied that disclosure under FOIA would be contrary to the expectations of the 3 individuals. Therefore he considers that disclosure of this information would be an invasion of the privacy of the individuals, and as such may cause them some distress.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

28. Notwithstanding a 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 there is a more compelling public interest in disclosure.
29. However, the Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interests of the members of staff concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.

30. The BBC states that it is open about why and the number of complimentary tickets it receives to sporting and other cultural events as a broadcaster and how it allocates these tickets. However, the BBC argued that focusing on the 3 names for one day in one event does not promote the public interest to any significant extent and does not *'help the public to understand why the BBC receives complimentary tickets.'*
31. The Commissioner accepts that there is a general public interest in terms of the transparency and accountability of public sector organisations. However, the Commissioner does not consider that in this case any legitimate public interest extends to the disclosure of the 3 names requested by the complainant as it adds nothing to the transparency or accountability of the BBC on the allocation of complimentary tickets.
32. Balancing the above, the Commissioner is satisfied that the data subjects would have no reasonable expectation that the information in question would be disclosed to the world at large. Their attendance was in a private capacity and their donations were a private matter.
33. Therefore, the Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds the BBC's application of the exemption provided at section 40(2) of the FOIA.

Conclusions

34. The Commissioner is satisfied that it would be unfair to provide information concerning the 3 names of senior managers who secured 8 tickets for Centre Court on the final day of Wimbledon by making a charitable donation to the face value of the ticket. Such disclosure would contravene the first data protection principle and would not be fair.
35. The Commissioner is therefore satisfied that the BBC was correct to refuse to disclose this information under section 40(2) of the FOIA.
36. As the Commissioner is satisfied that providing the requested information would contravene the first data protection principle, he has not gone on to consider the other data protection principles.

Other Matters

37. The Commissioner notes the long delay between the request for an internal review (14 August 2013) and the outcome of the review on

11 February 2014. This has been explained as a lack of staffing resources which has now been rectified.

38. The Commissioner's guidance explains that when a public authority receives an internal review request, it should ensure the review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.
39. The Commissioner notes that in this case the BBC took over 5 months to respond to the internal review request. The Commissioner would advise the BBC to follow his guidance on this matter to ensure good practice when dealing with internal review requests.

Right of appeal

40. 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

41. 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.
42. 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
Water Lane
Wilmslow
Cheshire
SK9 5AF