



Information Policy & Compliance  
[bbc.co.uk/foi](http://bbc.co.uk/foi)

18 September 2007

Dear Mr

**Freedom of information request – RFI2007000748**

Thank you for your request dated 16 August 2007 seeking further information about TV Licensing. Your request is being dealt with under the Freedom of Information Act 2000 ("the Act"). In your request you asked the following questions, which I have numbered for ease of reference:

1. *Please quote the paragraphs from statutes and case law (with full citation) which provide that one has to either buy a license for a television that one does not own or be subject to the only other alternative, which is to face being served with a warrant for entry into one's property to prove an absence of a television.*

Legislative basis for buying a licence for a television that one does not own

Section 363 of the Communications Act 2003 provides that it is offence to install or use a TV receiver without a TV licence and for a person to possess or have a TV receiver under his/her control which s/he knows or has reasonable grounds to believe will be installed or used by another person without a TV licence. Please see:

[http://www.opsi.gov.uk/acts/acts2003/ukpga\\_20030021\\_en\\_1.htm](http://www.opsi.gov.uk/acts/acts2003/ukpga_20030021_en_1.htm) for further information.

Please note that the legislation does not make reference to the ownership of the receiver. Instead, it is concerned with installation or use without a TV licence and possession or control of a TV receiver which a person knows or reasonably believes is intended to be installed or used without a TV licence. There are numerous circumstances where a person may be committing an offence under the Communications Act in respect of a TV receiver which s/he does not own. One example is when a tenant may use a television provided by a landlord.



INVESTOR IN PEOPLE

Legislative basis for being served with a warrant for entry into one's property to prove an absence of a television

Applications for, and the exercise of, search warrants are provided by s366 ('Powers to enforce TV licensing') of the Communications Act 2003.

Further information regarding the BBC's policy in relation to search warrants is outlined in the document *About TV Licensing*, available at [http://www.tvlicensing.co.uk/pdfs/40115 BBC Freedom of Info.pdf?r\\_exit link=d\\_pdf\\_download](http://www.tvlicensing.co.uk/pdfs/40115_BBC_Freedom_of_Info.pdf?r_exit_link=d_pdf_download).

A search warrant constituting the 'only other alternative'

It is our policy that when a person advises that they do not use a TV receiver to receive TV programmes at an address, TV Licensing stops further enquiry letters being sent out but sends an officer to the address to verify the situation.

If the officer is able to confirm by a brief observation of the main living areas that there is no TV receiver, or none set up to receive TV programme services, all further contact will cease for a period of 4 years. If the circumstances remain the same after that time, contact can be stopped for another 6 years.

The reason we have felt it necessary to have verification visits is because we know from experience that around 40% of people who tell our agents they do not have a TV receiver are found to be using one when the premises are checked. By carrying out visits, non-TV receiver users can be identified and future contact minimised, and evaders can be identified. Further detail on this is contained below.

Of course, a person is fully entitled to refuse entry and indeed to forbid access to their property. However, where this is the case, to enable TV Licensing to verify the situation at an address in the same measure as they do with other addresses, detection equipment will be used rather than a search warrant.

An application for a search warrant may only be made when there is good reason to believe that an offence has been committed, evidence of the commission of that offence is likely to be found and conditions regarding access to the property or vehicle warrant the granting of a search warrant. Please note that a search warrant is a 'last resort' option. Merely informing TV Licensing that a TV receiver is not installed or being used is not sufficient grounds on which a search warrant would be sought (nor would it be granted on the basis of this information alone).

2. *Please tell me how many warrants you obtain to enter premises each year for the past decade.*

I can confirm that we do hold the information that you have requested. However, I am withholding this information under section subsections 31(1)(a), (b), (d) and (g) of the Act

which relates to law enforcement, specifically that 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 exercise by the BBC of its functions as the TV licensing authority. This is because revealing additional information about search warrants will provide information that could be of use to people who wish to avoid paying the television licence fee.

I am satisfied in terms of section 2(2) of the Act that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. I have considered the public interest test in the section on why information has been withheld at the end of this letter.

