



Freedom of Information
Internal Review decision

Internal Reviewer	Asha Sharma Solicitor Commercial and Regulatory Legal Dept
Reference	IR2010026 (RFI20100835)
Date	2 September 2010

Requested information

The requestor asked that the BBC makes available the following:

“Please could you provide me with internal communication relating to the piece of software known as beebplayer which was available for the android platform. I would be specifically interested in minutes of any meetings where this software was a topic and emails which may relate to it being removed from the Android market. The timeframe for this would ideally be from January 2010 until now.”

The BBC informed the requestor, by letter dated 13 July 2010 (the ‘Disclosure Letter’), that the information requested would not be disclosed as it was considered to be legally privileged and therefore, exempt under section 42 of the Freedom of Information Act 2000 (the ‘Act’). As the exemption is a qualified one, a public interest test was carried out. For the detailed reasons stated in the Disclosure Letter it was decided that the public interest in withholding the information outweighs the public interest in favour of disclosing it.

Issues on review

The requestor has now asked that there be a review of the BBC’s decision to withhold the requested information under section 42 of the Act.

Background

In undertaking my review, I have considered the following documents and information:

1. The file provided to me by the BBC’s Information Policy and Compliance department which contains ‘beebPlayer’ related correspondence (the ‘Correspondence File’).
2. Section 42 of the Act.
3. Published guidance from the Information Commissioner’s Office on the exemption for legal professional privilege.
4. Various decision notices of the Information Commissioner.



Did the BBC correctly apply the Section 42(2) (legal professional privilege) exemption in this case?

I note that the Correspondence File contains an email sent by Matt Poole at 11.49 on 4 May 2009 and by James Hewines at 16.27 on 29 May 2009 and emails sent by Alex Kann at 15.16 and 16.31 on 29 May 2009 (the 'Relevant Emails'). The Relevant Emails all contain information which has been withheld under Section 42.

It is my view that the Relevant Emails do not fall within the definition of legal professional privilege, as defined in the Disclosure Letter, as they do not comprise communications between lawyers and their clients nor have they been created for the dominant purpose of being used in connection with actual or pending litigation. I conclude, therefore, that the Relevant Emails are not subject to legal professional privilege or any other exemption under the Act and should be disclosed.

Having read all the other beebPlayer related internal communications, I am satisfied that all such communications fall clearly within the definition of legal professional privilege. I am also satisfied that the public interest test favours maintaining the exemption for the reasons stated in the Disclosure Letter.

Decision

I believe that technically there has been a misapplication of the Section 42 (legal professional privilege) exemption in respect of the Relevant Emails which in my view should be disclosed. However, I endorse the BBC's original decision that all other information sought is exempt under Section 42 of the Act. I am also satisfied that in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Additionally, I am aware that the BBC has, pursuant to a subsequent request under the Act, disclosed certain beebPlayer related information. This information post dates the requestor's original enquiry under the Act and therefore, falls outside the scope of the information sought by the requestor. However, in the interests of transparency and given that certain beebPlayer related information is now in the public domain, it is my opinion that this information should be provided to the requestor in addition to the Relevant Emails.

Appeal Rights

If you are not satisfied with the outcome of your internal review, you can appeal to the Information Commissioner. The contact details are: Information Commissioner's Office, Wycliff House, Water Lane, Wilmslow, Cheshire SK9 5AF; Telephone 01625 545 700 or www.ico.gov.uk