

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 7 September 2006

Public Authority: House of Commons

Address: House of Commons
London
SW1A 0AA

Summary Decision and Action Required

The Information Commissioner's (the "Commissioner") decision in this matter is that the House of Commons has not dealt with the complainant's request in accordance with Part 1 of the Freedom of Information Act 2000 (the "Act") in that it has failed to comply with its obligations under section 1(1).

In order to comply with its obligations under s.1 (1) of the Act, the House of Commons (the "House") shall, within 35 calendar days of the date of this notice, communicate to the complainant the information that she requested.

1. Freedom of Information Act 2000 (the 'Act') – Application for a Decision and the Duty of the Commissioner

1.1 The Commissioner has received an application for a decision whether, in any specified respect, the complainant's request for information made to the Public Authority has been dealt with in accordance with the requirements of Part I of the Act.

1.2 Where a complainant has made an application for a decision, unless:

- the complainant has failed to exhaust a local complaints procedure, or
- the application is frivolous or vexatious, or
- the application has been subject to undue delay, or
- the application has been withdrawn or abandoned,

the Commissioner is under a duty to make a decision.

1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

2. The Complaint

- 2.1 On 16 February 2005 the complainant requested the following information from the Public Authority.

“The email of 9th January (as in the email 24 December before it) asked if a detailed breakdown of an MP’s travel expenses for 2003/04 could be made available under Freedom of Information. I said I was specifically interested in a breakdown of the travel expenses for that year of East Lothian MP Anne Picking”

Although the initial email request of 24 December 2004 was made prior to the full implementation of s.1 rights under the Act, the subsequent request and appeal took place after the statutory implementation date, and were treated by both parties as being covered by the Act.

The Commissioner therefore considers the request to be valid for the purposes of s.50 of the Act.

- 2.2 The House responded on 17 February 2005. It stated that disclosure of information additional to that in its publication scheme would not be consistent with the Data Protection Principles and is therefore exempt from disclosure under section 40 of the Act.

3. Relevant Statutory Obligations under the Act

Failure to give access

Section 1(1) provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

The Section 40 exemption

Section 40(2) of the Act states that:

“Any information to which a request for information relates is also exempt information if-

- (a) it constitutes personal data which do not fall within subsection (1), and*
- (b) either the first or second condition below is satisfied.”*

Section 40 (3) states:

“The first condition is:

(a) in a case where the information falls within any of the paragraphs (a) to (d) of the definition of “data” in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise under this Act would contravene-

(i) any of the data protection principles, or section 10 of that Act (right to prevent processing likely to cause damage or distress).....”

4. Review of the case

- 4.1 On 28 March 2005 the complainant formally asked the Commissioner for a decision about the House’s decision to refuse the request for information that she made to it.
- 4.2 On the 31 May 2005 the Commissioner wrote to the complainant to enquire whether the House had undertaken an internal review of the request. The complainant responded on 9 June 2006 confirming that she had asked the House for an internal review of her request.
- 4.3 On 1 July 2005 the complainant wrote to the Commissioner confirming that she had now received the internal review response from the House. She confirmed that the House had turned down her request on the grounds that the requested information constituted personal data of which the MP was the data subject, and that its disclosure would breach the principles of the Data Protection Act 1998 (the “DPA”). The complainant argued that she believed it was wholly legitimate to seek a breakdown of the MP’s expenses which at least detailed major rail and air trips, including those between Westminster and the MP’s constituency.
- 4.4 On 27 September 2005 the Commissioner wrote to the House explaining that this request appeared to be identical in nature to that of another complaint being considered by the Commissioner. The House was therefore asked to confirm whether it intended relying on the same arguments it had put forward in the other case or whether it wished to make any further comments in respect of this particular complaint.
- 4.5 On 27 October 2005 the House replied to the Commissioner’s letter of 27 September. It agreed this appeared to be an identical request and that if the points raised in this complaint are the same as in the other complaint then the House’s response on those points would be the same. However, if any further points needed raising then the House would wish to respond accordingly.