3. *Of the warrants applied for, please tell me what percentage are given and what percentage refused, broken down annually for the past decade.*

Please see my answer to question 2 above. I can confirm that in practice, only one search warrant application that TV Licensing has applied for has been refused which shows that TV Licensing does not spuriously apply for search warrants.

4. *Please state any remedies, damages, out of court settlements or anything else of a similar nature which the Television Licensing Authority has paid out as a result of any legal action, or complaint against it.*

The BBC assumed responsibility for the TV licensing system in 1991. In order to respond to your request, it would be necessary to review hundreds of legal files including those which have been archived. We estimate that this task would involve more than two and half days of work and its cost would, therefore, exceed the appropriate limit provided for by section 12 of the Act and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

Without performing this task, the BBC does not consider that there have been any such payouts made by the BBC pursuant to a legal action or complaint.

5. *I would liken a search under warrant, the threat of such a search or the continued harassment which I have suffered, to a form of punishment. As this punishment is completely arbitrary as it is without law, the punishment is in breach of Article 7 of the European Convention on Human Rights (no punishment without law). I would therefore like you to quote the paragraphs from statutes and case law (with full citation) which provide that such breach constitutes a proportionate, justified and legal action to the problem of limiting television licence evasion.*

Search under warrant and threat of such a search constituting a form of punishment without law

Please see my answer to question 1 above for information concerning TV Licensing's policy and legislative provision for using search warrants.

Against this background, we do not agree that the use or threat of use of search warrants constitutes 'punishment without law'. The BBC does not therefore hold any information of relevance concerning their use being a breach of Article 7 of the European Convention on Human Rights.

The continued harassment which [you] have suffered constituting a form of punishment without law

Please also see my answer to question 1 above for information concerning our policy towards individuals who advise TV Licensing that they do not use a television receiver to receive television programmes.

Against this background, we do not agree that the actions we have taken so far in your case constitute 'harassment'. As you may be aware, the Protection from Harassment Act 1997 prohibits offences of harassment. However, it does not apply to a course of conduct that:

- was pursued for the purpose of preventing or detecting crime;
- was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; or
- was reasonable in the circumstances.

The purpose for which TV Licensing pursues the course of conduct referred to in my answer to question 1 above is to prevent and detect crime and to ensure that a person complies with the requirement to obtain a TV licence if one is needed. As the address that you provided to TV Licensing when making your declaration that you do not have a TV receiver installed or in use did not correspond with a Post Office address nor with TV Licensing's records, it was reasonable in the circumstances for TV Licensing to persist with its enquiries of your household. Please note that the Broadcasters' Audience Research Board Limited estimates that 98% of households in the UK have a TV receiver and it would be contrary to the BBC's obligations to collect the licence fee if TV Licensing did not pursue enquiries at unlicensed addresses.

We therefore cannot support the statement that such actions constitute 'continued harassment' or 'a form of punishment [without law]'. The BBC does not therefore hold any information of relevance concerning such actions being a breach of Article 7 of the European Convention on Human Rights.

6. *Article 8 of the European Convention on Human Rights enshrines the right to respect for private life. This includes the right to be free from unlawful searches. It is therefore a breach of Article 8 that, purely for not owning a television, I either pay for a television license or be subject to a warrant to search my house; be subject to the threat of such a warrant; or face the harassment that I have so far faced. I would therefore like you to quote the paragraphs from statutes and case law (with full citation) which provide that such breach*

*constitutes a proportionate, justified and legal reaction to the problem of limiting television licence evasion.*

As you know, article 8 provides that there shall be no interference with the right to respect for private and family life 'except such as in accordance with the law and is necessary in a democratic society in the interests of . . . the economic well being of the country, for the prevention of disorder or crime'.

As stated in my answer to question 1 above, the Communications Act provides for search warrants to be issued if the specified criteria are satisfied. Any invasion of privacy that may result from the execution of a search warrant will not be in contravention of article 8 as the search warrant will have been obtained and executed lawfully and for the purposes of ensuring that licence fee is paid to the Consolidated Fund and in prevention of an offence under the Communications Act.

We therefore cannot support the contention that any of the actions you allege in respect of search warrants constitute a breach of the right to respect for private life. As stated above, we do not consider that TV Licensing correspondence constitutes unlawful harassment. It follows that the BBC does not hold any information of relevance concerning such actions being a breach of Article 8 of the European Convention on Human Rights.

