

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 6 August 2007

Public Authority: House of Commons
Address: House of Commons
London
SW1A 0AA

Summary

The complainant made a request to the House of Commons Treasury Committee for access to three files. The House refused to disclose all the information in two of the three files and some of the information in the third file as to disclose the information would infringe parliamentary privilege and is therefore exempt under section 34 of the Act. The House produced a certificate signed by the Speaker of the House of Commons certifying this, production of a certificate under section 34 is conclusive evidence that disclosure would infringe parliamentary privilege and so the Commissioner finds that section 34 (an absolute exemption) is engaged.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. The Complainant has advised that on the 8 December 2005 he made the following request for information to the House of Commons:

*" Please can you arrange for me to see the following files:
HC/CP/14051/9..../10...../11"*

3. The House of Commons (the House) responded on the 15 December 2005, it confirmed it held the information requested and confirmed that the files relate to correspondence, briefs and a draft report from the House Of Commons Treasury Committee's 1995-1996 inquiry into 'Financial Services Regulation: Self Regulation at Lloyds of London'. The House refused to disclose the information on the grounds that the refusal is necessary for the purpose of avoiding an

infringement of parliamentary privilege. It explained that the information was therefore exempt under section 34(1) of the Act.

4. The complainant's representative replied on the 15 December 2005. He asked the House if there were circumstances where material placed in a closed box would not be exempt under section 34, for a list of the contents of the requested files and if the exemption would also apply to the same request made by a Member of Parliament.
5. On the 4 January 2006 the House responded informing the complainant that the correspondence dated 15 December 2005 was being treated as further FOI request. The House explained that when a request is received, the relevant information is carefully reviewed to see if it can be disclosed in full or in part and if not why. The status of the box as referenced by the complainant as being 'closed' not does not affect the process of the review.
6. The House also stated that a list of contents of the files could not be disclosed as one did not already exist and the Act only provided a right of access to recorded information and did not require a public authority to create new information. Further the House explained to the complainant that the exemption at section 34 of the Act can apply in appropriate circumstances to a request by a Member of Parliament.
7. On the 16 January 2006 the complainant's representative wrote again requesting an internal review of the House's decision.
8. On the 1 March 2006 the House responded to the complainant with the outcome of the internal review. The House found that the material exempt under section 34 was the draft report HC/CP/14051/11 (box 11) and brief HC/CP/14501/10 (box 10), the House explained that a certificate certifying that the exemption is required for the purpose of avoiding an infringement of the privileges of the House of Commons would be prepared for consideration of Mr Speaker. The House further explained that under section 34(4) such a certificate would be conclusive evidence that the exemption applies. The House also explained that the review had found that the decision to withhold all the material in the file HC/CP/14051/9 (box 9) was incorrect and recommended that the file should be reviewed in order to identify material which was not exempt, and that this should then be disclosed. This review would not be done at the time but was to be undertaken separately.
9. The response from the House explained that the information in box 9 consisted of correspondence relating to the inquiry and contains information from several categories including: letters to (or from) the Chairman or committee staff' attachments to those letters including published and other widely circulated material; and letters to others of which the Chairman of the Committee was a copy recipient.
10. The complainant's representative responded on the 1 March 2006 stating that they had no dispute about the drafts of the reports remaining confidential but that the evidential material sent to the Committee should be made available. The complaint's representative expressed that he believed that this was what was

meant by the conclusion of the internal review to review the contents of box 9. He also expressed concerns that no contents list of the boxes existed and the potential records management and security issues this raised.

11. On the 21 March 2006 the complainant received a further response from the House in relation to its review of box 9 (see paragraph 8). The House explained that the further review of box 9's contents had now been completed and enclosed the material found not be exempt under section 34. The House also stated that a Speaker's certificate would be forwarded certifying that the remainder of the information and the information in boxes 10 and 11 is exempt under section 34.

The Investigation

Scope of the case

12. On the 7 March 2006 the complainant's representative asked the Information Commissioner to investigate the House's refusal to disclose the information requested. In particular the complainant stressed that he had no issue with material prepared specifically for the Committee and or on the Committee's instructions being withheld as he accepts that they are covered by Parliamentary Privilege. The complaint 's representative stated his concerns were in relation to material that has been attached to letters to the Committee and in particular what is encompassed by 'any attachments to those letters which are essential to a full understanding of the arguments in them.'
13. The complainant's representative also stated that he was extremely concerned that no indexes of the contents of the files existed. The Commissioner has raised this with the House and explained to the House that under section 84 of the Act, the definition of 'information' is information recorded in any form. In particular the Commissioner explained that the creating of a contents list, if the information is held (i.e. each files has a title), does not constitute the creation of new information but is providing existing information in an alternative format. The Commissioner advised the House of the decision in case FS50070854 which outlines this in more detail. The House acknowledged this approach. However the Commissioner has not investigated this in more detail as the complainant's initial request was to see the full contents of the three files and his comments relating to the lack of a contents list focus more on the archiving system and the records management issues this raises. The Commissioner also notes that the request made under the Act was to see the contents of the three files and not a contents list, this was done later in an attempt to focus his request.
14. The Commissioner focused his investigation on the application of section 34 to the three boxes and on establishing if the reference to a review of box 9 at the internal review (see paragraph 8) had been undertaken.

