

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 10 June 2009

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

Summary

The complainant asked the House of Commons (HoC) to provide him with a variety of information about expense claims made by 12 specific MPs relating to both travel allowances and stationery allowances. The HoC provided the complainant with some information but argued that further information was exempt from disclosure on the basis of section 40(2) of the Act (Personal information). The information withheld on the basis of section 40(2) comprised the total amount claimed by each MP for staff travel for the financial years 2005/2006 and 2006/2007 against the Incidental Expenses Provisions and staffing budget allowances, and a breakdown of the amount claimed by each MP in relation to centrally purchased stationery and postage for the financial years 2005/2006 and 2006/2007 of the published tables. (Since 2004 MPs' total annual spend against allowances has been published on the Parliamentary website). The complainant asked the Commissioner to consider the application of section 40(2) to these two classes of information. The Commissioner has concluded that section 40(2) does not provide a basis to withhold the information and therefore the Commissioner has ordered the HoC to disclose this information. In handling this request the Commissioner has also concluded that the HoC breached section 1(1)(b) and 10(1) by incorrectly withholding this information.

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 submitted the following request to the House of Commons (HoC) on 6 December 2007:

'This is a request under the Freedom of Information Act seeking information about official expenditure in respect of the MPs listed on the attached sheet.

I wish to know whether the House of Commons holds information of the following description and, if so, I wish to have the information communicated to me.

1. In respect of each of the years 2005/2006 and 2006/2007:

- (a) a breakdown of each category of travel expenses claimed by the MP, showing how much the expense claimed in each category related to travel by (i) the MP, (ii) [his or her] spouse [or partner], and (iii) where this information is not already included in the published figures, the MP's staff;
- (b) a breakdown of the expenses for centrally purchased stationery (col 7 in the published table) and for postage costs (col 7a) showing the nature of the stationery and the nature of the mailings, the postage for which was claimed.

2. In respect of the period since 1 March 2007:

- (a) how much has been claimed by that MP in respect of the "communications allowance";
- (b) how much the MP has spent in his constituency on communication with constituents, and whether or not such spending has been claimed for'.

3. The MPs listed on the annex to the request were: David Borrow, Paul Flynn, Peter Hain, Geoff Hoon, Phil Hope, Dr Stephen Ladyman, Martin Linton, Nick Palmer, Ken Purchase, Bill Rammell and Tom Watson.

4. The reference in the request to the 'published table' relates to the tables published by the HoC which list the total amount claimed by each MP against various different allowances. Further details of the allowances MPs can claim are included in the 'Findings of fact' section below.

5. The HoC responded to this request on 13 December 2007 using the reference numbers employed by the complainant in his letter of 6 December 2007. In relation to request 1(a) the HoC explained that all of the expenditure reported in the published tables, for example columns 5a to 5f, related to MPs' own travel and none of its related to claims for travel undertaken by an MP's staff or spouse. In relation to request 1(b) the HoC confirmed that it held a breakdown of stationery and postage costs; however it considered this to be exempt from disclosure by virtue of section 40(2) of the Act. In relation to request 2(a) the HoC explained that expenditure for all MPs against the communication allowance for the period in question would be published in autumn 2008 and therefore this request was refused on the basis of section 22 (information intended for future publication) of the Act. (This intended publication was inline with the HoC's stated

