



4 September 2017

Dear Mr _____

Thank you for your recent correspondence. I apologise for the delay in responding to the points that you raised. These points require some time in terms of both their volume and complexity and relate to detailed legal provisions that require individual consideration.

In your letter, you asked:

1. Does legal professional privilege apply to public bodies;
2. Whether some form of wording can be used to disclose the BBC's legal advice without undermining legal professional privilege;
3. Whether the BBC considers TV Licensing letters to be transparent and consistent;
4. Whether there are any negative consequences to withholding consent to an interview conducted by TV Licensing officers;
5. Whether the BBC ought to publish the TV Licensing process for enforcement;
6. Whether an individual is given sufficient information to provide informed consent to an interview conducted by TV Licensing officers;
7. Whether the BBC wishes to publicly share the prescribed form of words used by TV Licensing officers;
8. Can the BBC clarify its policy in the light of comments in an exchange of emails between the organisation and a member of the public;
9. Whether the BBC wishes to use the proposed form of words in your letter when TV Licensing officers visit properties;
10. Whether the statement "will you be in on 20th February" is consistent with an individual's right to decline an interview;
11. Whether the BBC wishes to publish information in relation to all aspects of TV Licensing visiting;

12. Whether the BBC considers that individuals in Scotland have the right to permanently withdraw the right of access to the front door of their property;
13. Whether the BBC wishes to publish a process for withholding consent to visits by TV Licensing officers;
14. Whether it is appropriate to grant search warrants on the basis of evidence that an individual has declined to give consent to an interview with TV Licensing officers;
15. For clarification in relation to the procedure following an individual's withdrawal of their implied permission to access their property;
16. Whether it is mandatory for TV Licensing to inform interviewees that they have the right to legal counsel with a charge before an interview is conducted;
17. Whether it is mandatory for TV Licensing to inform interviewees that they have the right to legal counsel without charge by dint of the presence of a police officer at or near the property;
18. Whether TV Licensing prosecutes obstruction as a "consolation outcome"; and
19. Whether TV Licensing was correct to seek to interview an individual in relation to the TV licence evasion offence, having obtained sufficient evidence for a search warrant in connection with that offence.

I have answered each of these queries in turn below.

1. Does legal professional privilege apply to public bodies;

Legal professional privilege encourages full and frank discourse between a client and their lawyer in the knowledge and confidence that the lawyer cannot disclose the contents of the communication without the client's consent. Privilege is not overridden by any other higher public interest and applies equally to public bodies as well as to private organisations.

This is a position confirmed by the Information Commissioner, who has set out the following comments on legal professional privilege, which may be helpful for you -

"The client's ability to speak freely and frankly with his or her legal adviser in order to obtain appropriate legal advice is a fundamental requirement of the English legal system. The concept of LPP protects the confidentiality of communications between a lawyer and client. This helps to ensure complete fairness in legal proceedings".

- and is available here:

https://ico.org.uk/media/for-organisations/documents/1208/legal_professional_privilege_exemption_s42.pdf

2. Whether some form of wording can be used to disclose the BBC's legal advice without undermining legal professional privilege;

You have asked again to have sight of a copy of the legal advice provided to the BBC in relation to the TV Licensing enquiry visiting procedures. We are not in a position to meet this request.

As you have mentioned in your letter, this advice is subject to legal professional privilege. It is important to maintain privilege for the reasons set out above. Privilege can be waived by agreeing to release only part of the advice covered and even if only a small part of the advice is released, privilege can be lost on all of the advice given on the issue (as it would otherwise allow the disclosing party the ability to cherry-pick information to release).

3. Whether the BBC considers TV Licensing letters to be transparent and consistent;

The BBC is satisfied that TV Licensing letters are transparent and consistent. These letters have been subject to extensive review and scrutiny, both internally by the BBC Executive and externally by the BBC Trust.

You stated that you considered that TV Licensing's letters contained a contradiction. You referred to the following statements in support of this assertion:

“stop this visit now by telling us you do not need a Licence”; and
“if you tell us you do not need a Licence, we may confirm this with a visit”.

It may be helpful to read these extracts in their context. The former refers to “this visit”. It uses the definite article and refers to a visit that has already been described in the letter in which appears. The latter refers to “a visit” pertaining to a no licence needed claim (NLN). This process is set out and described on the TV Licensing website.

