

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 2 March 2009

Public Authority: British Broadcasting Corporation
Address: 2252 White City
201 Wood Lane
London
W12 7TS

Summary

The complainant requested information, in relation to a number of geographical areas, regarding the percentage of premises without a TV licence, the number of premises with a TV licence and the number of prosecution statements taken. The BBC refused to disclose this information relying on section 31(1) (a) 'law enforcement' to withhold the information. The Commissioner has investigated and found that section 31(1) (a) is not engaged in relation to the number of premises with a TV licence and the number of prosecution statements taken. However, he found that section 31(1) (a) is engaged in relation to the percentage of premises without a TV licence and that the public interest in maintaining this exemption outweighed the public interest in disclosure of the information. The Commissioner also found that the BBC breached the requirements of sections 17(1), 1(1) (a) and 16(1) in its handling of the request. He requires the BBC to disclose to the complainant:

- (i) the number of premises with a TV licence in the areas specified in the request; and
- (ii) the number of prosecution statements taken in the areas specified in the request.

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. On 25 August 2006 the complainant requested the following information from the BBC:

“Under the Auspices of the Freedom of Information Act, I would be grateful if you would provide me with the following information:

1. The percentage of households that have TV licences in the following locations (or their nearest postcode boundary equivalents):

Each of the London Boroughs
The Borough of Reigate and Banstead
The whole of Northern Ireland
Each of the following towns or cities:
Glasgow
Edinburgh
Belfast
Londonderry
Cardiff
Bradford
Leeds
Dewsbury
Cambridge
Norwich
Leicester
Lincoln
Dorchester

2. The number of prosecutions against licence evaders in each of those areas in the last year.

3. The request stemmed from an earlier request made to the BBC by a different individual on 2 January 2006. This information was provided to the Commissioner by the complainant:

“Under the auspices of the Freedom of information Act, I would be grateful if you would provide me with the following information:

1. The percentage of households that have TV licences in the following locations (or their nearest postcode equivalents):

Each of the London Boroughs
The Borough of Reigate and Banstead
The whole of Northern Ireland
Each of the following towns or cities:
Bradford
Cambridge
Dewsbury

Edinburgh
Leicester
Lincoln
Swansea

2. The number of prosecutions against licence evaders in each of those areas in the last year.”

4. In response to the request dated 2 January 2006 the BBC responded on 9 February 2006 and disclosed the crude percentage evasion rates for England, Northern Ireland, Scotland and Wales as well as the number of prosecutions against licence evaders in England, Wales, Scotland and Northern Ireland. However, it refused to disclose the information for the more localised figures under section 31(1) (a) of the Act. The complainant in that case requested an internal review of this response on 16 February 2006 and the BBC responded on 5 April 2006 upholding its decision to withhold the localised figures under section 31(1).
5. The complainant made his request, as detailed in paragraph 2, explaining to the BBC that he had taken over responsibility for the request from the previous complainant but that due to the time elapsed he didn't believe he could now appeal to the Commissioner and as such was formally asking for the information again along with some additional information.
6. The BBC replied on 30 August 2006 explaining that the Information Commissioner was willing to accept the complaint and that if the other complainant still wished to make a complaint to the Commissioner he could now do so. The BBC advised the complainant that in relation to the information he had requested on 25 August 2006 the reasons for withholding information about particular towns, cities and regions remained the same as in the other complainant's request.
7. On 1 September 2006 the complainant wrote again to the BBC stating that he would like the whole request for information dated 25 August 2006, including that of the additional towns and cities treated as a new request on his own behalf. He explained that he was treating the BBC's response of 30 August 2006 as a refusal notice and would now approach the Information Commissioner for a resolution.
8. On 22 June 2007 the complainant wrote again to the BBC repeating his request for information stating:

“I therefore repeat my request below, together with additional information about the actual number of households not having licences as well as the percentages.

Under the auspices of the Freedom of Information Act, I would be grateful if you would provide me with the following information:

1. The number and percentage of households that have TV licences in the

following locations (or their nearest postcode boundary equivalents):

Northern Ireland
England
Scotland
Wales

Each of the 32 London Boroughs
The Borough of Reigate and Banstead
Each of the following towns and cities:

Glasgow
Edinburgh
Belfast
Londonderry
Cardiff
Bradford
Leeds
Dewsbury
Cambridge
Norwich
Leicester
Lincoln
Dorchester
Bournemouth.