7. *Article 6 of the European Convention on Human Rights enshrines the right to a fair trial. This includes the presumption of innocence. The Television Licensing Authority require me, if I am to avoid paying for a licence or further harassment, to prove that I do not have a television by letting someone into my house (or being forced to under warrant). I am being treated as being guilty until I can prove my innocence, in breach of the presumption of innocence and hence in breach of Article 6. I would therefore like you to quote the paragraphs from statutes and case law (with full citation) which provide that such breach constitutes a proportionate, justified and legal reaction to the problem of limiting television licence evasion.*

As you may know, Article 6 of the European Convention on Human Rights relates to individuals who are 'charged with a criminal offence'. However, you have not been charged with any criminal offence. This Article is not therefore relevant, and it follows that the BBC does not hold any information of relevance concerning such actions being a breach of Article 6 of the European Convention on Human Rights.

8. *I have had letters and even had Television Licensing Authority Officers stating that they will apply for a warrant to search my premises if I do not pay for a Television Licence or allow them to search my premises. A warrant will only be granted if there is a reasonable belief that (i) a 'serious arrestable offence' has been committed; and (ii) evidence relevant to the investigation of that offence is likely to be found there; and (iii) there is no other way to gain access except with a warrant. There are few situations where there could be a reasonable belief that a television is being watched by someone who claims that they have not got a television on their premises, without a licence, so it is unlikely that a warrant could be issued for the purpose of checking. You may be able to detect television usage, mechanically or*

*physically, but can have no evidence to suggest that a television is being watched when the accused does not have a television, other than the fact that the accused does not have a licence and does not want to let a stranger into their home. It is even more unlikely that watching a television without a licence could be considered a 'serious arrestable offence' (usually defined here as one that results in death or serious injury, rape, kidnapping, or serious financial loss).*

- (i) Why, and under what authority (legal or otherwise), do you threaten people with a warrant which you are so unlikely to be unable to obtain?*
- (ii) Why, and under what authority (legal or otherwise), do you not state, when you make your threats, that (especially in the case of someone who does not own a television) it is incredibly unlikely that a warrant would be obtainable?*
- (iii) The result (and I presume the intention) is that you bully people (by deceiving them into thinking that if they do not comply with your request for a search then there will be legal sanctions, even though that is incredibly unlikely to be the case) into letting officers into premises in order to search for television apparatus. Please explain, quoting the relevant paragraphs from statutes and case law (with full citation), how this bullying and deception is a legal, proportionate and reasonable approach to limiting television licence evasion.*

As stated above, the grounds upon which a search warrant for an offence under part 4 of the Communications Act may be obtained are set out in section 366 of that Act.

When references to search warrants are made in TV Licensing correspondence, they are not intended to convey that a search warrant will be obtained if no response to such correspondence is received. Rather, they are made for the purpose of informing recipients who require a TV licence but do not have one of the means by which evidence may be gathered against them. It is hoped that this will deter such recipients from continuing to commit the criminal offence of using their TV receivers without a licence. References to search warrants will only appear in correspondence which is being sent to people whose addresses have been unlicensed for a considerable period of time and who would have received information on several occasions about the need to obtain a TV licence if one is required.

The BBC does not consider that references in correspondence to the possibility of a search warrant being obtained so that evidence that an offence is being committed can be gathered constitute bullying and deception. Accordingly, the BBC does not hold any information of relevance to your request.

9. *Please cite all cases of harassment which have been brought against the Television Licensing Authority which have gone through the courts, or been settled at mediation or similar arbitration and please state what their outcomes were.*

There have been no cases of harassment which have been brought against the BBC in its capacity as the TV Licensing Authority.

10. *Please quote the paragraphs from statutes and case law (with full citation) which provide that the Television Licensing Authorities' persistent threats, deception and bullying do not constitute harassment.*

Please see my answer to question 5 above.