- policy of publishing the annual total claimed by each MP against the communications allowance in each financial year). The HoC explained why it had concluded that the public interest favoured maintaining this exemption. Finally in relation to request 2(b) the HoC explained that all expenditure against the communication allowance related to communications with constituents and further the HoC did not hold, by definition, information about expenses which had not yet been claimed for.
6. The complainant contacted the HoC and asked it to conduct an internal review of its decision. In relation to request 1(a) the complainant argued that the HoC's response only considered the published figures relating to MPs' own travel whereas his request had clearly also sought details of travel claims by MPs' staff, spouse or partner. In relation to request 1(b) the complainant noted that the HoC had refused a previous request for a breakdown of a particular MP's travel expenses on the basis of section 40(2) but this argument had been rejected by both the Commissioner (see decision notice [FS50067986](#)) and the Information Tribunal (see decision [EA/2006/0074](#)). The complainant suggested that the application of section 40(2) was not any stronger when applied to stationery costs than travel costs and thus the case law suggested that the information falling within the scope of request 1(b) should be disclosed. In relation to request 2(a) the complainant asked the HoC to re-consider its application of section 22 of the Act.
 7. The HoC acknowledged receipt of internal review request on 28 December 2007. In this letter the HoC confirmed that it now understood the request 1(a) also covered information about expense claims made in relation to travel by the MPs' spouse, partner and/or staff and furthermore confirmed that it did maintain a record of such claims. The HoC informed the complainant that it aimed to complete the internal review within 30 working days.
 8. The complainant contacted the HoC on 15 January 2008 and asked to add the following MPs to the list he originally submitted on 6 December 2007: Martin Linton, Ken Purchase and Jeremy Corbyn.
 9. The HoC wrote to the complainant on 4 March 2008. In this letter the HoC noted that although the complainant's letter of 15 January 2008 could reasonably construed as being a new request, it was prepared to add the additional names to the list of MPs included in the original request of 6 December 2007. The HoC noted that in fact Martin Linton and Ken Purchase already appeared on the list of 6 December and therefore the only name needed to be added was that of Jeremy Corbyn. The HoC's letter of 4 March 2008 also set out the findings of the internal review which also used the reference numbers employed by the complainant in his letter of 6 December 2007:
 10. In relation to request 1(a) the HoC confirmed that the rules governing travel entitlements were published in the Green Book.¹ In relation to claims made

¹ The Green Book is published by the HoC's Department of Finance and Administration and is designed to provide MPs with information on their pay, allowances, pensions and responsibilities. The version of the Green Book published in July 2006 can be viewed here: <http://www.parliament.uk/documents/upload/HofCpsap.pdf>

- against the travel allowance the HoC explained that the claims made by each MP are published in full each as are the claims made by them between the constituency and Westminster undertaken by their staff where these are paid for from the same budget, i.e. the travel allowance. The HoC directed the complainant to column 6 of the published tables which details staff expenditure claimed by each MP from the travel allowance. The HoC explained that although it held records detailing a breakdown of the costs of travel claimed by each MP for their spouses and family, using criteria adopted by the Information Tribunal it was only prepared to disclose the total amount claimed by each MP for their spouse and family for each financial year, as opposed to a breakdown of these figures. These totals, and where applicable confirmation that no claims were made, were provided to the complainant for all MPs covered by his request. The HoC also explained that in addition to claims made under the travel allowance, the costs of some journeys undertaken by MPs and their staff on parliamentary business can be claimed from the IEP and staffing budgets. The HoC confirmed that it was aware of recent decision notice issued by the Commissioner ([FS50083202](#) and [FS50134623](#)) which had concluded that further details about expenditure for various allowances should be provided. However, the HoC confirmed that until it had reached a position on these notices, i.e. whether it would follow approach adopted by the Commissioner, it remained of the view that any further breakdown of expenses claimed, including the amount of travel claims made by MPs for their own travel and their staff's travel from the IEP and staffing budgets, remained exempt on the basis of section 40(2).
11. In relation to request 1(b) the HoC confirmed that it held records of stationery purchased from the central supplier and of costs associated with the purchases of envelopes and other mailers with pre-paid postage costs. The HoC noted the complainant's reference to the Tribunal's conclusions on information held about travel claims as being analogous to his request 1(b) but the HoC noted that the Tribunal ordered disclosure of information in terms of general classification rather than a detailed breakdown. Moreover, the HoC reiterated its comments summarised in the last sentence of the preceding paragraph, i.e. that until it had fully considered recent decision notices issued by the Commissioner it remained of the view that a breakdown by MP of stationery costs was exempt on the basis of 40(2).
 12. Finally, in relation to request 2(a) the HoC explained that although it remained of the view that information falling within the scope of this request was exempt from disclosure on the basis of section 22, it was prepared to provide this information to the complainant. The HoC therefore enclosed the total amount claimed by each MP covered by the complainant's request against the communication allowance for the period 1 April 2007 to 31 January 2008. (The Commissioner notes that request 2(a) also covers the month March 2007, although the figures for this month were not included in the information provided to the complainant. However, as the scope of the case section sets out below the complainant did not ask the Commissioner to consider this omission).