Chronology

15. The complainant's representative wrote to the Commissioner on the 24 April 2006 enclosing a copy of the letter dated 21 March 2006. The complainant's representative expressed dissatisfaction with this response, stating that no material had been made available to him that had been produced to the Committee prior to the production of the Committee's report. The complainant's representative also stated that the information provided was for the most part already in the public domain and that the material he wanted to see was evidential material produced for the Committee in advance of it reaching its conclusions.
16. The complainant also provided a copy of a letter sent by him to the House informing them that he remained unhappy with the responses as detailed in his letter to the Commissioner, and that his complaint was now with the Information Commissioner.
17. The House responded to the complainant on the 10 May 2006. In its response the House reiterated to the complainant that his original request had been for the contents of three files and had never made reference to 'evidential material'. The House explained that the Treasury and Civil Service Committee had produced two reports:
 - I Fifth Report of the Treasury and Civil Service Committee of Session 1994-95, *Financial Services Regulation: Self regulation at Lloyd's of London*, HC 187;
 - II Fourth Report of the Treasury and Civil Service Committee of Session 1995-6, *Financial Services Regulation: Self regulation at Lloyd's of London*, HC 223.The files requested contain material related to the latter of the reports.
18. The House explained that whilst it understood that the complainant was not satisfied that he had not received a full list of the files requested, that where a document is exempt under section 34 there is no requirement to provide one. The House did suggest to the complainant that he could make a more general request for example for all the material held in relation to the Treasury and Civil Service Committee's inquiry, or a request for a specific document rather than requesting specific files, the contents of which were not known. The House explained that some of the information in a new request could also be exempt.
19. On the 16 April 2007 the Commissioner wrote to the complainant to clarify some aspects of his complaint. In particular the Commissioner asked the complainant to confirm if his complaint relates to the information held in file box 9 and if he accepted that the information in the other boxes is exempt under section 34.
20. The Commissioner also wrote to the House of Commons on the 16 April 2007 to ask for further explanation of its application of section 34 and for a copy of the certificate signed in accordance with section 34(3).

21. On the 3 May 2007 the complainant's representative responded to the Commissioner. In his letter the complainant's representative stated that at no time has a copy of a certificate under section 34 been produced to him. The complainant's representative clarified that whilst he had not disputed the application of section 34 in relation to boxes 10 and 11, he did feel that information contained in those files should be made available to him. However, he confirmed that his primary complaint was the non disclosure of the information held in box 9.
22. On the 24 May 2007 the House responded to the Commissioner. Included in the response was a copy of the certificate confirming that the information not already disclosed to the complainant from box 9 and box 10 and 11 was exempt under section 34 of the Act.

Findings of fact

23. The requested information is the contents of three files HC/CP/14051/9,10,11 (boxes 9,10 and 11) which relate to the Fourth Report of the Treasury and Civil Service Committee of session 1995-96, *Financial Services Regulation: Self-Regulation at Lloyd's of London*, HC 223.
24. Box 11 contains a draft report, box 10 contains a brief and box 9 contains correspondence relating to the inquiry.
25. Some of the contents of box 9 have been disclosed to the complainant but the House has stated the remainder of the information in this box and all the information in the other boxes is exempt under section 34.

Analysis

Exemption: Section 34 'Parliamentary Privilege'

26. Section 34 provides that information is exempt if exemption from section 1(1)(b) of the Act is required for the purpose of avoiding an infringement of the privileges of either House of Parliament. Section 34(3) states that a certificate signed by the appropriate authority certifying that exemption is, or at any time was, required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact.
27. Parliamentary privilege is a matter of constitutional law and is regarded as being of the utmost importance for effective working of Parliament as it protects its right to operate independently, without interference from external sources. The purpose of the exemption is therefore to preserve Parliament's right to regulate its own proceedings. The Commissioner notes that the types of information which would normally fall within this exemption are:
 - committee report and drafts;
 - memoranda submitted to committees;

- internal papers prepared by the Officers of either House directly related to the proceedings of the House or committees;
 - papers prepared by the libraries of either House, or by other House agencies;
 - correspondence between Members, Officers, Ministers and Government Officials directly related to House proceedings;
 - papers relating to investigations by the Parliamentary Commissioner for Standards;
 - papers relating to the Register of Members' Interest;
 - And bills, amendments and motions, including those in draft where they originate from Parliament or a Member rather than from parliamentary counsel or another government department.
28. The exemption can be claimed where it can be demonstrated that disclosure would result in an infringement of parliamentary privilege. However, where a certificate is produced there would be no need to investigate further as the certificate is deemed to be conclusive evidence of the fact.
29. In its refusal notice the House stated that the exemption at section 34 was required to protect privilege but did not state why or indicate that a certificate was being produced. In the internal review the House explained further that the material was prepared directly for the Committee's inquiry and was therefore covered by the exemption and informed the complainant that a certificate certifying this was being prepared.
30. The Commissioner queried with the House if a certificate had been produced certifying that the information was exempt. The House explained that whilst communications had been ongoing with the complainant no certificate had been obtained as the files were still being reviewed. The House stated that following its review of the files and subsequent disclosure of some information to the complainant, it received a letter from the Commissioner informing it of the complainant's complaint. In light of this it did not obtain a certificate as it thought best to await further contact from the Commissioner.
31. In the House's response to the Commissioner of the 24 May 2007, it produced a certificate dated 21 May 2007 certifying that the information requested in box 10 and 11 and such information as has not been made available to the requester in box 9 is exempt under section 34.
32. The production of a certificate signed by the Speaker of the House of Commons is conclusive evidence of the fact that the exemption is or at any time was required to prevent an infringement of parliamentary privilege., A certificate has now been supplied. The Commissioner therefore finds that the exemption at section 34 of the Act is engaged and the information withheld is exempt from disclosure.
33. As section 34 is an absolute exemption there is no requirement to consider the public interest test.

The Decision

34. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act.

Steps Required

35. The Commissioner requires no steps to be taken.

Right of Appeal

36. Either party has the right to appeal against this Decision Notice to the Information 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

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

Dated the 6th day of August 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
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Wilmslow
Cheshire
SK9 5AF**