2. The number of prosecutions against licence evaders in each of those areas in the last year.”

9. The BBC responded on 23 July 2007. The BBC explained that in its response to the request of 25 August 2006 it provided the figures requested on the percentage of households with a TV licence and the number of prosecutions for England, Scotland, Northern Ireland and Wales but refused to disclose the information for the other areas specified under section 31(1) (a). The BBC therefore stated that it was refusing the new request for this information under section 14(2) as it was not obliged to comply with a request for information identical to one it had already complied with, unless a reasonable time has elapsed. However, the BBC acknowledged that the request 22 June 2007 did contain a new request for information specifically for the ‘number of households that have a TV licence in the areas specified. The BBC disclosed to the complaint the number of licences in force as of March 2007 for England, Northern Ireland, Scotland and Wales but refused to disclose the statistics for the more localised locations and the number of prosecutions under section 31(1) (a).

The Investigation

Scope of the case

10. On 22 August 2007 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant asked the Commissioner to investigate the BBC's refusals in respect of both information requests, 25 August 2006 and 22 July 2007.
11. During the course of the investigation (in letters dated 21 October 2008 and 18 December 2008) the BBC explained to the Commissioner, and to the complainant, that there are two types of evasion figures: the official UK evasion rate and the crude evasion rates. The official UK evasion rate is calculated using a model maintained and enhanced by the BBC in consultation with the Department for Media Culture and Sport (DCMS); it compares the number of licences in force to external statistics on the number of premises that require a licence. This official evasion rate cannot be broken down to any level smaller than UK level because of the non availability of the external statistics (such as the actual number of unoccupied premises).. However, the crude evasion rate takes into account the number of licences in force against the number of premises listed on the TV Licensing database as being licensable, adjusted by an estimate of those that are unoccupied. It is the crude evasion rate which was provided to the complainant for England, Scotland, Wales and Northern Ireland which would enable him to calculate the percentage of premises that hold a TV licence. The BBC acknowledged that it should have explained to the complainant that it didn't hold the requested information but was supplying him with the crude evasion rates for each UK Nation instead.
12. The BBC also explained that the complainant's request asked for the percentage of households that have a TV licence but that the crude evasion rate looks at all premises and not just households. Licensable premises include all potentially licensable places, not just households and do not take into account the probability of there being a TV at the premise. Therefore the BBC explained whilst the percentage of premises without a TV licence (the crude evasion rate) in the areas named could be provided the percentage of households with TV Licence could not be provided as it is not held. The BBC explained that it is the crude evasion rate for the more localised areas requested that was being withheld under section 31(1) (a).
13. The BBC explained that in relation to the request for the number of households with a TV licence it also only held information on the number of premises with a TV licence and not the number of households. In the response to the complainant dated 1 September 2006, the statistics provided were for the number of premises with a TV Licence in England, Northern Ireland, Wales and Scotland and not the number of households. The BBC explained that the number of premises with a licence in force at the areas specified was also held but that it was also withholding this information under section 31(1) (a).

14. The third part of the complainant's request was for the number of prosecutions against licence evaders in each of the named areas. The BBC explained that the information provided was the number of convictions against licence evaders in England, Scotland, Northern Ireland and Wales and not the number of prosecutions, and that this had been done in error. The BBC explained the information it holds on prosecutions is the number of prosecution statements taken in each area; the BBC stated that this information was also being withheld under section 31(1) (a).
15. In other words the information requested for: (1) the percentage of households with a TV licence; (2) the number of households with a TV licence and (3) the number of prosecutions against licence fee evaders is not what it held. Instead the BBC holds (1) the percentage of premises without a TV licence (2) the number of premises with a TV licence and (3) the number of prosecution statements taken.
16. The Commissioner clarified with the complainant on 23 December 2008 if he wished to proceed with his complaint on the basis of the information which the BBC stated that it held:
 - Crude evasion rate for areas specified in his request (i.e. the % of premises without a TV licence),
 - Number of premises in the areas specified in the request with a TV licence,
 - Number of prosecution statements taken in the areas specified in the request.
17. The complainant responded to the Commissioner on 6 January 2009 and informed him that he wished to proceed with his complaint on the basis of the information held (as detailed above) and wanted the Commissioner to consider the BBC's application of section 31(1) (a) to withhold this information.