The Investigation

Scope of the case

13. The complainant contacted the Commissioner on 14 April 2008 and explained that he wished to complain about the HoC's handling of his requests. The complainant noted that he was still in correspondence with the HoC in relation to a number of issues emanating from his requests and moreover noted that he was not asking the Commissioner to consider all aspects of the HoC's refusal to provide information.
14. The complainant specifically set out that the only two issues he wished the Commissioner to consider were:
15. In relation to his request numbered 1(a) the complainant noted that the HoC published the annual amount claimed by MPs for their staff travel against the travel allowance. However, it considered the amount each MP claimed for staff travel against the IEP and staffing budgets allowance to be exempt from disclosure on the basis of section 40(2). The complainant argued that it was inconsistent for the HoC to accept that the annual level of staff travel expenses should be disclosed when they were claimed against the travel allowance but not when they were claimed against the other non-travel allowances. The complainant also argued that the Commissioner findings in decision notice FS50083202 and FS50134623 strongly suggest that this information should be disclosed.
16. In relation to his request numbered 1(b) the complainant noted that the HoC did not hold any information about the nature of the mailings sent by the various MPs, but its refusal notice of 13 December 2007 made it clear that it did hold a breakdown of stationery and postage costs themselves, albeit that this breakdown was exempt from disclosure on the basis of section 40(2). Again the complainant argued that HoC's reliance on section 40(2) was without merit for the reasons entirely analogous with the decision notices referenced in the previous paragraph.

Chronology

17. Due to a backlog of complaints about public authorities' compliance with the Act, the Commissioner was not able to begin his investigation of this complaint immediately. Therefore it was not until the 26 January 2009 that the Commissioner contacted the HoC in relation to this case. The Commissioner noted that since the complainant had initially submitted his complaint to him in April 2008 there had been a number of significant developments with regard to the disclosure of information about allowances paid to MPs, e.g. the High Court case of May 2008.² The Commissioner therefore asked the HoC to confirm whether in light of these developments it was still seeking to rely on section 40(2)

² Corporate Officer of the House of Commons v Information Commissioner & Heather Brooke, Ben Leapman, Jonathan Michael Ungood-Thomas [2008] EWHC 1084 (Admin) (16 May 2008).

to withhold the information falling within the scope of this complaint or whether it was now prepared to disclose the information.

18. The HoC provided the Commissioner with a response on 14 April 2009. In this response the HoC informed the Commissioner that copies of the scanned claims forms and receipts relating to the ACA, IEP and Communication Allowances and a breakdown of stationery and postage costs would be made available to the public by mid-July 2009.

Findings of fact

19. Since 2004, MPs' spend against allowances has been published each year on the Parliamentary website. The figures comprise annual totals for the following elements:
- MPs' Additional Costs Allowance (ACA) and/or London Supplement
 - Incidental Expenses Provision (IEP)
 - Staff Costs
 - MPs' travel
 - MPs' staff travel
 - Centrally purchased stationery
 - Central IT provision
 - Other central budgets (such as temporary secretarial allowance)
20. The provision of **Travel** entitlements for MPs is done on the basis that reasonable travel and associated parking for the MP's vehicle will be paid for provided that the costs are wholly exclusively and necessarily incurred on Parliamentary duties. This includes travel on the recognised direct route between any two of the following three points: the MP's main home, Westminster, the constituency. Travel within the MP's constituency, within the UK and European travel is also included.
21. The provision of the **IEP** is available to MPs to meet the costs incurred by MPs in carrying out their Parliamentary duties. It cannot be used to meet personal costs, or costs of party political activities or campaigning. The main areas of expenditure incurred include the costs of the following: accommodation for office or surgeries, work commissioned and other accommodation related services, certain travel and communications. This may include for instance expenditure on the following: rental, surveyors and lawyers fees, payments to utilities (rates, water, gas, and electricity), insurance for the office premises, postage, etc.
22. **Staffing** expenses are available to MPs to cover the provision of staff to assist the MP in the performance of their Parliamentary duties. Allowable expenditure within this allowance includes by way of example the following: staff salaries and employer's National Insurance contributions, overtime payments and reasonable cover for staff absences.
23. The provision of an **ACA** recognises that MPs who live outside Greater London need to maintain a residence within a convenient distance from Westminster if

