

Freedom of Information Act 2000 (Section 50)

Decision Notice

Dated 4 September 2006

Name of Public Authority: House of Commons

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

Summary Decision and Action Required

The Information Commissioner's decision in this matter is that the House of Commons (the "House") has partly dealt with the complainant's request for the names and salaries of MPs staff in accordance with Part I of the Act.

- The House incorrectly relied upon section 3(2) of the Act in relation to the **salaries** of MPs' staff. In this case, information in relation to the salaries of MPs' staff is held by the House as a public authority listed in Schedule I of the Act.
- The House has complied with its obligations under section 1(1) in so far as it has correctly applied section 36(7) of the Act to the **names** of MPs' staff. The Speaker of the House's certificate that disclosure of the names of MPs' staff would be likely to prejudice the effective conduct of public affairs under section 36(2)(c) operates as conclusive evidence of that fact. Further section 36 operates as an absolute exemption in respect of information held by either the House of Commons or House of Lords and therefore, the Commissioner has not undertaken an assessment of the public interest test.
- The House incorrectly applied the exemptions under section 38 and section 40(2) of the Act to the **names** of MPs' staff.
- The House correctly applied section 40(2) of the Act to the specific **salary** details of individual staff members employed by MPs.

In view of the matters referred to above the Commissioner does not require the House to take any remedial steps.

1. **Freedom of Information Act 2000 (the "Act") – Applications for a Decision and the Duty of the Commissioner**

- 1.1 The Information Commissioner (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 Freedom of Information Act 2000.
- 1.2 Where a complainant has made an application for a decision the Commissioner is under a duty to make a decision, unless:
 - a 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 - the application has been withdrawn or abandoned.
- 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 In a letter to the House of 2 January 2005 the complainant requested information in relation to the names and salaries of MPs’ staff.
- 2.2 On 31 January 2005, the House issued a refusal notice to the complainant. In this refusal notice the House claimed that the requested information is exempt under section 40(2) of the Act. In particular, the House argued that disclosure of information additional to that in the publication scheme would not be consistent with the data protection principles under the Data Protection Act 1998 (the “1998 Act”) and is therefore exempt from disclosure under section 40 of the Act.
- 2.3 In an email of 31 January 2005, the complainant requested that the House review its decision to withhold the requested information on the basis that it is exempt from disclosure under section 40(2) of the Act.
- 2.4 In a letter dated 24 March 2005, the House outlined its internal review decision which was to uphold its original refusal on the basis that the requested information is exempt under section 40(2) of the Act. Further, the House asserted that MPs’ staff are employed by the MP not the House and they can reasonably expect that their identities (except as required by the Interests of Members’ Secretaries and Research Assistants), and to a greater extent, their salaries will not be disclosed. The House also suggested that it does not hold the information requested as the public authority subject to the Act. The House claimed that the information is held on behalf of MPs acting in their individual capacities (e.g. deciding which staff to employ), who do

not constitute part of the House which is the public authority for the purposes of the Act.

- 2.5 In a letter dated 6 April 2005 the complainant requested that the Commissioner carry out a review the House's application of section 40(2) and section 3(2) of the Act to the information she requested. The Commissioner has treated the complainant's request as a complaint under section 50 of the Act.
- 2.6 On receipt of the complaint the Commissioner allocated the case to a Complaints Resolution Officer who investigated the House's application of section 40(2) and section 3(2) of the Act to the information requested by the complainant.
- 2.7 During the course of the Commissioner's investigation the House submitted that section 36(2)(c) also applies to the names of MPs' staff. In addition the House made the Commissioner aware that following its internal review the House wrote to the complainant explaining that in addition to the exemption under section 40(2) it is also relying on the exemption under section 38 of the Act in respect of the names of MPs' staff. The Commissioner's review of the House's application of these exemptions is also considered below.

3. Relevant Statutory Obligations under the Act

3.1 **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.

3.2 Section 3(2) - Definition of public authorities

3. - (1) In this Act "public authority" means---

- (a) subject to section 4(4), any body which, any other person who, or the holder of any office which---
 - (i) is listed in Schedule 1, or
 - (ii) is designated by order under section 5, or
- (b) a publicly-owned company as defined by section 6.

