

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 27 July 2009

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

### Summary

---

The complainant asked the House of Commons to provide him with details of the amounts spent by seven MPs on circulars and reports to their constituents for the financial years 2006/07 and 2007/08. The House of Commons refused to disclose the information citing section 22 (information intended for future publication) and argued that the public interest favoured maintaining the exemption. The Commissioner has investigated the circumstances of this case and concluded that at the time of the request the House of Commons applied section 22 correctly and the public interest favoured maintaining the exemption.

### 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. On 7 May 2008 the complainant sent a letter to the House of Commons ('HoC') containing the following request:

'Thank you for your letter dated 2<sup>nd</sup> May regarding the spending on circulars and reports by the MPs for Gower, Swansea West, Swansea East, Neath, Aberavon, Bridgend and Ogmere.

Can I also have the same figures for 2006-07 and 2007-08.'

3. The reference in this quotation to a letter sent by the HoC on 2 May 2008 relates to a previous request submitted by the complainant on 4 May 2006. The HoC

refused this request citing section 40(2) of the Act which provides an exemption to disclosure if that disclosure would constitute a breach of the Data Protection Act 1998. The complainant subsequently complained to the Commissioner about this refusal. The Commissioner issued a decision notice (reference number [FS50130517](#)) on 31 March 2008 which concluded that the information covered by the request of 4 May 2006 was not exempt on the basis of section 40(2). The decision notice therefore ordered the information to be disclosed which the HoC did in the letter dated 2 May 2008. (The reference to 'circulars and reports' relates to updates and publications sent by the MPs to their constituents).

4. The HoC contacted the complainant on 6 June 2008 and confirmed that it held the information that he requested in his letter of 7 May 2008. However, the HoC explained that it had taken the decision to prepare for publication detailed information about expenditure claims made by all Members, including the information falling within the scope of this request. The HoC explained that it intended to publish this information later that year (i.e. towards the end of 2008). Consequently, the HoC explained to the complainant that it believed that the information he had requested was exempt from disclosure on the basis of section 22 of the Act which provides an exemption for information which is intended for future publication. The HoC also explained why it believed that the public interest favoured maintaining the exemption.
5. The complainant wrote to the HoC on 10 June 2008 and asked it to conduct an internal review of its decision to refuse to disclose the information he requested.
6. On 25 July 2008 the HoC contacted the complainant and explained that it had carried out an internal review and this had concluded that section 22 had been correctly relied upon.

## The Investigation

---

### Scope of the case

7. The complainant contacted the HoC on 29 July 2008 in order to complain about the HoC's decision to withhold the information he had requested on the basis of section 22 of the Act. He specifically argued that it was unacceptable for him to have to wait until late 2008 to be provided with the information he had requested.

### Chronology

8. 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 6 March 2009 that the Commissioner contacted the HoC in relation to this complaint. The Commissioner asked the HoC to confirm whether it was still seeking to rely on section 22 to withhold the requested information and if so, to provide any further submissions to support its reliance on this exemption.

9. The HoC contacted the Commissioner on 14 April 2009 and confirmed that it was seeking to withhold the requested information on the basis of section 22. The HoC informed the Commissioner that it was still in the process of preparing the information requested with the aim of publishing the information no later than mid-July 2009.
10. The Commissioner and the HoC also exchanged a number of emails on 12 June 2009 in relation to the application of section 22 of the Act to this particular request.

## Analysis

---

### Exemption

#### Section 22 – information intended for future publication

11. The HoC has argued that all of the information falling within the scope of this request is exempt from disclosure by virtue of section 22.
12. 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),
  - (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).’
13. In order to determine whether section 22 is engaged the Commissioner therefore needs to consider the following questions:
  - Is the information requested actually held by the HoC?
  - Did the HoC have an intention to publish the information at some date in the future when the request was submitted?
  - If so, was this date determined when the request was submitted?
  - In all the circumstances of the case, is it ‘reasonable’ that information should be withheld from disclosure until some future date (whether determined or not)?
14. 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:

15. 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).
16. 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).<sup>1</sup>
17. 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.

### **Is the information requested actually held by the HoC?**

18. Under rules set out in detail the publication entitled *The Green Book*, MPs are entitled to make claims against a range of allowances which are provided to assist them in their role as an MP. The allowances are split into eight different categories, namely:
  - 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)

---

<sup>1</sup> 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)

19. The Commissioner understands that MPs are entitled to claim the cost of circulars, the information which is the focus of this request, against the IEP. In order to support these claims MPs must submit claim forms detailing the nature of each claim, supported where necessary by a receipt.
20. As noted above, the request which is the focus of this decision notice is closely related to the request which was the focus of decision notice FS50173086 in which the complainant sought information of exactly the same description but for an earlier time period.
21. As set out in detail in this earlier decision notice, the HoC explained that given the way which the ACA and IEP allowances are administered there were a number of sources for information relating to the cost of circulars claimed by each of the MPs covered by the scope of the request. Paragraph 8 of decision notice FS50173086 sets out what these separate sources are.
22. Consequently given the disparate way in which information falling within the request was held the HoC argued that technically it did not hold the information requested by the complainant. However, the Commissioner concluded in FS50173086 that although the information relevant to the request was held in a variety of documents, this did not mean that for the purposes of section 1(1) of the Act the information was not held:

‘The Act provides a general right of access to “recorded information”. The fact that the information requested in this case is held by the House in various documents does not mean that the information requested is not held. Rather it requires the House to extract the relevant information from these documents and to provide it to the complainant in the form requested. In other words, if the information described by an applicant in a request is contained in various documents it **is** held by the House albeit such a request requires the House to extract and collate the information in the form requested.’ (para 20).
23. Therefore although Commissioner accepts that the HoC may only hold the information falling within the scope of this request – i.e. for the period 2006/07 and 2007/08 – in a range of different documents rather than in one centralised document or location, on the basis of the reasons set out in decision notice FS50173086 the Commissioner considers the HoC to hold this information for the purposes of section 1(1) of the Act.