they are to carry out their public functions effectively. Alternatively, if they decide to establish their family residence within a convenient distance of Westminster, they need to maintain a secondary residence in the constituency for use on those occasions when they visit their constituency.

24. **Central IT provision** includes the provision of computers and other IT equipment, free of charge, on loan to MPs for Parliamentary use only.
25. **Centrally purchased stationery** includes the provision of stationery items ordered from a central supplier for use in direct connection with a Member's Parliamentary duties. Postage associated with the use of centrally purchased stationery includes pre-paid postage ordered from the central supplier for use in direct connection with a Member's Parliamentary duties.
26. **Other central budgets** includes the winding-up allowance (WUA) which is payable to defeated or retiring Members after the date on which they cease to be MPs. This covers the reimbursement of the cost of any work necessary, including staff and office costs, to conclude their parliamentary business after the date on which they cease to be MPs.
27. The withheld information that the Commissioner considers to fall within the scope of this complaint comprises:
 - The total amount claimed by each MP for staff travel for the financial years 2005/2006 and 2006/2007 against the IEP and staffing budget allowances.
 - A breakdown of the amount claimed by each MP under column 7 (centrally purchased stationery) and 7a (stationery: associated postage costs) for the financial years 2005/2006 and 2006/2007 of the published tables.
28. On 23 July 2008 Statutory Instrument 2008 No. 1967 came into force. This SI removed both the HoC and the House of Lords from Schedule I of the Act in respect of certain classes of information. This information included 'information relating to any residential address of a member of either House of Parliament' and 'information relating to travel arrangements of a member of either House of Parliament, where the arrangements relate to travel that has not yet been undertaken or is regular in nature' (sections 2(2)(a) and (b) of the SI). However, as the information which is the focus of this notice does not fall within any of the classes of information set out in the SI, then the SI does not have any bearing on the Commissioner's consideration of this complaint.

Analysis

29. Before turning to consider each of these questions in turn, the Commissioner wishes to make it explicitly clear that his role in considering complaints under Part I of the Act is limited to considering the circumstances as they existed at the time of the request or at least by the time for compliance with sections 10 and 17, i.e. within 20 working days following the receipt of the request. The Commissioner's

approach follows that set out in a number of Information Tribunal decisions and is endorsed by the High Court:

30. The Tribunal in *DBERR v Information Commissioner and Friends of the Earth* (EA/2007/0072) noted that the application of the public interest test involved the consideration that 'the timing of the application of the test is at the date of the request or at least by the time of the compliance with ss.10 and 17 FOIA' (para 110). The Tribunal in *DCLG v Information Commissioner* (EA/2007/0069) also supported this approach by referring back to the wording of section 50 of the Act: 'the reference to whether the request "has been dealt with" seems to us plain in that it refers back to the time of the request and decision to disclose (or not to disclose). This also makes sense as there needs to be a degree of certainty for any public authority and for any subsequent appeal' (para 14).
31. This approach was endorsed by the High Court in the case of the Office of Government Commerce and Her Majesty's Attorney General on behalf of The Speaker of the House of Commons in which Justice Burnton stated that:

'...it seems to me to be arguable that the Commissioner's decision whether a public authority complied with Part 1 of the Act may have to be based on circumstances at the time of the request for disclosure of information, but that his decision as to the steps required by the authority may take account of the subsequent changes of circumstances...' (para 98).³
32. The consequence of this approach is that the Commissioner cannot take into account events which have happened after the request has been submitted, or more accurately after 20 working days following the date of compliance, but before the Commissioner has issued his decision notice.