Chronology

18. The Commissioner began his investigation on 30 July 2008 by writing to the BBC. The Commissioner asked the BBC to reconsider its application of section 14(2) to the information request of 22 July 2007 in light of the explanation given by the complainant in his complaint to the Commissioner and the time elapsed between the original request and this date. He also asked the BBC for a copy of the withheld information and for further arguments regarding the application of section 31(1) (a) and the public interest test.
19. The BBC responded on 16 October 2008 providing the Commissioner with a copy of the information being withheld and further arguments to support its reliance on section 31(1) (a). The BBC explained the difference between the information held and that requested (as outlined in the 'Scope' section of this notice). The BBC also withdrew its reliance on section 14(2).

20. The Commissioner responded on 21 October 2008 asking the BBC to explain to the complainant what information is held in relation to his request.
21. The BBC wrote to both the complainant and the Commissioner on 18 December 2008 explaining in more detail what information it holds and the reasons for this information being withheld. The BBC also additionally now sought to rely on section 12(1) in relation to some of the information on the number of prosecutions statements taken.
22. Following this the Commissioner wrote to the complainant on 23 December 2008 outlining the BBC's position regarding both the information held and the exemptions being applied. The Commissioner asked the complainant if he wished to proceed with this complaint on the basis of the information held.
23. The complainant responded on 6 January 2009 confirming that he did wish to proceed on this basis.
24. The Commissioner wrote again to the BBC on 8 January 2009 to ask for further information regarding its reliance on section 12(1) to part of the third part of the complainant's request.
25. The BBC, in a telephone call on 23 January 2009, withdrew its application of section 12(1).

Findings of fact

26. "TV Licensing" is a trade name 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, with the administration of the cash related payment schemes contracted to Revenues Management Services Ltd (RMS). Paypoint Network Ltd are contracted to provide over-the-counter services. The marketing and public relations activities are contracted to the AMV Consortium. The consortium is made up of the following four companies: Abbot Mead Vickers BBDO Ltd; Fishburn Hedges Boys Williams Limited; PHD Media Limited and Proximity London Ltd. The BBC is a public body in respect of its TV Licensing functions and retains overall responsibility for enforcement and collection of TV licensing money.
27. It is a criminal offence to install and use television receiving equipment to watch or record television without a valid TV licence. TV Licensing investigates and prosecutes such unlicensed use of television receiving equipment on behalf of the BBC.
28. The BBC's responsibility to enforce the licensing regime arises as a consequence of its powers to issue TV Licences (section 364 of the Communications Act 2003) and to collect and recover licence fees (section 365 of the Communications Act 2003) This responsibility was expressly confirmed by the Home Office in 1991, the year in which the BBC became the statutory authority for the licensing regime.

29. The BBC rely on a number of deterrents to ensure that people pay their licence fees including communications, detection equipment and the potential for prosecution and a fine of up to £1000.
30. The information being withheld is as follows:
- The crude evasion rate (regarding the percentage of premises that do not have a TV Licence) for the locations listed below;
 - The number of premises that have a TV licence in the locations listed below; and
 - The number of prosecution statements taken in each of the locations listed below.
 - Each of the London Boroughs
 - The Borough of Reigate & Banstead
 - Each of the following cities:
 - Glasgow
 - Edinburgh
 - Londonderry
 - Cardiff
 - Bradford
 - Leeds
 - Dewsbury
 - Cambridge
 - Norwich
 - Leicester
 - Lincoln
 - Dorchester
 - Bournemouth
31. This information is being withheld under section 31(1) (a).

Analysis

Procedural matters: Section 17 'Refusal of a Request'

32. Section 17(1) states that a public authority which is to any extent relying on a claim that information is exempt information, must, within the time for complying with section 1(1) give the applicant a notice which:
- (a) states that fact,
 - (b) specifies the exemption in question, and
 - (c) states why the exemption applies.
33. The Commissioner finds that the BBC should have treated the request of 25 August 2006 as a new request for information from the complainant, made in his own right, and issued a refusal notice in compliance with the requirements of section 17(1). The notice issued to the complainant on 30 August 2006 did not

specify the exemption being relied on but instead referred the complaint to the previous response sent to the other complainant. In failing to do issue the complainant with his own refusal notice the BBC breached the requirements of section 17(1).

Section 1 'General right of access'

34. Section 1(1) provides that any person making a request for information to a public authority is entitled to (a) to be informed in writing whether it holds information and (b) if that is the case to have that information communicated to him.
35. The BBC confirmed to the complainant that it held the information requested and provided some of it. However, during the course of the investigation the BBC acknowledged that the information held was not the same as the information requested. The BBC explained this in a letter to the complainant dated 18 December 2008.
36. The Commissioner however considers that the information held does fall broadly within the scope of the complainants request and that it was reasonable for the BBC to interpret the complainant's request as it did. In reaching this conclusion the Commissioner has had regard to the complainant's statement that he was happy for the BBC to interpret the request as they did. The BBC therefore complied with sections 1(1) (a) by confirming that it did hold information falling within the scope of the request although it breached 10(1) by failing to inform the complainant of this within the time for compliance.