(2) For the purposes of this Act, information is held by a public authority if—

- (a) it is held by the authority, otherwise than on behalf of another person, or
- (b) it is held by another person on behalf of the authority.

3.3 Section 36(2)(c)- Effective conduct of public affairs

36. - (2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
 - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
 - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
 - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
 - (i) the free and frank provision of advice, or
 - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2).

(4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words "in the reasonable opinion of a qualified person".

(5) In subsections (2) and (3) "qualified person"-

- (a) in relation to information held by a government department in the charge of a Minister of the Crown, means any Minister of the Crown,
- (b) in relation to information held by a Northern Ireland department, means the Northern Ireland Minister in charge of the department,
- (c) in relation to information held by any other government department, means the commissioners or other person in charge of that department,
- (d) in relation to information held by the House of Commons, means the Speaker of that House,
- (e) in relation to information held by the House of Lords, means the Clerk of the Parliaments,
- (f) in relation to information held by the Northern Ireland Assembly, means the Presiding Officer,
- (g) in relation to information held by the National Assembly for Wales, means the Assembly First Secretary,
- (h) in relation to information held by any Welsh public authority other than the Auditor General for Wales, means-
 - (i) the public authority, or

- (ii) any officer or employee of the authority authorised by the Assembly First Secretary,
 - (i) in relation to information held by the National Audit Office, means the Comptroller and Auditor General,
 - (j) in relation to information held by the Northern Ireland Audit Office, means the Comptroller and Auditor General for Northern Ireland,
 - (k) in relation to information held by the Auditor General for Wales, means the Auditor General for Wales,
 - (l) in relation to information held by any Northern Ireland public authority other than the Northern Ireland Audit Office, means-
 - (i) the public authority, or
 - (ii) any officer or employee of the authority authorised by the First Minister and deputy First Minister in Northern Ireland acting jointly,
 - (m) in relation to information held by the Greater London Authority, means the Mayor of London,
 - (n) in relation to information held by a functional body within the meaning of the Greater London Authority Act 1999, means the chairman of that functional body, and
 - (o) in relation to information held by any public authority not falling within any of paragraphs (a) to (n), means-
 - (i) a Minister of the Crown,
 - (ii) the public authority, if authorised for the purposes of this section by a Minister of the Crown, or
 - (iii) any officer or employee of the public authority who is authorised for the purposes of this section by a Minister of the Crown.
- (6) Any authorisation for the purposes of this section-
- (a) may relate to a specified person or to persons falling within a specified class,
 - (b) may be general or limited to particular classes of case, and
 - (c) may be granted subject to conditions.

(7) A certificate signed by the qualified person referred to in subsection (5)(d) or (e) above certifying that in his reasonable opinion-

- (a) disclosure of information held by either House of Parliament, or
 - (b) compliance with section 1(1)(a) by either House,
- would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact.

3.4 Section 38 - Health and safety

38. - (1) Information is exempt information if its disclosure under this Act would, or would be likely to-

- (a) endanger the physical or mental health of any individual, or
- (b) endanger the safety of any individual.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

3.5 Section 40(2)- Personal information

40. - (2) 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.

(3) 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.

(4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny-

- (a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and
- (b) does not arise in relation to other information if or to the extent that either-
 - (i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from

- this Act) contravene any of the data protection principles or section 10 of the Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or
- (ii) by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the Data Protection Act 1998 shall be disregarded.

(7) In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act; "data subject" has the same meaning as in section 1(1) of that Act; "personal data" has the same meaning as in section 1(1) of that Act.

4. Review of the Case

Section 3(2): What information does the House hold?

- 4.1 The House interpreted the request as that information which it holds in relation to the names and salaries of MPs' staff that draw a salary and whose salary is paid from the public purse.
- 4.2 The House pointed out that the information it holds about MPs' staff may not be complete as it may not hold information in relation to other staff "who are not salaried or whose salary is paid privately from the Member's own resources and who do not come onto the Parliamentary Estate (e.g. MPs' staff who do not need access to the Parliamentary Estate and therefore do not have a security pass issued by the House)".
- 4.3 The Commissioner understands that the House holds information pertaining to the names and salaries of MPs' staff because these staff are paid from the staffing allowance. The Staffing Allowance is used to pay for MPs' staff. In addition to this public fund, the Commissioner understands that MPs may also transfer money from the Incidental Expenses Provision to the Staffing Allowance to meet staffing costs. The Commissioner also understands that the House holds other information (e.g. names and salaries) about MPs' staff because:

- The House administers the Other Costs Payroll (OCP) which is funded by MPs' own funds (and is not covered by the rules associated with the staffing allowance).
 - Some staff are paid from "Short Money" (public funds available to support opposition parties).
 - The House's payroll section holds details (names, amounts, etc.) of MPs' staff paid expenses (travel and other out of pocket expenditure) from the Incidental Expenses Allowance or reimbursed for travel costs associated with training.
 - The names of MPs' staff who have attended training sessions are held by a contractor on behalf of the House.
 - The Pass Office holds the names of MPs' staff that hold a security pass.
 - The Library holds the names of pass holders to administer access to the research facilities.
- 4.4 Both the House and the complainant considered that the scope of the request covers that information which the House holds in relation to the names and salaries of MPs' staff that draw a salary and whose salary is paid from public funds. Therefore, the Commissioner did not undertake a review of whether the House is obliged to release other information which it may hold in relation to the names and salaries of MPs' staff that are not paid from public funds.
- 4.5 The House argued that it does not "hold" information about the salaries of MPs' staff for the purposes of section 3(2) of the Act. In particular, the House argued that it holds information about the individual salaries of Members' staff on behalf of those MPs not on its own behalf, and therefore that it does not "hold" all the information requested as the public authority covered by Schedule I for the purposes of the Act.
- 4.6 The House suggested that it provides payroll services to Members in respect of their staff, but the Members themselves are the employers, not the House. Further, the House argued that in terms of its capacity as a payroll service provider and pension administrator, the limits of what the House does are set out by or agreed with the employing Member. In this respect, the House argued that it acts as a data processor rather than a data controller for the purposes of those functions under the Data Protection Act 1998. Further according to the House, a corollary of this is that it does not "hold" the information "otherwise than on behalf of another" for the purposes of section 3(2) of the Act.
- 4.7 The House argued that the individual salaries of MPs' staff are held by the House only to enable it to pay staff directly rather than through the MP and that it has no control over what staff are hired or what they are paid, subject to the salaries being within the permitted pay bands set by the House and to the staff costs for the particular Member not exceeding the overall maximum allowed. On this basis, the House

concluded that it holds this information only on behalf of another person (the MP) and therefore information regarding the salaries of MPs' staff is not "held" for the purposes of section 3(2) of the Act by the House of Commons which is a public authority listed in Schedule I of the Act.

- 4.8 With respect to MPs' staff salaries that are paid from public funds, the House explained that MPs decisions about whom to employ is subject to the rules governing the staffing allowance. For instance, as outlined above the salaries of MPs' staff paid from the Staffing Allowance must be within the permitted pay bands set by the House and the staff costs for the particular Member must not exceed the overall maximum allowed. The Commissioner also understands that the rules governing the Staffing Allowance set out the possible job titles (which include various categories of secretary, research/parliamentary assistants and caseworkers), and the associated rates of pay that each MP may pay his or her staff. The House provided links to a list of all the permitted job titles and corresponding pay bands applicable to MPs staff (see: http://www.w4mp.org/html/library/salaries/payrates_apr2005.pdf) and a copy of the standard contract which is amended to take account of the requirements of each job (see: <http://www.w4mp.org/html/personnel/contractnewpermanent.pdf>). In its capacity as the party responsible for managing and administering the allowance system the House is responsible for ensuring that the rules which govern each allowance are adhered to. In carrying out these functions it is the Commissioner's view that the House holds information about MPs' staff salaries for its own purposes.
- 4.9 The House accepts that it holds information regarding the names of MPs' staff for the purposes of section 3(2) because it requires this information in order to carry out its functions in respect of, for instance, the issuing of security passes, allocating accommodation and other resources, to check the existence of an employment contract, to enter the name on the Register of Interests of Members' Secretaries and Research Assistants or to provide Human Resource services. In view of this the Commissioner finds it difficult to understand why the House does not accept that it also holds information about the salaries of MPs' staff under section 3(2) because it requires this information in order to for example ensure that MPs' staff salaries correspond with the pay bands set out by the House (and in accordance with the rules governing the staffing allowance).
- 4.10 The House further argued that despite the fact that it is responsible for managing and administering the MPs' staffing allowance, which involves the use of public funds, it cannot see what the latter has to do with whether the information requested is held for the purposes of section 3(2). Further, the House suggested that if MPs chose to pay the salaries of its staff direct and claim reimbursement of their total outlay, the salaries would still be paid from the public purse but the MP would not be required to release the information under the Act. In

respect of the fact that the House manages and administers the Staffing Allowance the House argued that although it manages and administers the information requested it only does so for the purposes of providing payroll services for MPs' staff on behalf of the MP concerned.