Section 22 – information intended for future publication

33. Although the HoC has not formally argued that it is seeking to rely on section 22 of the Act, the Commissioner notes the comments in the HoC's response of 14 April 2009 imply that it is seeking to rely on section 22 as basis to now withhold this information. Section 22 allows a public authority to refuse to disclose information if it intends to publish it in the future and where it is reasonable that the information should not be published until the intended date of publication.
34. Section 22(1) states that:

'Information is exempt information if-

 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

³ Office of Government Commerce and Information Commissioner and Her Majesty's Attorney General on behalf of The Speaker of the House of Commons, [2008] EWHC 737 (Admin) (11 April 2008)

- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).'

35. Therefore, for section 22 to be engaged the public authority, **at the time of the request**, has to have a settled intention to publish the information requested, albeit that it does not have to determined exactly when the date of publication will be.
36. In the circumstances of this case it is clear that at the time of this request the HoC did not have a view to publish the two classes of information which the complainant has asked the Commissioner to consider; this is evidenced by the fact that it argued that this information was exempt from disclosure on the basis of section 40(2) of the Act. Therefore section 22(1)(b) is not met thus the exemption contained at section 22 cannot be relied upon to refuse the two types of information falling within the scope of this notice.

Section 40 – personal data

37. The HoC has argued that both classes of information covered by this complaint are exempt from disclosure on the basis of section 40(2) of Act. The Commissioner has set out below what section 40(2) provides and has then gone to consider its application to each class of information.
38. In undertaking this analysis the Commissioner is conscious of the not insignificant amount of case law that has already been established regarding the application of section 40(2) in relation to information held by the HoC about MPs' expenses. This case law comprises the various decision notices issued by the Commissioner, the subsequent appeals by the Tribunal (reference numbers [EA/2006/0015/0016](#); [EA/2006/0074/0075/0076](#) and [EA/2007/0060/0061/0062/0063/0122/0123/0131](#)) and the High Court case of May 2008 which is referenced above at footnote 3.
39. Consequently in the analysis which follows, rather than reprise the arguments in relation to the application of section 40(2) in full, the Commissioner has summarised, where appropriate, the relevant arguments and made reference to appropriate sections of the various pieces of case law.
40. Section 40(2) of the Act provides an exemption for information which is the personal data of any third party where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 ('DPA').
41. In order to rely on the exemption provided by section 40(2), the information being requested must therefore constitute personal data as defined by the DPA.
42. Section 1 of 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,

and includes any expression of opinion about the individual and any indication of the intention of the data controller or any other person in respect of the individual.'

43. The data protection principle which the Commissioner understands the HoC believes would be breached if the withheld information is disclosed is the first data protection principle which states that

1. Personal data must be processed fairly and lawfully and
2. Personal data shall not be processed unless at least one of the conditions in DPA schedule 2 is met.

44. The Commissioner considers the most relevant condition in schedule 2 of the DPA to this case is the sixth condition which reads:

'The processing is necessary for the purposes of the legitimate interests pursued by the data controller or by a 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.'

Is the information personal data?

45. The HoC has argued that the withheld information constitutes the personal data of the MPs' because it relates to the personal expenses claimed by each of the named individuals. The Commissioner accepts this to be the case and is therefore satisfied that all the withheld information is personal data as defined by the DPA.

Is disclosure fair and lawful?

46. In considering whether disclosure would be fair and lawful the Commissioner has taken into account a number of criteria, including:

- Whether the information relates to an individual's public life (i.e. their work as a public official or employee) or their private life (i.e. their home, family, social life);
- The reasonable expectations of the individuals as to what would happen to their personal data;
- Whether the individuals have objected to disclosure.