Exemption: Section 31 'Law enforcement'

37. Section 31(1) (a) provides that information is exempt information if its disclosure would, or would be likely to, prejudice the prevention or detection of crime.
38. It is the BBC's view that the information held on the percentage and number of households that have a TV licence and the number of prosecution statements in the localised areas requested is exempt as its disclosure would, or would be likely to, prejudice the prevention or detection of crime, the apprehension or prosecution of offenders, the collection of the licence fee and the BBC's ability to discharge its public functions in respect of such matters.
39. The BBC state that it is unable to collect the money settled upon it through the Department of Media Culture and Sport licence settlement fee process, then it will not receive the full level of funding for its programme making activities. The BBC further state that it is in the interest of the licence fee payer that the cost of enforcement activities is kept to a minimum. It explained that if licence fee evasion were to increase it would result in increased resources being required to enforce the licensing system. It would also increase the total amount of income which is forgone due to evasion.

The number of premises that have a TV licence and the percentage of premises that do not have a TV licence

40. The BBC have explained that release of the number of premises that have a TV licence and the percentage of those that do not in the areas named could result in people using the information to evade the licence fee. If the public became aware of areas with high TV licence evasion rates, the BBC believes that a significant number of people would decide not to pay for their TV licence, knowing that there is a higher rate of evasion in their area, and presumption that therefore there is a lower risk being caught by TV licensing.
41. This view, in relation to the number of premises with a TV licence, is based on the fact that the information provided could be combined with a rough population count or number of premises to generate rough evasion rates. These evasion rates could then identify the evasion trends for the areas named.
42. The main reasons the BBC believes people would take advantage of this knowledge and decide not to pay their television licence are:
 - (a) The official evasion rate at March 2005 was 5%, but the crude evasion rate varies from area to area
 - (b) The BBC is aware that a growing number of individuals deliberately evade the licence fee due to dissatisfaction with the BBC. In 2007-2008 the BBC received 97 complaints from people who objected to paying their licence fee (which is up from 60 complaints in 2005-2006).
 - (c) The BBC is also aware of a number of blogs and forums on the internet dedicated to people who are dissatisfied with having to pay the licence fee. These sites are used by members to share information on the TV licensing system and how to evade payment, and therefore, it is likely that information regarding the rates of evasion would be shared on blogs if the figures are release into the public domain.
43. The BBC is of the view that releasing the figures to the public would result in the BBC losing funding through a reduction in Licence Fee payments (as more people will attempt to evade paying their licence fee) and would be forced into a position where it would have to spend more of the licence fee on enforcement activities (such as deploying more detector vans).
44. The BBC did acknowledge that it releases figures on a regular basis relating to how many evaders have been caught in specific cities in the UK. This is released annually in order to generate press and media communications for public relations purposes. However, this information is based on the number of prosecution statements which are taken and does not necessarily relate to the crude evasion rates.
45. The BBC did not state which level of prejudice it believes would occur from release of the information – ‘would’ or ‘would be likely to’ prejudice. The Commissioner considers that where the level of prejudice has not been specified then, unless there is clear evidence that the higher level should apply, the lower threshold should be used. In this case the Commissioner has therefore considered whether disclosure would be likely to prejudice the prevention or detection of crime. In the case of *John Connor Press Associates Limited v The*

Information Commissioner [EA/2005/005] the Tribunal confirmed that “the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk.” (para 15)