- 4.11 The Commissioner recognises that MPs as individuals are not included in Schedule I of the Act and therefore are not covered by the Act. However, in respect of the hypothetical situation presented by the House, the Commissioner is aware that if MPs paid staff direct and claimed reimbursement of their total outlay, the House would likely still require such information for the purpose of verifying that the MPs claim for reimbursement was made in accordance with the rules governing the allowance. Therefore, in this respect as the House is listed in Schedule I of the Act any such information it held for the purpose of carrying out its functions would be information held by the House for the purposes of section 3(2).
- 4.12 In the Commissioner's view the issue is whether the House as a public authority listed in Schedule I of the Act, holds the information requested for the purposes of section 3(2) and whether or not it is required to provide it for the purposes of section 1(1). In this case, it is the Commissioner's view that the House holds this information for its own purposes as it is responsible for ensuring that the staffing allowance is used by MPs in accordance with the rules set out by the House (e.g. within permitted pay bands, job titles, standard contractual arrangements and raise and bonus rules). In this respect, the House as the public authority listed in Schedule I of the Act "holds" information about both the names and salaries of MPs' staff for its own purposes beyond any payroll services it may supply for MPs. In other words, even if one were to accept that the salary details are also held on behalf of MPs in respect of the House's payroll service for those MPs it is also clear that for the purposes of section 3(2) of the Act this information is held by the House in its own right as the public body responsible for ensuring that the rules governing the expenditure of public funds, in this case MPs' expenses, are adhered to.

Section 36(2)(c): Likely to prejudice the effective conduct of public affairs?

- 4.13 After the Commissioner had started the investigation and consideration of this case, the House argued that section 36(2)(c) also applied on the ground that disclosure of the names of MPs' staff would, or would be likely to, prejudice the effective conduct of public affairs. In a letter to the Commissioner, the House argued that this was, "because it gives rise to a risk that their ability to continue to work effectively, without unwarranted interruption will be inhibited and thus that the effective conduct of public affairs by Members will be prejudiced."

4.14 The Speaker of the House signed a certificate to this effect on 23 May 2006. A signed certificate under section 36(7) of the Act is conclusive evidence that disclosure would, or would be likely to prejudice the effective conduct of public affairs under subsection (2) of that section. In these circumstances the Commissioner is obliged to conclude that the exemption applies to the names of MPs' staff. In addition, by virtue of section 2(3)(e) of the Act, section 36 is an absolute exemption so far as it relates to information held by either the House of Commons or House of Lords. Therefore the Commissioner has not undertaken a consideration of the public interest test.

Section 38: Health and safety

4.15 The Speaker's certificate under section 36(7) is conclusive so far as disclosure of names is concerned. Given, however, that the House placed reliance upon section 38 of the Act for the names of MPs' staff, the Commissioner has undertaken a consideration of that exemption in this context.

4.16 The House asserted that section 38 pertaining to health and safety applies to information about the names of MPs' staff because disclosure of their names would endanger the safety of an individual. In particular the House has argued that to release the names of MPs' staff may make individual staff persons and the MPs for whom they work vulnerable to attack. Further, the House argued that the public interest favoured maintaining the exemption under section 38. In particular the House considered that:

- there is a public interest in proper scrutiny of expenditure from the public purse but considered that this public interest is satisfied by the information currently available through its publication scheme;
- the interest of the staff in keeping their identity private outweighs any third party interest in obtaining this further level of detail.

4.17 The House also argued that its decision to remove the Register of Interests of Members' Secretaries and Research Assistants (which includes the names of MPs' secretaries and research assistants and other MPs' staff members based at Westminster or otherwise in possession of a security pass) from its website for a period during 2005 was due to the fact that it had been advised that the names of MPs' staff ought not to be disclosed for reasons of security as such disclosure may render the MP or their staff vulnerable to attack.