47. In a previous decision notice, FS50071451, the Commissioner stated that the:

'Expenses are claimed by individual MPs in relation to their duties...it is only because such costs are considered to be expenses arising from the

holding of public office that they are subject to reimbursement from the public purse.⁴

48. In this case the two types of information withheld, costs incurred by MPs' staff for travel, and stationery costs, do not have any relation to an MPs' private life in the way that certain expense claims made under the ACA may do, for example a claims for furniture of an MP's second home. The Commissioner is therefore satisfied that the withheld information in this case relates purely to the MPs' public rather than private life.
49. Turning to the expectations of the MPs' in question, in previous cases involving MPs' expenses the HoC has argued that on the basis of the guidance that MPs had been given prior to the right of access coming into force in January 2005, MPs would have a reasonable expectation that nothing would be released about their expense claims except the totals contained in the publication scheme, i.e. the totals claimed against expenses already published on the Parliament's website.
50. The Tribunal in its decision in EA/2007/0060 etc made it clear at paragraphs 45 and 46 that it rejected this argument and concluded that MPs knew, or should have known, that since 1 January 2005 information about their expense claims beyond that listed in the publication schemes may be disclosed in response to requests under the Act.
51. Moreover, in relation to the information about the annual amount claimed for staff travel by each MP against the IEP and staffing budgets allowances, the Commissioner notes that the annual amount claimed by each MP under the allowance 'Members' staff travel' for both 2005/06 and 2006/07 is already published by the HoC. Therefore the Commissioner agrees with the complainant that it is incongruous for the HoC to argue that MPs' would expect that the annual amount of staff travel expenses incurred and charged against the staff travel allowance would be disclosed but claims for staff travel expenses incurred and charged against the IEP and staffing budgets allowances would not.
52. Furthermore for both classes of information the Commissioner is not aware that any of the MPs who are covered by the scope of the complainant's request have objected to the disclosure of either class of withheld information.
53. The Commissioner is therefore satisfied that disclosure of the two classes of withheld information would not be unfair. Furthermore, in the Commissioner's opinion disclosure of such information would not be unlawful..
54. However, as set out above, for personal data to be disclosed under the Act, disclosure must not only be fair and lawful but must also meet one of the conditions contained in schedule 2 of the DPA. In this case, as also noted above, the Commissioner believes that the most appropriate condition is the sixth condition.

⁴ [FS50071451](#), paragraph 32.

Is the sixth condition in schedule 2 of the DPA met?

55. The Commissioner's interprets the sixth condition as setting a three part test which must be satisfied, namely:

- there must be **legitimate interests** in disclosing the information,
- the disclosure must be **necessary** for a legitimate interest of the public, and
- even where the disclosure is necessary it nevertheless must not cause **unwarranted interference** (or prejudice) to the rights, freedoms and legitimate interests of the data subject.

Legitimate interests

56. The Tribunal in EA/2007/0060 etc at paragraphs 70 to 74 accepted that there were a range of legitimate interests which supported the disclosure of information used by MPs to support claims against the ACA allowance. As the information which was the focus of the Tribunal's deliberations, i.e. a receipt level disclosure of ACA claims, is different in nature to the allowance information which is being requested here, i.e. annual travel costs and a breakdown of stationery information, not all of the particular interests identified by the Tribunal are directly relevant to this case. Nevertheless, the Commissioner considers that the following legitimate interests identified by Tribunal would be met by disclosure of the information which is the focus of this case:

'...70 (b) Ensuring that an MP's use of public money is properly accounted for, by providing public scrutiny of the use of public funds, on the basis that greater transparency helps to ensure the thrifty and appropriate use of public funds and to guard against their misuse...

...72(f) An assessment of the amount, breakdown and probity of expense claims is a useful way of assessing a politician's probity generally and of measuring them against their public pronouncements...

...72(g) MPs' claims for expenses have a normative function as a yardstick for others making claims for public money. Expectations of financial propriety, openness and transparency are more easily required of other claimants when those expectations are met by those who make the rules for others...

...72(h) The importance of transparency and accountability are heightened where, as here, the system involves self-certification by the persons claiming the public money...

...72(i) Past instances of misuse, and mistakes requiring funds to be repaid, have demonstrated the legitimacy of public concern over the potential for abuse...

...73 (j) The concern is not merely the use of public money. It is also pertinent that MPs are entitled to claim that money solely by reason of the public elected office which they hold...

...73(l) Disclosure will better inform the long continuing public debate about reforms to the system of allowances.'