11. *Please cite all cases where a decision made by the Television Licensing Authority has been subject to Judicial Review or review by any ombudsman or similar watchdog and please state what their outcomes were.*

As noted in response to question 4 above, it would be necessary to review hundreds of legal files including those which have been archived to ascertain how many judicial review actions have been brought against the BBC in its capacity as the TV Licensing Authority and their outcomes. We estimate that this task would involve more than two and half days of work and its cost would, therefore, exceed the appropriate limit provided for by section 12 of the Freedom of Information Act and the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

Without performing this task, the BBC considers that there have been approximately 4 judicial review actions and none of these have been commenced in the past 10 years. The actions concerned decisions made in respect of the grant of concessionary TV licences to residential care accommodation.

12. *Please quote the paragraphs from statutes and case law (with full citation) which provide that the Television Licensing Authorities' policy of persistent threats, deception and bullying would be considered fair, reasonable, justified and proportionate (taking into account the seriousness of the objectives the policy wishes to achieve) if subject to a Judicial Review or review by any ombudsman or watchdog.*

Please see my answer to question 5 above.

13. *Please explain, quoting the relevant paragraphs from statutes and case law (with full citation), how the Television Licensing Authority has more powers than the police force.*

The BBC does not consider that it has greater powers than the police force and accordingly can provide no information in respect of this request.

14. *Why, when I have explicitly asked for questions to be answered in previous correspondence, have you failed to provide me with answers?*

I apologise if this has been the case, but I hope the above answers have now provided the information you require.

## Why information has been withheld

I am required under s 2(2) of the Act to assess whether the public interest in maintaining the exemption outlined in response to question two above outweighs the public interest in disclosing the information.

There is a public interest in disclosure in order to reassure the public that the licensing authority is exercising its functions appropriately and proportionately, ie that:

1. search warrants will not be obtained except in exceptional circumstances;
2. people will not be unfairly prosecuted;
3. the TV licensing system is being efficiently run; and
4. value for money is being obtained.

I consider that the above public interest factors in favour of disclosure are served by the following:

1. As search warrants are only issued by independent third parties (the magistrate or sheriff in Scotland) in accordance with strict legal requirements, the public interest in knowing that we are using our powers proportionately is satisfied. In the last four years there have only been two cases where a search warrant has not revealed an unlicensed address where a licence was required (and in both cases, there was a delay before entry). This shows that search warrants are only applied for in cases where the evidence means that it is extremely likely that a television is in use. TV Licensing is open regarding its policy that it will only apply for a search warrant as a last resort.
2. The BBC/TV Licensing does not prosecute except where it is in the public interest to do so, which includes having sufficient evidence. This is a key principle of the Crown Prosecution Guidelines which we publicly state that we adhere to. Further, a magistrate would not allow a prosecution to take place if there was not sufficient evidence and public interest.
3. The BBC has a duty to enforce the television 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 honest majority of people who are properly licensed and to the overall amount of revenue available to the BBC. It would also increase collection costs.
4. In this case, the public interest is satisfied by ensuring the effective collection of the licence fee. The BBC is required to satisfy the National Audit Office ('NAO') as to the value for money of the collection and enforcement arrangements and is accountable for the economy, efficiency and effectiveness of such arrangements. NAO's most recent audit is published at [http://www.nao.org.uk/publications/nao\\_reports/06-07/0607183.pdf](http://www.nao.org.uk/publications/nao_reports/06-07/0607183.pdf).
5. 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 06/07. This demonstrates that the TV Licensing system is being efficiently run. This and further related information is available in the BBC's annual report (see [www.bbc.co.uk](http://www.bbc.co.uk)), the TV Licensing Annual Review and the *About TV Licensing* document (see <http://www.tvlicensing.co.uk/aboutus/index.jsp>).

As stated above, revealing additional information about search warrants will provide information that could be of use to people who wish to avoid paying the television licence fee.

I am therefore satisfied, in terms of section 2 of the Act, that in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest (outlined above) in disclosing the information.

### **Appeal rights**

If you are not satisfied with this response you have the right to an internal review by a BBC senior manager or legal adviser. Please contact us at the address provided, explaining what you would like us to review and including your reference number. If you are not satisfied with the internal review, you can appeal to the Information Commissioner. The contact details are: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF, telephone 01625 545 700 or see <http://www.ico.gov.uk/>

I hope this response is helpful.

Yours sincerely,



**Natalie Saunderson**

**Policy Adviser**

**BBC TV Licensing Management Team**