A residential address is categorised as NLN when TV Licensing receives an oral or written (including email) declaration that television receiving equipment at the address is not being used for licensable activity. TV Licensing will visit a sample of NLN addresses to confirm that a licence is not needed. A methodology will be used to determine which addresses will make up the sample for visiting. However, in some circumstances NLN addresses will be specifically excluded from the sample for visiting, in the interests of fairness. In these circumstances, any confirmation on expiry of the NLN guard that the relevant circumstances remain unchanged will result simply in the maintenance of its NLN guard and the address will remain within the exceptions from visiting. TV Licensing's No Licence Needed Policy can be found here:

<http://www.tvlicensing.co.uk/check-if-you-need-one/topics/telling-us-you-dont-need-a-tv-licence>

4. Whether there are any negative consequences to withholding consent to an interview conducted by TV Licensing officers;

There are no direct negative consequences to withholding consent to an interview conducted by TV Licensing officers as such. However, where consent has been withheld, TV Licensing reserves the right to use other methods of detection.

Enquiry officers may apply for authorisation to use detection equipment if they are refused entry on to premises. TV Licensing may also apply to a magistrate (or sheriff in Scotland) for a search warrant. However, this is only done as a last resort and when a senior manager and a legal adviser considers that there is good reason to believe that an offence has been committed.

5. Whether the BBC ought to publish the TV Licensing process for enforcement;

I agree that there are benefits to publishing information about the TV Licensing process for enforcement. In that vein, we have produced the TV Licensing Prosecution Code to help members of the public to understand how the enforcement process works. This document can be found here:

<http://www.tvlicensing.co.uk/ss/Satellite?blobcol=urldata&blobheadname1=content-type&blobheadvalue1=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1370006381767&ssbinary=true>

6. Whether an individual is given sufficient information to provide informed consent to an interview conducted by TV Licensing officers;

I am content that sufficient information is provided to an individual to provide informed consent to an interview conducted by TV Licensing officers. I have set out further information below about the application of the Police and Criminal Evidence Act 1984 ("PACE") codes to these visits.

As you can see from the Prosecution Code, the enquiry officer must explain why they are visiting, be polite, courteous and fair, and abide by rules of conduct. The officers will always ensure that a caution is given before proceeding with an interview and will leave the property if asked to do so. It is open to an individual to bring a complaint to TV Licensing if they have any concerns that an enquiry officer is not abiding by the code of conduct.

In addition, as you correctly point out, the enquiry officers will not attend the property until TV Licensing has provided the individual with information about both the TV Licensing framework and the nature and purpose of the visit.

7. Whether the BBC wishes to publicly share the prescribed form of words used by TV Licensing officers;

The BBC does not consider it appropriate to publicly share the prescribed form of words used by TV Licensing enquiry officers as this information is likely to undermine the purpose of the visit and may be used tactically as a means of evading the television licence fee.

8. Can the BBC clarify its policy in the light of comments in an exchange of emails between the organisation and a member of the public;

It is not clear what exchange of emails you are referring to. However, there is clearly a distinction to be drawn between the status of police interviews and those conducted by individuals who do not have the power of arrest. TV Licensing officers have regard to the PACE codes of practice, but unlike police officers, they are not required by law to comply with its provisions.

9. Whether the BBC wishes to use the proposed form of words in your letter when TV Licensing officers visit properties;

As mentioned above, the BBC is satisfied that it provides sufficient information to individuals to comply with its obligation in relation to the PACE codes of practice.

10. Whether the statement “will you be in on 20th February” is consistent with an individual’s right to decline an interview;

The BBC considers that the above statement is consistent with an individual’s right to decline an interview. Whilst the statement is indicative of a visit by a TV Licensing officer taking place on a particular date, it does not suggest that the individual is required to proceed with an interview or that an interview will actually be conducted. As mentioned above, the individual can decline to be interviewed.

11. Whether the BBC wishes to publish information in relation to all aspects of TV Licensing visiting;

As described above, the BBC publishes a TV Licensing Prosecution Code, which provides information and guidance on the prosecution process.

12. Whether the BBC considers that individuals in Scotland have the right to permanently withdraw the right of access to the front door of their property;

In England, Wales and Northern Ireland we recognise that the common law right for TV Licensing’s officers to visit a property may be withdrawn, but we will use other methods of detection to check if a licence is needed. We do not recognise this withdrawal in Scotland as different laws apply.