57. On hearing the HoC's appeal to the Tribunal's decision, the High Court was equally clear on the existence of strong legitimate public interests in disclosure of information about expense claims made by MPs:

'We have no doubt that the public interest is at stake. We are not here dealing with idle gossip, or public curiosity about what in truth are trivialities. The expenditure of public money through the payment of MPs' salaries and allowances is a matter of direct and reasonable interest to taxpayers... The nature of the legitimate public interest engaged by these applications is obvious.' (Para 15).

Necessity

58. The Commissioner is conscious that in the case EA/2007/0060 etc the Tribunal placed significant weight on disclosure of receipt level data relating to ACA expenses claims being necessary because of the significant flaws in the way in which the ACA has been administered. The Commissioner accepts that in this case, especially in respect of the travel information which is only being requested as an annual figure rather than a breakdown, the level to which disclosure is necessary could be seen as less than in the requests considered by the Tribunal.
59. However, the Commissioner believes that there is a perceptible and genuine lack of public confidence in the entire system of MPs' expenses not just the administration of the ACA, and therefore disclosure of the information which is the focus of this request is necessary to serve the weighty and numerous interests quoted above.

Unwarranted interference

60. The Commissioner believes that the consideration of unwarranted interference is essentially an exercise of weighing up the cumulative value of the public interest factors in favour of disclosure established in the preceding section against the prejudice to the rights, freedoms and legitimate interests of the data subject in which disclosure may result. In effect, this consideration is similar to the balancing exercise set out at section 2 of the Act and the public interest test which must be applied to qualified exemptions.
61. In undertaking this weighing exercise the Commissioner again notes that the nature of the information which is the focus of this notice is far less detailed than the information which was the focus of Tribunal in EA/2007/0060 etc. Therefore in contrast to the information considered by the Tribunal, disclosure of the information in this case does not have the potential to reveal information of a very personal nature, including, for example, information about an MP's partner or children.

62. More specifically in relation to the amount claimed in relation to staff travel as MPs already disclose some of this information in by virtue of it being published in tables produced by Parliament, the Commissioner does not accept that there would be any unwarranted interference in disclosure of the total claimed by each MP for the remainder of staff travel costs claimed against the IEP and staffing budgets.
63. Although disclosure of a breakdown of the costs claimed in relation to columns 7 and 7a would reveal more about how each MP used their expenses, given that this information only relates to the use of stationery costs the Commissioner does consider that this equates to anything beyond a marginal incursion on the rights and freedoms of the MPs.
64. For both classes of withheld information the Commissioner has therefore concluded that public interest factors in favour of disclosing the information detailed above would meet a number of legitimate public interests and on balance strongly outweigh any prejudice that may occur to the MPs covered by the scope of the request. In reaching this conclusion the Commissioner has placed particular weight on the fact that the legitimate interests in disclosure encompass a range of interests including accountability, transparency and value for money, and ultimately the health of democracy.
65. On the basis of the reasoning set out above, the Commissioner believes that disclosure of information covered by the scope of this complaint would be fair, lawful and meet the sixth condition in schedule 2 of the DPA.

Procedural matters

66. Section 1(1) of the Act states 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.’

67. Section 10(1) of the Act states that

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

68. As the Commissioner has decided that the information covered by the complainant’s complaint, i.e. that listed at paragraph 27, is not exempt from disclosure on the basis of section 40(2) of the Act the Commissioner believes that this information should have been provided in line with the duty at section 1(1)(b) of the Act. The HoC’s failure to do so therefore constitutes a breach of section

1(1)(b). Furthermore, by failing to provide this information within 20 working days of the request the HoC also breached section 10(1) of the Act.

The Decision

69. The Commissioner's decision is that section 40(2) does not provide a basis to withhold the information listed at paragraph 27 and therefore this information must be provided to the complainant. By failing to provide this information in response to the request the Commissioner has found that the HoC breached sections (1)(1)(b) and 10(1) of the Act.

