FREEDOM OF INFORMATION
GUIDANCE FOR SUPPLIERS AND OTHER CONTRACTORS

1 INTRODUCTION

The Freedom of Information Act 2000 (FOIA) comes into force on 1 January 2005 and will change the way that the BBC approaches the handling and disclosure of information about its contractors and suppliers.

FOIA gives anyone the right to request any information covered by the legislation that is held by, or on behalf of, the BBC. The BBC is required to disclose the information unless one of the exemptions set out in the legislation applies. (see below) It is fully retrospective and is enforced by an independent Information Commissioner. FOIA is intended to deliver greater accountability for decisions and spending across the whole of the public sector. It requires public authorities to strike the balance between achieving transparency and protecting genuinely confidential or commercially sensitive information.

This guidance is for contractors and other suppliers. It explains how FOIA applies to the BBC and how the BBC will approach the handling and disclosure of information about contractors and suppliers.

2 HOW DOES FOIA APPLY TO THE BBC?

The BBC, Channel 4 and S4C are all covered by FOIA only *"in respect of information held for purposes other than those of journalism, art or literature"*.

In practice this means that information directly related to the BBC's core production and content creation activities, including some contractual information, is outside the scope of FOIA.

For example, the BBC would not be required to disclose information about a contract with an independent producer because that information directly relates to content production.

All other information held by the BBC is within the scope of FOIA and must be disclosed on request unless the BBC determines that an exemption applies. For example, the BBC would be required to disclose information about a contract with a catering company, unless that information was covered by an exemption.

FOIA also applies to information held "on behalf of" the BBC by a contractor.

3 WHAT IS THE PROCESS FOR MAKING A FOIA REQUEST?

From 1 January 2005, anyone (anywhere in the world) or any company can make a request for information. The request must be in writing (email is ok); give a name and a return address and specify the information required.

FOIA is retrospective. This means it applies to all non-content related information, no matter how old. The BBC keeps most contractual information for 7 years. Further details on the BBC's records policy are available at http://www.bbc.co.uk/foi/docs/historical_information.shtml

The BBC must respond to a FOIA request within 20 working days of receipt. The BBC cannot transfer or delegate its duties under FOIA to a third party.

4 WHAT INFORMATION ABOUT CONTRACTS AND SUPPLIERS WILL THE BBC DISCLOSE UNDER FOIA?

The BBC already makes information available on bbc.co.uk about its standard terms of trade, commercial activities and its Fair Trading Commitment.

When FOIA comes into force, the BBC is likely to disclose on request the following types of information:

- the nature of the goods, service or project which is the subject of the contract including appropriate parts of any Invitation to Tender
- the BBC's overall contract spend on particular goods, services or projects
- the performance standards in a particular contract
- completion or administration of a particular contract

See paragraph section 8 for further information about how we handle requests.

5 WHAT INFORMATION WILL THE BBC REFUSE TO DISCLOSE?

The BBC will refuse to disclose information if one of the exemptions in FOIA applies and where there is also no overriding public interest in release. This public interest test applies to qualified exemptions in the legislation.

The exemptions that are most likely to apply to contractual information are:

- Trade secrets – we will not disclose information relating to trade secrets. (s.43(1))
- Commercial interests – we will not disclose information if it would prejudice the commercial interests of any person. For example, the unit prices of goods, or information that could identify profit margins is likely to be withheld under this exemption. (s.43(2))
- Personal privacy – we will not disclose information if disclosure would breach the Data Protection Act. (s 40)
- Data Protection – We will not disclose information that has been given to us in confidence if doing so would constitute an actionable breach of confidence (s. 41(1))

In most cases, FOIA requires the BBC to take into account any public interest in disclosure when deciding whether to apply an exemption.

6 CONSULTATION

It is the BBC's decision whether or not to disclose contractual information but it will take the views of contractors into account when making a decision under FOIA.

