

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 27 March 2007

Public Authority: British Broadcasting Corporation
Address: MC3 D1
Media Centre
Media Village
201 Wood Lane
London
W12 7TQ

Summary

The complainant requested the amounts paid by the BBC to six insurers engaged by the BBC between 1995 to the present day. The BBC refused to disclose this information as the information requested was subject to section 43 of the Act – prejudice to commercial interests'. The Commissioner's review of the application of section 43 found that the exemption was not engaged in respect of the information requested as the public authority had not demonstrated that disclosure would, or would be likely to, prejudice the BBC or the insurers' commercial interests. The Commissioner's decision is to uphold the complaint and order the BBC to disclose the requested information within 35 calendar days from date of this notice.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Complainant has advised that on the 25 September 2005 he requested the following information from the BBC:

"The names of all Insurance Brokers engaged by the BBC, worldwide, since 2003 and the names of all Insurance Companies who provide employer liability insurance to the BBC"

3. The BBC responded on the 3rd October 2005 informing the complainant that it was unable to supply a list of all insurers as it did not hold a comprehensive list and to obtain one would take more than two and a half days work, under section 12 of the Act if the cost of complying would exceed the appropriate limit, which equates to two and a half days work, a public authority is under not obligation to handle the request.
4. The BBC did supply a list of the 'lead' insurers to the complainant, who were engaged by the BBC during the time period specified in his request.
5. On the 15 December 2005 the complainant made an additional request for the precise dates six of the 'lead' insurers had been engaged by the BBC and how much money was paid to each one, on each occasion.
6. The BBC responded to this request on the 15 January 2005, it provided the complainant with dates of engagements for each service supplier but refused to disclose the amounts paid under section 43(2) of the Act. The BBC stated that the disclosure of the information would prejudice the BBC's ability to negotiate and secure contracts for similar services both in terms of current negotiations and in the future.
7. In considering the public interest the BBC stated that whilst it recognised that there was a public interest in ensuring the BBC obtains value for money in the award of insurance contracts this is not achieved through disclosure of fees paid to insurers. Disclosure would mean the BBC could not secure the best possible terms and would not, therefore, offer the best value for money. The public interest in value for money, it argued, lies in the open procurement process.
8. On the 15 January 2006 the complainant requested an internal review specifically asking the BBC to reconsider its application of the exemption under section 43.
9. The BBC conducted an internal review and responded to the complainant on the 9 February 2006 confirming its original decision not to disclose the requested information.

The Investigation

Scope of the case

10. On 14 February 2006 the complainant contacted the Commissioner to complain about the BBC's refusal to release the amounts paid to the six insurers engaged by the BBC, under section 43 of the Act.
11. The Commissioner's investigation focused on whether the BBC was justified in relying on the exemption under section 43 of the Act as its basis for withholding the amounts paid to the six insurers, as requested by the complainant.

Chronology

12. The Commissioner began his investigation by writing to the BBC on the 12 January 2007 asking for further clarification as to how the information would, or would be likely to, prejudice the BBC's commercial interests and for a copy of the information being withheld.
13. The BBC responded on the 12 February 2007 explaining why it considered disclosure of the information would prejudice its, and the insurers' commercial interests and enclosing a copy of the information being withheld. The BBC also offered to disclose a 'headline' figure of the total amount paid to the insurers during this period to the complainant.
14. On the 14 February 2007 the Commissioner contacted the complainant and informed him that the BBC was now prepared to disclose some further information.
15. On the 16 February the BBC disclosed to the complainant the amount in total paid by the BBC to the six insurers.
16. On the 17 February 2007 the complainant contacted the Commissioner to inform him that the information supplied by the BBC did not satisfy his request and asked the Commissioner to continue his investigation into the refusal to disclose the amount paid individually to the six insurers.
17. The Commissioner wrote again to the BBC on the 21 February 2007 to inform the BBC that the information supplied had not satisfied the complainants request and to ask the BBC further questions around the application of the exemption under section 43.

Findings of fact

18. The request is for the amounts paid to six insurers by the BBC for their services. Of these six insurers all but one of is currently engaged by the BBC.
19. The BBC – correctly in the Commissioner's view – interpreted this request as covering insurance brokers (who purchase insurance on behalf of their clients) and insurance companies who write the insurance contracts themselves. In this Notice, the word "insurer" is used to cover both insurance brokers and insurance companies. In fact, of the six insurers falling within the scope of the complainant's request all but one are insurance brokers.
20. There is only one other insurance company within the market place, currently capable of replicating the insurance package offered by the insurance company engaged. This company has previously been engaged by the BBC.
21. In the current market place there are five insurance brokers who are able to service elements of the BBC requirements based on recent tender applications. Only one of these has been previously engaged by the BBC.

22. The BBC is currently renegotiating two of its current contracts. One contract is being renewed following a recent tender process, whilst the other is an extension to an existing contract.