Steps Required

70. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- (i) Disclose to the complainant the total annual amount claimed in 2005/2006 and 2006/2007 by each of the MPs listed in annex A which is attached to this notice for staff travel claims against the IEP and the staffing budgets allowances. For clarity, the HoC does not need to provide separate figures for claims against the IEP allowance and claims against the staff budgets allowance - they can be added together, but it does need to provide separate figures for each financial year.
 - (ii) Disclose to the complainant a breakdown of the amount claimed by each MP listed in the annex in respect of the figures contained in column 7 (centrally purchased stationery) and 7a (stationery: associated postage costs) of the published tables for the financial years 2005/2006 and 2006/2007. For clarity the Commissioner considers that this breakdown could be provided by virtue of simply providing the complainant with copies of all receipts and claims forms each MP submitted in respect of each allowance. Alternatively, the Commissioner considers that the HoC could provide a breakdown of both allowances, i.e. in relation to column 7 this could be in a format such as £20 on envelopes, £400 on leaflets etc; in relation to column 7a this would be a separate breakdown of the postage costs, for example, £x spent on posting y items.
71. The HoC must comply with these steps by 31 July 2009.

Failure to comply

72. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session

Reference: FS50199197



Information Commissioner's Office

in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

73. 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@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

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 10th day of June 2009

Signed

**Richard Thomas
Information Commissioner**

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

Annex A

List of MPs covered by this notice:

David Borrow
Paul Flynn
Peter Hain
Geoff Hoon
Phil Hope
Dr Stephen Ladyman
Martin Linton
Nick Palmer
Ken Purchase
Bill Rammell
Tom Watson
Jeremy Corbyn

Legal Annex

Freedom of Information Act 2000

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.”

Section 1(2) provides that -

“Subsection (1) has the effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.”

Section 2(2) provides that –

“In respect of any information which is exempt information by virtue of any provision of Part II, section 1(1)(b) does not apply if or to the extent that –

(a) the information is exempt information by virtue of a provision conferring absolute exemption, or

(b) in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information”

Section 10(1) provides that –

“Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.”

Section 17(1) provides that -

“A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.”

Section 22(1) provides that –

“Information is exempt information if-

- (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
- (b) the information was already held with a view to such publication at the time when the request for information was made, and
- (c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).”

Section 40(2) provides 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 the second condition below is satisfied.”

Section 40(3) provides that –

“The first condition is-

- (a) in a case where the information falls within any of 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 than under this Act would contravene-
 - (i) any of the data protection principles, or
 - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
- (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.”

Statutory Instrument 2008 No. 1967 Freedom of Information

Amendment of Schedule I

2.—(1) Part 1 of Schedule 1 to the Freedom of Information Act 2000 is amended as follows.

(2) In paragraph 2, after “The House of Commons” insert—

“, in respect of information other than—

- (a) information relating to any residential address of a member of either House of Parliament,
- (b) information relating to travel arrangements of a member of either House of Parliament, where the arrangements relate to travel that has not yet been undertaken or is regular in nature,
- (c) information relating to the identity of any person who delivers or has delivered goods, or provides or has provided services, to a member of either House of Parliament at any residence of the member,
- (d) information relating to expenditure by a member of either House of Parliament on security arrangements.

Paragraph (b) does not except information relating to the total amount of expenditure incurred on regular travel during any month.”

Data Protection Act 1998

Part I

1) In this Act, unless the context otherwise requires—

“personal data” means 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,
- and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

Schedule 1

The first principle states 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.

Schedule 2

Conditions relevant for purposes of the first principle: processing of any personal data

1. The data subject has given his consent to the processing.
2. The processing is necessary— (a) for the performance of a contract to which the data subject is a party, or (b) for the taking of steps at the request of the data subject with a view to entering into a contract.
3. The processing is necessary for compliance with any legal obligation to which the data controller is subject, other than an obligation imposed by contract.
4. The processing is necessary in order to protect the vital interests of the data subject.
5. The processing is necessary—
 - (a) for the administration of justice
 - (b) for the exercise of any functions conferred on any person by or under any enactment
 - (c) for the exercise of any functions of the Crown, a Minister of the Crown or a government department
 - (d) for the exercise of any other functions of a public nature exercised in the public interest by any person.
6. — (1) 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.

(2) The Secretary of State may by order specify particular circumstances in which this condition is, or is not, to be taken to be satisfied.