46. This interpretation follows the judgement of Mr Justice Munby in *R (on the application of Lord) v Secretary of State for the Home Office* [2003]. In that case, the view was expressed that, “Likely connotes a degree of probability that there is a very significant and weighty chance of prejudice to the identified public interests. The degree of risk must be such that there ‘may very well’ be prejudice to those interests, even if the risk falls short of being more probable than not. In other words, the risk of prejudice need not be more likely than not, but must be substantially more than remote.
47. The Commissioner notes that the BBC have presented the same arguments to demonstrate that disclosure would be likely to prejudice the prevention or detection of crime in relation to both the crude evasion rates by area and the number of premises with a TV licence. However, the Commissioner considers that different considerations should be taken into account for each.
48. The crude evasion rates for the areas requested show the different levels of evasion in different areas and the Commissioner accepts the BBC argument that disclosure of this information would be likely to encourage people to evade paying their TV licence within certain areas. For example if in a specific area the crude evasion rate was as high as 30% but in another area it was on 6% it is plausible that an individual living in the 30% area would be likely to feel confident that they would be able to successfully avoid paying their licence – therefore prejudicing the BBC’s ability to prevent crime in that area.
49. However, the Commissioner does not consider that the BBC have demonstrated the same causal link between a disclosure of the number of premises with a TV licence and a prejudice to the prevention or detection of crime. The BBC argue that from the number of licensed premises an individual would be able to calculate the evasion rate by taking a rough count of the population or number of premises. The Commissioner does not agree with this argument as he is of the view that the figures for the number of licensed premises do not provide the public with enough information to calculate an evasion rate. Even if a person knew the population of an area this would not give an indication of how many premises there are and it is unrealistic to think that an individual could count the number of premises in the locations requested. Even if they could this would not enable them to create a figure as a count of premises would not indicate how many of these premises require a licence and how many licences they may require.
50. The Commissioner therefore finds that section 31(1) (a) is engaged in relation to the crude evasion rates for the areas requested. However he finds that it is not engaged in relation to the number of licensed premises in the areas requested.

Number of prosecution statements taken for the areas requested.

51. The BBC explained to the complainant that it does not hold localised figures for prosecution and convictions as this information is held by the Home Office and Ministry of Justice. However, the BBC does hold information on the number of

prosecution statements taken, which are records of interviews taken under caution. The BBC argue that disclosure of the information would reveal trends to the public which would be useful to a person attempting to evade the licence fee. For example, if the public were aware that the number of prosecution statements taken in specific areas was low it may harm the deterrent effect of the BBC's enforcement procedures and lead to a further increase in evasion in those areas, which would not be in the public interest.

52. The BBC explained that TV Licensing release an annual "League of Shame" which lists the number of prosecution statements taken in various locations. This information is released by the BBC into the public domain in a limited way in order to generate press and media communications. These releases take the following formats:
- Press Statements: For examples, the twenty cities with the highest number of prosecution statements taken in a given year were released in January 2008 as part of TV Licensing's strategy of increasing the general deterrent effect.
 - Freedom of Information Requests: Information is released in Freedom of Information responses which request the number of TV licence evaders.
53. Whilst the Commissioner recognises this concern he does not consider that disclosure of the prosecution statements taken in the areas requested differs significantly from those figures proactively published by the BBC.
54. In reaching a decision on the application of section 31(1) (a) to the number of prosecution statements taken the Commissioner has considered the above arguments as well as arguments contained within the confidential annex. A confidential annex has been used to consider arguments which the Commissioner considers necessary for the purposes of his decision but which represent information of a sensitive nature to the BBC's policies on TV licensing enforcement.
55. For the reasons outlined above and in the confidential annex to this decision notice, the Commissioner finds that section 31(1) (a) is not engaged in relation to the number of prosecution statements taken in the areas specified in the request.

Public Interest Test

56. Section 31(1) (a) is a qualified exemption and is therefore subject to the public interest test. As the Commissioner has found that section 31(1) (a) is engaged in relation to the crude evasion figures for the areas specified in the request, he must therefore decide if the public interest in maintaining the exemption is outweighed by the public interest in disclosure of this information.
57. The BBC acknowledged that there is a public interest for people to have general information about television licence evasion. Disclosure of the information to the public would ensure public funds are being appropriately applied; that is ensuring that the TV licensing system is being efficiently run and that value for money is being obtained.