Analysis

Exemption 43 – Commercial Interests

23. Section 43 provides a qualified exemption where disclosure would, or would be likely to, prejudice the commercial interests of any party.
24. The BBC has argued that disclosure of the information would prejudice both its commercial interests and the interests of the six insurers to whom the request relates. The BBC point out that the insurance market the BBC operates in is extremely limited and historical pricing information would mean that potential bidders may base their pricing around what the BBC has been prepared to pay in the past. The needs of the BBC over the last decade, in terms of insurance requirements, have remained relatively static and it does not foresee any changes in the near future. The BBC argued that it has recently secured a significant price reduction on an insurance contract and it does not believe this would have been possible had the supplier known what was previously paid for the service.
25. The BBC considers that disclosure of the information could also prejudice the insurers' commercial interests for two reasons. Firstly it could damage their relationship with other clients in the media sector if it became known what they charged the BBC and secondly the information requested constitutes insurer's know-how. The BBC explained that insurers put a lot of resources into modelling, and then pricing, individual risks and this pricing information combined with an insurer's reputation in the market could enable competitors to price without going through the same underwriting process.
26. The BBC also confirmed that, although the information requested is only the pricing information, the specification of the service requirements are already in the public domain and will have been made available at the time of the competitive tenders. Pricing is the only information not publicly available.
27. The Commissioner is not convinced that disclosure of the information would, or would be likely to prejudice the commercial interests of any party. The BBC has argued that, as the market is so limited, disclosure of historic pricing information would enable competitors to base their pricing around historical information.
28. The BBC has identified that there are currently ten insurance brokers in the market that could provide the level of service the BBC require and of these, six are, or have previously been, engaged by the BBC. The BBC also identified that there are only two insurance companies that can replicate its current arrangements. One is currently engaged and the other has been previously. As the BBC has identified that its requirement for insurance has not changed

significantly over the past decade and is unlikely to do so in the foreseeable future, disclosure of the information is unlikely to reveal to those currently or previously engaged any information regarding what the BBC is willing to pay for insurance that they would not already be aware of.

29. Although four of the potential insurance brokers have not been engaged by the BBC, the Commissioner feels that disclosure of pricing information could generate more open competition enabling the BBC to obtain better value for money. Both the insurers who have been engaged previously, and those who have not, would be able to see what others have been paid and may reduce their price accordingly.
30. The BBC has also argued that disclosure would prejudice the commercial interests of the insurers as it is in effect giving away their know-how. They have explained that whilst the information requested is only for amounts paid and not details of what this figure includes, the requirements of the tender are already in the public domain. Therefore, it is claimed, the two elements combined would affect the insurers both in terms of their relationship with other clients in the media sector, and enabling other insurers to offer similar levels of service without going through the process of underwriting.
31. The Commissioner accepts that disclosure would enable insurers not currently engaged by the BBC to gain an insight into the figures paid to other insurers and the requirements of the tender. However, to secure a contract with the BBC they would still have to go through a tender process and complete a full underwriting process to demonstrate their ability to provide the services the BBC require.
32. Although the Commissioner accepts that there is a risk that revealing what insurers charge the BBC could damage reputations with other clients, the BBC has not demonstrated that there is a real prospect that disclosure would, or would be likely to, prejudice their commercial interests.
33. The Commissioner considers that in such a limited market disclosure of the information is unlikely to have a negative impact on the insurers' commercial interests. If other clients were dissatisfied with the amounts they were being charged, they could pursue the issue with their insurer. Disclosure of the information could in fact enhance an insurer's profile and generate new business. In any event, the services provided by the different insurers to the BBC are unlikely to be identical with those provided to other clients, It is difficult to see, therefore, that any real commercial prejudice could occur in this way from disclosure of amounts charged to the BBC.
34. For the reasons set out above, the Commissioner's conclusion is that the exemption under section 43(2) of the Act is not engaged. The public authority has not demonstrated that disclosure of the information would, or would be likely to, prejudice the commercial interests of any party.

The Decision

35. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act.

Steps Required

36. The Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires the BBC to disclose the information requested to the complainant within 35 calendar days of the date of this Notice.

Failure to comply

37. 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

38. 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 27th day of March 2007

Signed

**Richard Thomas
Information Commissioner**

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

Legal Annex

General Right of Access

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 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 1(3) provides that –

“Where a public authority –

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.”

Section 1(4) provides that –

“The information –

(a) in respect of which the applicant is to be informed under subsection (1)(a), or

(b) which is to be communicated under subsection (1)(b),

is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.”

Section 1(5) provides that –

“A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).”

Section 1(6) provides that –

“In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as “the duty to confirm or deny”.”

Commercial interests

Section 43(1) provides that –

“Information is exempt information if it constitutes a trade secret.”

Section 43(2) provides that –

“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).”

Section 43(3) provides that –

“The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).”