4.18 Except for a period during 2005, the Register has been published on the House's website, and given this the Commissioner requested clarification of the House's view that section 38 applies to the names of MPs' staff. The House replied that it had to balance the requirement for the transparency of parliamentary proceedings against the advice of its security advisors. According to the House, despite the fact that the

names of MPs' staff based at Westminster or otherwise in possession of a security pass appear in the Register which is published on its' website the advice about security risks still stands. Further the House argued that the advice of its security advisors is especially applicable in the case of purely constituency based staff (whose names do not appear in the Register, and who may or may not be paid from public funds).

- 4.19 The Commissioner notes that the names of MPs' staff are largely available in the public domain (e.g. as part of the Register of Interests for MPs' Secretaries and Research Assistants which is available on the House of Commons website and forms part of its publication scheme). The Commissioner also notes that MPs' staff names which appear in the Register are listed there despite whether they have any interests to declare. The Commissioner understands that this Register has been made available to the public in accordance with Resolutions made by the House of Commons on 17 December 1985 and 28 June 1993.
- 4.20 In addition, MPs' own websites often include reference to the names of their constituency and/or parliamentary office staff. The House has acknowledged that there are constituency staff that are responsible for handling enquires from members of the public and that such staff are likely to be named as a point of contact. Further it is likely that members of the public who end up interacting with a member of a MP's constituency office are likely to know that staff's name. Thus the identities of MPs staff that are responsible for dealing with members of the public are unlikely to be a matter of secrecy.
- 4.21 In any case, the House did not submit any compelling or legitimate grounds for exempting the names of MPs staff for health and safety reasons, or any specific information in relation to a health and safety risk involving a particular individual staff member or group of staff.
- 4.22 Therefore, in this case, it is the Commissioner's view that the exemption under section 38 of the Act does not apply to information pertaining to the names of MPs staff. In this case, the Commissioner has not considered the public interest test because the exemption under section 38 does not apply.

Section 40(2): Personal information

Names

- 4.23 The House stated that both the names and salaries of MPs staff is personal information of a third party other than the requestor and therefore falls within the exemption under section 40(2) of the Act. Further, the House argued that disclosure of this information would breach the first data protection principle of the Data Protection Act 1998 (the "1998 Act") because disclosure would be unfair. The House also asserted that in its view the only condition of Schedule 2 of the

1998 Act which could apply, condition 6, would not be met. In its internal review decision the House argued that:

Staff employed by Members can reasonably expect that their identities will not be disclosed (except as required by the register) and, to an even greater extent, that their individual salaries will not be published. Thus such disclosure would be unfair, and for that reason, in breach of the data protection principles... The former interest is met by the voluntary disclosure in the publication scheme of the total amounts claimed by Members in respect of staff costs and by the register of interests and the House has concluded that the interests of the data subjects outweigh your interest in obtaining access to the further information you seek. It considers that the balance between the competing interests has been struck in the House's publication scheme and that the details already made available allow proper and informed scrutiny of Members' spending.

- 4.24 In the Commissioner's view the names and salaries of MPs' staff is "personal data" within the definition of the 1998 Act.
- 4.25 Although disclosure of the names of MPs staff is not required because of the application of section 36(7), the Commissioner has concluded that the House had incorrectly applied the exemption under section 40(2) to this aspect of the requested information. In the Commissioner's view disclosure of the names of MPs' staff would not be unfair, and in particular, condition 6 of Schedule 2 of the 1998 Act can be met.
- 4.26 As outlined above the Commissioner understands that the names of MPs' staff are already largely available in the public domain. For instance, the Register of Interests of Members' Secretaries and Research Assistants (the "Register") is available on the House's website. The Commissioner also notes that whilst a copy of the Register is not printed by The Stationery Office and is not available in bookshops, a copy of the most recent edition is put:
- in hard copy form for public inspection in the Committee Office of the House of Commons; and
 - in hard copy form in the Oriel Room at the House of Commons for inspection by Members of either House.
- 4.27 The Commissioner also understands that in addition to MPs' secretaries and research assistants any member of a MPs' staff that is based at Westminster or otherwise in possession of a security pass issued by the Parliamentary Pass Office is included in the Register.
- 4.28 Further, as outlined above, the identities of MPs' staff that occupy public facing roles will be known (e.g.: staff in a MP's constituency office) and some MPs publish the names and contact details of their staff on their website.
- 4.29 The Commissioner is also aware that other jurisdictions publish the names of MPs' staff as a matter of course. For instance, the European