58. However, the BBC considers that the public interest factors in favour of disclosure are served by the mechanisms currently in place. The BBC has a duty to enforce the licensing system and it is essential that effective deterrents against evasion are maintained for this purpose. Without an effective deterrent evasion would invariably increase. This would be to the detriment of the majority of people who are licensed as the BBC would have to spend more of its licence fee on tackling evasion rather than on programming.
59. The BBC also state that it is required to satisfy the National Audit Office as to the value for money for the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. The most recent audit is published at www.nao.org.uk/publications/nao_reports/06-07/0607183.pdf. The BBC believes there are sufficient safeguards in place to ensure that value for money is being obtained.
60. Further the BBC state that the public interest is served by knowing the official evasion rates as released by the Department of Culture, Media and Sport, and by the BBC releasing the crude evasion rate by each UK Nation. According to the BBC, releasing the information at a more detailed level would allow people to determine those areas where there is a high evasion rate, and thus come to the informed decision on the likelihood of being caught. It is clearly not, the BBC state, in the public interest that the public receive information which results in people being in a position to evade paying their TV licence. The Commissioner accepts that disclosure of the information makes it likely that people would evade paying their TV licence.
61. The BBC also state that releasing the information would have a negative impact on the interests of legitimate licence fee payers, and negatively affect the value for money which is being obtained through licence fee collection in three main ways:
1. The BBC would receive less of the allocated licence fee to use to fulfil its public purpose.
 2. The BBC would need to spend more of the licence fee on additional enforcement measures, due to the public having increased knowledge on high areas of evasion.
 3. TV Licensing aims to maximise TV licensing revenue by collecting the fee in the most cost effective way, and would strongly oppose any steps which would undermine its process and result in an increased cost to the licence fee payer.
62. Finally the BBC state it is in the public interest that the TV licensing system is run efficiently. The BBC has reduced the cost of collection from 6.2% of the total licence fee collected in 1991/2, when it took over from the Home Office, to 3.6% for the financial year 2007/08

63. The BBC's arguments surround the detrimental effect disclosure would have in relation to the amount of money which it would be able to collect and therefore have to spend on the cost of collecting the licence fee.
64. In reaching a decision on the balance of public interest the Commissioner has considered the following factors in favour of disclosure of the information:
- Disclosure would provide the public with more information regarding the evasion rates across the country and enable it to scrutinise the BBC's enforcement activities by area.
 - Allow the public to ensure public money on enforcement activities is directed in the appropriate areas
65. The Commissioner accepts the following BBC arguments for maintaining the exemption:
- The Commissioner accepts that disclosure of the information would be likely to increase the instances of evasion within certain areas and that this is not in the public interest.
 - The Commissioner also accepts that there is a public interest that enforcement activities are kept to a minimum so that the money collected from the licence fee can be spent elsewhere
 - The Commissioner also accepts that the information provided to the public in the "League of Shame" and the information which he has found should be disclosed, the number of premises and number of prosecutions, satisfy the public interest in providing more information regarding evasion rates across the country.
66. In addition the Commissioner considers that that it is in the public interest that the TV Licensing system is efficiently run. The BBC has reduced the cost of collection from 6.2% of the total licence fee collected in 1991/2, when it took over from the Home Office, to 4.1% for the financial year 2006/07. He notes that it is in the public interest that the BBC is able to collect all the money settled upon it through the Department for Media Culture and Sport licence fee settlement process to enable it to receive the full level of funding for its activities. He also considers that it is in the public interest that the BBC's ability to do so is not prejudiced. The BBC estimates that the total amount of income forgone due to evasion in 2006/07 was £173 million. The Commissioner therefore does not consider that the disclosure of information which would be likely to increase the amount of evasion would be in the public interest.
67. In weighing the factors the Commissioner has concluded that the arguments for maintaining the exemption outweigh those for disclosure of the information. In particular he considers that the public interest in ensuring the BBC is able to carry out its enforcement activities to ensure the best value for money outweigh the public interest in providing the public with more information, in addition to the number of premises and prosecution statements requested.

68. The Commissioner therefore accepts that in relation to the crude evasion rates for the areas specified in the request the public interest in maintaining the exemption outweighs the public interest in disclosure of the information.

The Decision

69. The Commissioner's decision is that the public authority dealt with the following elements of the request in accordance with the requirements of the Act:

(i) The BBC correctly applied section 31(1) (a) to the crude evasion rates for the areas specified in the request.

70. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

(i) The BBC breached the requirements of section 17(1) by failing to treat the request of 25 August 2006 as a new request for information and issuing a notice in accordance with that section.

(ii) The BBC breached the requirements of section 10(1) by failing to explain to the complainant that the information requested (the number of households and the presentgate of households with and without a TV licence) was not held within the time for compliance

(iii) The BBC misapplied section 31(1) (a) to the information requested on number of premises with a TV licence and the number of prosecution statements taken in the areas specified in the request.

Steps Required

71. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose to the complainant:

(i) The number of premises with a TV licence in the areas specified in the request; and

(ii) The number of prosecution statements taken in the areas specified in the request.

72. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

73. 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

74. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

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.

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 2nd day of March 2009

Signed

**Richard Thomas
Information Commissioner**

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