The BBC strongly recommends that if a contractor considers information would be exempt under FOIA, it identifies for the BBC the exact nature and location of this information. A template is **attached** to help contractors identify information considered exempt. This template can be used for existing contracts as well as new contracts. The BBC will refer to this summary of "designated information" when considering a FOIA request.

In routine short term contracts we anticipate that little, if any, information is likely to be exempt and therefore it may not be necessary to prepare a summary of designated information.

In significant long term contracts there is likely to be more information that a contractor considers exempt. The procedure for designating information may need to be adapted by agreement between the contractor and BBC contract manager. In long term contracts especially, the BBC would expect the summary of designated information to be amended during the life of the contract.

7 BBC STANDARD TERMS OF TRADE: CONFIDENTIALITY PROVISIONS

The confidentiality obligations in the Standard Terms of Trade are subject to the BBC's statutory obligations under FOIA.

To make this clear, the BBC has amended its Terms of Trade with effect from 15 November 2004. The Terms of Trade now include a confidentiality clause that protects information designated by a contractor to the extent that it is exempt under FOIA. The Terms of Trade now also require a contractor to provide information to the BBC within 10 days if the information is required in response to a FOIA request. This is due to the significant amount of work required to process a request including collating and reviewing the information.

8 HANDLING FOIA REQUESTS FOR CONTRACTUAL INFORMATION

After 1 January 2005, if the BBC receives a FOIA request for information it will:

- handle the request in accordance with the process set out in FOIA
- take into account any summary of Designated Information prepared by the contractor
- consult the contractor as soon as reasonably practicable if the contractor's views are necessary to make an informed decision
- Notify the contractor prior to the disclosure wherever practicable

If the request relates to information held by the contractor on behalf of the BBC the contractor must provide any relevant information to the BBC within 10 days. Although the BBC has 20 days to respond to the requester, there is a significant amount of work required to process a request including collating and reviewing the information.

9 FURTHER INFORMATION AND ADVICE

General Information about FOIA	Information about FOIA and contracts
BBC FOI www.bbc.co.uk/freedom	BBC Suppliers www.bbc.co.uk/supplying
Information Commissioner www.informationcommissioner.gov.uk	Awareness Guidance Notes 2 and 5 www.informationcommissioner.gov.uk
Government Policy on FOIA www.foi.gov.uk	Government Guidance on FOIA Exemptions http://www.foi.gov.uk/guidance/ Code of Practice http://www.foi.gov.uk/understand.htm#part5

TEMPLATE
Summary of Designated Information under FOIA

Contract	Contract clause	Harm if released	FOIA exemption	Public interest considerations	Review date

Purpose

A contractor should use this template to identify designated information to the BBC at or before the contract is entered into. The BBC will refer to this summary of designated information if it receives a FOIA request for information relating to the contract.

How to complete the summary:

Contract
Please identify the contract by title and Purchase Order number if relevant.

Contract clause
Please identify the clause, if relevant. Sometimes the clause or schedule in the contract itself may be commercially sensitive. For example, it may identify a trade secret. Sometimes the clause itself will not be commercially sensitive but it will refer to information held or created under the contract that is. For example, a contract clause that cross references a separate list of unit prices.

Harm if released
Please specifically identify the harm that would be caused by releasing this information with reference to FOIA. For example, the disclosure of information about how a company is able to offer a competitive price may prejudice its commercial position.

FOIA exemption
Please identify which FOIA exemption you think is relevant. For example, if releasing the information would prejudice your (or someone else's) commercial interests then the relevant exemption is section 43(2).

Public interest considerations

This is relevant if you have identified a qualified exemption (ie one that is subject to the public interest test). Section 43(1) (trade secrets), and 43(2) (commercial interests), are both qualified exemptions.

Review date
Information that is commercially sensitive one year, may no longer be commercially sensitive the next. If you know that the harm caused by release may be confined to a limited time period then please specify a review date.