Parliament publishes a list of the names of MEP's assistants on its website. Both the European Data Protection Supervisor and the European Data Protection Ombudsman have commented on this practice. In a paper entitled "The misuse of data protection rules in the European Union" the European Data Protection Ombudsman suggests that MEP's assistants do not have a fundamental right to participate anonymously in public activities. In this respect The European Data Protection Ombudsman has commented that:

...any such right would be incompatible with the principle of openness and the right of public access, because to conceal the identities of those participating in public activities would deprive the citizen of the possibility to understand and monitor those activities effectively.¹

- 4.30 The European Data Protection Supervisor has acknowledged the need to ensure that adequate safeguards are available for exceptions on legitimate grounds.² The Commissioner agrees that exceptions on legitimate grounds should be taken into account. However, in the context of the information requested in this case, the House has not submitted any information pertaining to a unique prejudice or special circumstance involving any individual MP staff member.

Salaries

- 4.31 The Speaker's certificate under section 36(7) applies to the names of staff, but not to their salaries. The application of section 40(2) to salaries must be considered separately. On this issue, the Commissioner understands that the pay bands and corresponding job titles for MPs' staff paid from the Staffing Allowance are a matter of public record (see: www.4mo.org/html/personnel/contractnewpermanent.pdf).
- 4.32 However, the exact salary details of each individual member of a MP's staff paid from the public purse is not a matter of public record. Again, in the Commissioner's view this information is personal information within the definition of personal data in section 1 of the 1998 Act. The central question is whether disclosure of the requested information would be in breach of the first data protection principle pertaining to the fair and lawful processing of personal data.
- 4.33 The Commissioner is aware that the great majority of MP's staff are not senior, certainly in comparison to many other public sector employees. It is the Commissioner's view, moreover, that disclosure of the exact salaries of each individual member of a MP's staff would impinge on the private lives of MPs' staff to an extent which cannot easily be justified. The Commissioner is also aware that the exact salary details of an individual member of a MP's staff may reveal other information about that individual that that individual could reasonably expect would

¹ www.euro-ombudsman.eu.int/letters/en/20020925-1.htm

² http://www.edps.eu.int/publications/policy_papers/Public_access_data_protection_EN.pdf

not be disclosed. Finally he bears in mind that the pay bands which apply to MPs' staff paid from the public purse (by way of the staffing allowance) is already a matter of public record and that staff had no expectation that their precise salaries would be individually made public.

- 4.34 In view of these considerations, the Commissioner has concluded that disclosure of the specific salary details of individual members of a MP's staff would not be fair and, accordingly that section 40(2) was properly applied to this information. Further, as section 40(2) is an absolute exemption, the Commissioner has not considered the public interest test.

5. The Commissioner's Decision

- 5.1 The House incorrectly relied upon section 3(2) of the Act in relation to the **salaries** of MPs' staff paid from the public purse. In this case, information in relation to the salaries of MPs' staff is held by the House as a public authority listed in Schedule I of the Act.
- 5.2 The House has complied with its obligations under section 1(1) in so far as the House has correctly applied section 36(7) of the Act to the **names** of MPs' staff. The Speaker of the House's certificate that disclosure of the names of MPs' staff would be likely to prejudice the effective conduct of public affairs under section 36(2)(c) operates as conclusive evidence of that fact. Further section 36 operates as an absolute exemption in respect of information held by either the House of Commons or House of Lords and therefore, the Commissioner has not undertaken an assessment of the public interest test.
- 5.3 The Commissioner has concluded that the House incorrectly applied the exemptions under section 38 and section 40(2) of the Act to the **names** of MPs' staff.
- 5.4 The House correctly applied the exemption under section 40(2) to the specific **salary** details of individual members of a MPs' staff paid from the public purse in so far as disclosure of this information would breach the first data protection principle of the Data Protection Act 1998.

6. Action Required

- 6.1 In view of the matters referred to above the Commissioner does not require the House to take any remedial steps.

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

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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 4 day of September 2006

Signed

**Richard Thomas
Information Commissioner**

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