- 4.6 In response to this letter, the Commissioner wrote again to the House on 1 November 2005 outlining certain points raised by the complainant. The House responded to these points on 7 November 2005, once again reiterating its decision to withhold the information.
- 4.6 Further correspondence took place between November and March with the complainant about the information she was seeking as part of the breakdown of travel expenses. The complainant indicated she was not interested in seeking the cost of each journey, only average costs and that she was primarily interested in those journeys that are part of the travel between London and East Lothian. She indicated that she was especially keen on knowing the number of trips between London and East Lothian involving plane, rail and rail sleeper. In relation to claims on behalf of a spouse she was interested in both the total cost claimed for travel and particularly the cost if any involving a spouse traveling between London and East Lothian. She also commented that she would like to know a total for all travel not involving trips between London and East Lothian. However she explained that as she did not know how the information was recorded, she was not clear whether her request was too onerous.
- 4.7 Between November 2005 and April 2006 the complaint was also considered along with a number of similar complaints received by the Commissioner. Representatives of the Commissioner visited the House in October 2005 to discuss in general terms the type of information about MPs' expenses that the House holds.
- 4.8 On 18 April 2006 the Commissioner issued a Preliminary Decision Notice in which he stated that his preliminary view was that the information was not exempt under s.40. The House was invited to make any further representations as to why the Commissioner should not serve a Decision Notice in the terms described in the Preliminary Notice within 30 days of the 18 April 2006.
- 4.9 The House responded on 12 May 2006 and commented on its interpretation of paragraph 6 Schedule 2 of the DPA. Its comments are explained in 5.4 below. It also asked the Commissioner to explain how he had taken into account the complainant's request for information concerning the spouse of the MP concerned. Furthermore it commented that in defining more precisely the nature of the information required by the complainant in the Preliminary Notice the Commissioner had in fact widened the scope of the request beyond that which was previously agreed with the House. It commented that this raised different issues for the House which it had not previously had to consider and that some of the information as now defined may not in fact be held.
- 4.10 The Commissioner wrote back to the House on 15 May 2006 and asked a number of questions about what information the House recorded and whether in fact it did hold the information as requested by the complainant. The House confirmed that average costs were not recorded. However it accepted it is possible for the

complainant to calculate these figures using the data held by the House. It also confirmed that total costs are held by mode of transport (by motor mileage, rail and air but rail sleeper and taxi cannot be separately identified). It also does not record information about the total cost for all other travel not involving trips between London and East Lothian. It does hold information that reveals the total cost of travel claimed specifically for a spouse and this can be reported separately. However this category of expenditure is currently excluded from the total published for travel costs each year as part of the House's voluntary annual publication of allowance costs for each MP.

4.11 The Commissioner is satisfied that some of the information as sought by the complainant is not recorded and therefore not held by the House. The complainant has confirmed that she is content to receive a detailed breakdown as it is recorded and held by the House.

4.12 **Personal Data**

The Commissioner accepts that the information requested is personal data as defined in the DPA. The DPA defines personal data as:

"...data which relate to a living individual who can be identified-

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller..."

4.13 **The first data protection principle**

The first data protection principle requires that:

"Personal data shall be processed fairly and lawfully, and, in particular, shall not be processed unless-

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met"

4.14 The House argued that disclosure of information in addition to that which is already included in its publication scheme would be unfair to individual MPs. In a letter of December 2002, MPs had been advised of the information which would be disclosed in the House's publication scheme. The House asserted that since no further notice of additional disclosure has been given, MPs could reasonably expect that nothing further would be disclosed and that disclosure of the requested information would therefore be unfair.

4.15 In the Commissioner's view disclosure of the information sought would not be unfair. The Commissioner accepts that disclosure of the information requested

goes beyond that which MPs were notified of in the letter of December 2002. However, the Commissioner also notes that the letter of December 2002 does not, and could not, give any assurances to MPs that additional information will not be provided should the Act require its disclosure.

- 4.16 The Commissioner is of the view that the information requested relates to individuals acting in an official as opposed to a private capacity. The journeys that an MP may claim reimbursement for are ones made in connection with his or her official business, for example travel to the House of Commons from his or her constituency. Purely private travel, for example that carried out for recreational purposes, is not subject to reimbursement. Information about such journeys does not, therefore, fall within the terms of the complainant's request.
- 4.17 The Commissioner accepts that the information sought is personal data. However, disclosure of the requested information would not erode the personal privacy that individual MPs are entitled to in their private lives. The Commissioner considers that the information sought in this case is personal data about the money that an MP has claimed as reimbursement for the cost of journeys made in order to carry out her Parliamentary business, journeys for which she receives an official allowance paid for from the public purse. Therefore, it is the Commissioner's view that disclosure of the information in this case would not be unfair.