13. Whether the BBC wishes to publish a process for withholding consent to visits by TV Licensing officers;

As set out above, the BBC publishes a TV Licensing Prosecution Code, which provides information and guidance on the prosecution process. The BBC also provides separate guidance on the process for withholding consent to visits by TV Licensing officers. This is extracted below:

“What law authorises enquiry officers to request access to my home? Can I refuse to let them in? The Communications Act 2003 imposes an obligation on the BBC to issue TV Licences and collect the licence fee. The BBC must ensure that it fulfils its responsibility to the vast majority of households who pay their licence fee, by enforcing the law in respect of those who intentionally evade paying it. TV Licensing uses a range of activities to raise awareness about the requirement for a TV Licence, remind people to pay, inform them of ways to pay, and to deter people from evading the licence fee.

Enquiry officers do not have any legal powers to enter your home without a search warrant granted by a magistrate (or sheriff in Scotland). They (like other members of the public) rely on an implied right in common law to call at a property as far as the door, while going about their lawful business and making their presence known. Enquiry officers must explain to the occupier of the premises why they are visiting, be polite, courteous and fair, and abide by rules of conduct.

You have no obligation to grant entry to an enquiry officer if you don’t wish to do so. If refused entry by the occupier, the enquiry officer will leave the property. If enquiry officers are refused access, then TV Licensing reserve the right to use other methods of detection.

Enquiry officers may apply for authorisation to use detection equipment if they are refused entry on to premises. TV Licensing may also apply to a magistrate (or sheriff in Scotland) for a search warrant. However, this is only done as a last resort and when a senior manager and a legal adviser considers that there is good reason to believe that an offence has been committed”.

14. Whether it is appropriate to grant search warrants on the basis of evidence that an individual has declined to give consent to an interview with TV Licensing officers;

An application to a magistrate (or sheriff in Scotland) 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 warrant the granting of a search warrant.

Search warrants are only applied for in cases where the evidence means that it is likely that a television is in use. Whilst TV Licensing's responsibility is to ensure that in each case a proper application is made, it is the magistrate who must be satisfied that the application is backed by the appropriate evidence and well founded. Ultimately, the decision as to whether to grant a search warrant rests with the court.

15. For clarification in relation to the procedure following an individual's withdrawal of their implied permission to access their property;

This information is set out in the answer to question 13 above.

16. Whether it is mandatory for TV Licensing to inform interviewees that they have the right to legal counsel with a charge before an interview is conducted;

As referred to above, section 67 of PACE makes clear that officers who do not have the power of arrest are not subject to an absolute duty to comply with the PACE codes, in contrast with interviewers that possess this power such as the police. TV Licensing does, however, have regard to the PACE codes where relevant whilst carrying out its duties.

17. Whether it is mandatory for TV Licensing to inform interviewees that they have the right to legal counsel without charge by dint of the presence of a police officer at or near the property;

PACE makes clear that question of whether the PACE codes are mandatory or to be taken into account is determined by the status of the person who is discharging their duty to investigate the offence. It draws no distinction between scenarios in which a police officer is present within the vicinity of the interview and those that are not.

18. Whether TV Licensing prosecutes obstruction as a "consolation outcome"; and

TV Licensing does not prosecute obstruction as a "consolation outcome". It is a distinct and separate offence to intentionally obstruct a person exercising a search warrant (see section 366(8) of the Communications Act 2003). TV Licensing must be satisfied that there is sufficient evidence to show that the latter offence has been committed and that prosecution is in the public interest before bringing any such prosecution.

19. Whether TV Licensing was correct to seek to interview an individual in relation to the TV licence evasion offence, having obtained sufficient evidence for a search warrant in connection with that offence.

A search warrant can only be sought and granted by a magistrate where there are reasonable grounds for the application, evidence of the commission of that offence is likely to be found, and conditions regarding access to the property warrant the granting of a search warrant.

TV Licensing is open regarding its policy that it will only apply for a search warrant as a last resort. Search warrant applications are considered scrupulously before they are submitted. As a matter of law, a search warrant cannot be granted unless there are reasonable grounds for believing that an individual is using a TV receiver without a TV licence.

Therefore, it is usually appropriate to seek to interview an individual where a search warrant has been granted by a magistrate.

I hope that I have been able to address your questions.

Yours sincerely



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