4.18 **Schedule 2, Condition 6**

The first data protection principle requires that personal data shall be processed fairly and lawfully and in particular shall not be processed unless at least one of the conditions in Schedule 2 of the DPA is met. In this case the House asserted that the only relevant condition which might be met in Schedule 2 is condition 6. Condition 6 legitimises the processing of personal data in cases where:

The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

- 4.19 The House recognises that information pertaining to the use of public money by elected office-holders is a matter of legitimate public interest. However, the House asserts that disclosure in this case would be prejudicial to the legitimate interests of the data subject (the MP). This is because the requested disclosure would go beyond that notified to MPs in December 2002 (and which now forms part of the House's publication scheme); this was a level of disclosure which, at the time, was thought by the House to represent the appropriate balance between the interests of the public and the interests of MP's.

- 4.20 The House also argues that, in the context of condition 6 of Schedule 2 of the DPA, MPs should not be required to produce evidence of specific prejudice arising from disclosure in order to provide a counterbalance to the legitimate interest of the requestor. The House suggests that it would be unfair to require MPs to present evidence of a specific prejudice, arguing that the requestor needs only to establish that her legitimate interest is a general one in the spending of public funds and not anything specific to her.
- 4.21 Further, the House asserts that since the request was made under the Act and the House is not entitled to ask why the complainant is seeking the information, it does not believe that the legitimate interests the complainant has in disclosure, and the possible prejudice to an MP, can be properly balanced unless the House knows why the complainant wants the information and what she intends to do with it. In addition, the House argues that it does not accept that the balance falls in favour of the complainant unless specific prejudice can be identified.
- 4.22 The Act does not allow a request for information to be refused on the grounds that the public authority is unaware of the purposes for which information is being sought and of how it might be used. Any assessment of whether disclosure of the information will cause prejudice must be based on a consideration of the nature of the information and whether its disclosure would cause unwarranted prejudice to the legitimate interests of the MP.
- 4.23 In any event, the House has not produced evidence of any prejudice to the legitimate interests of the MP.
- 4.24 As the House has acknowledged, the public (and the complainant as a member of the public) has a legitimate interest in access to information about an elected official's claims for public money. The House has not demonstrated that disclosure of the requested information would cause unwarranted prejudice to the legitimate interests of the MP. Therefore, the Commissioner's view is that, in this case, condition 6 of Schedule 2 of the DPA is met. Therefore this requirement of the first data protection principle does not prevent the disclosure of the requested information.

4.25 **Personal data about the MP's spouse**

The Commissioner notes that the complainant has also asked for the total cost of travel claimed for the MP's spouse. The Commissioner accepts that such information is personal data about the MP's spouse. However the Commissioner does not accept that the disclosure of this information will breach the data protection principles. He does not accept, therefore, that this part of the requested information is exempt from disclosure by virtue of s.40 of the Act.

- 4.26 The Commissioner considers that the information requested still relates to the MP in her carrying out of official Parliamentary business. The Commissioner notes that the costs incurred by an MP's spouse in travelling between the MP's home/constituency and Westminster can be claimed for by the MP from public funds, and that there is a set limit as to the number of allowable journeys. The arguments referred to above therefore equally apply to information concerning the spouse. In particular the Commissioner is of the view that in this case the legitimate public interest in this information being made available outweighs any prejudice there might be to the legitimate interests of the MP's spouse in withholding it. Therefore it is the Commissioner's view that in respect of disclosure of this part of the requested information, condition 6 of Schedule 2 of the DPA can be met. In any event, the House has not produced any evidence of prejudice to the legitimate interests of the spouse.
- 4.27 In this case the House also indicated disclosure of information which identifies the routes travelled by a Member is likely to establish a pattern of travel by that Member. The Commissioner has also considered whether disclosure of the information would create a security risk for the spouse as well. The Commissioner accepts that where it is possible to establish a pattern of travel by the disclosure of information there may be a security risk. However in this specific case the Commissioner is not satisfied it is possible to do so. The complainant has requested to know the number of journeys between say London and Edinburgh. It is generally known that the MP (and on occasions her spouse) in question will probably travel frequently between these two locations given the location of her constituency and of Parliament. She is not however asking the House to provide the detailed routes, times or dates of those journeys. Without this specific information the Commissioner considers it is not possible to establish a pattern of travel which could create a security risk to the MP.

5. The Commissioner's decision

The Commissioner's decision is that the House is in breach of section 1(1) of the Act in that it incorrectly withheld the information requested on the basis that it is exempt under s.40 (2) of the Act.

6. Action Required

In order to comply with its obligations under s.1 (1) of the Act, the House shall, within 35 calendar days of the date of this notice, communicate to the complainant the information that she requested.

7. Right of Appeal

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "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@dca.gsi.gov.uk

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 7th day of September 2006

Signed

**Graham Smith
Deputy Commissioner**

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