**Did the HoC have an intention to publish the information at some date in the future when the request was submitted?**

24. In order to answer this question the Commissioner has summarised below a number of key events in relation to the disclosure of information about MPs' allowances held by the HoC.
25. Since 2004 MPs' spend against their allowances has been published each year on the Parliamentary website. The figures published comprise the annual totals

- claimed by each MP against each of the 8 types of allowance listed above at paragraph 18.
26. Since the Act has come into force in January 2005 the HoC has received a number of requests for information seeking more detailed information about the allowance claims submitted by MPs; in essence these requests sought a breakdown of the total amount of expenses claimed.
  27. In response to a number of these requests the HoC refused to provide the information requested arguing that disclosure of detailed information about MPs' expense claims would constitute a breach of the first data protection principle and therefore such information was exempt from disclosure on the basis of section 40(2) of the Act.
  28. A number of applicants who had their requests refused by the HoC subsequently complained to the Commissioner who in due course issued a number of decision notices in which he concluded that in some cases section 40(2) had been incorrectly applied. Consequently, the Commissioner issued a number of decision notices in which he ordered the HoC to disclose a range of information about MPs' expenses in relation to the specific requests. One such notice included FS50173086 which, as discussed above, is closely related to the request which is the focus of this decision.
  29. A number of the Commissioner's decision notices were appealed by the HoC to the Information Tribunal and in some cases were cross appealed by the applicants. (See Tribunal cases [EA/2006/0015/0016](#) which was issued on 16 January 2007; [EA/2006/0074/0075/0076](#) which was issued on 9 August 2007 and [EA/2007/0060/0061/0062/0063/0122/0123/0131](#) which was issued on 26 February 2008). In the first of these two cases the Tribunal upheld the decisions of the Commissioner. In the third case the Tribunal rejected the HoC appeal, allowed the cross appeal by the applicants and in doing so substituted the Commissioner's decision notice with one of its own. The Tribunal's substituted decision required the HoC to disclose more detailed information than the Commissioner's original decision notices had requested; it essentially ordered the disclosure of all documents submitted by a number of MPs to support their ACA claims, including any receipts and claim forms submitted in support of these claims.
  30. On 3 April 2008 Nick Harvey, as spokesman for House of Commons Commission, announced that the decision had been taken to appeal to the High Court against the Information Tribunal decision, EA/2007/0060 etc, that full details of the additional costs allowance for 14 Members should be disclosed, on the grounds that the tribunal had misdirected itself in law, in particular by ordering the disclosure of private addresses.
  31. Mr Harvey also announced that the two further decisions of the Commissioner which required the HoC to disclose less detailed information about 7 Members would not be appealed and the information would be released to the requesters shortly. Mr Harvey noted that this principle would apply to the requests for information on the claims of the 14 Members which was being appealed to the

High Court, i.e. data for these 14 Members would be disclosed now to the lesser level of detail by category but not down to receipt level. The appeal to the High Court related solely to the more detailed information and addresses.

32. Furthermore, and central to this case, Mr Harvey also announced that:

‘The same level of information (i.e. by category—not down to receipt level) will be released about the expenses of all Members in the autumn, for the years 2004-05 to 2007-08. For the future, information compiled on a similar basis will be released quarterly, starting with the information relating to the first quarter of 2008-09 (April to June). This release of information will also begin in the autumn.’<sup>2</sup>

33. The High Court issued its judgement on the HoC’s appeal on 16 May 2008 which upheld the decision of the Tribunal. The HoC subsequently disclosed the information in line with the Tribunal’s previous decision, i.e. disclosure of receipt level data for the claims submitted by 14 MPs in relation to the ACA.

34. Following the High Court’s judgment the HoC decided that in order to meet the requirements of the number of requests it was continuing to receive about MPs’ expenses it would prepare for publication all information it held about MPs’ allowances. This publication would include disclosure of receipt level data, not just disclosure by category as announced in April 2008, and cover all claims (i.e. not just the ACA but against all of the eight allowances) made by all MPs dating back to April 2004.

35. Having considered the chronology of events as set out above the Commissioner is satisfied that when it received this request which was dated 7 May 2008 the HoC had an intention to publish the information which the complainant was seeking. This is because the complainant was seeking the annual amount claimed by a number of MPs for a particular category of expense claim, i.e. spending on circulars and reports, and on 3 April 2008 it was announced that the HoC would disclose details of expense claims down to category, though not receipt level, for all MPs.,

### **Was the date of publication determined when the request was submitted?**

36. Although there was no specific date for publication determined when the request was submitted, the Commissioner understands that based on the comments of Mr Harvey disclosure of category level data would take place in the autumn of 2008.

### **In all the circumstances of the case, is it ‘reasonable’ that information should be withheld from disclosure until the date determined?**

37. In deciding whether it is reasonable in this case to withhold the information until the date of intended publication the Commissioner has considered his published

<sup>2</sup> Hansard, 3 April 2008 : Column 1142W,  
<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080403/text/80403w0002.htm#column1142W>

guidance on the exemption: Freedom of Information Act Awareness Guidance No 7 – Information Intended for Future Publication.<sup>3</sup>

38. This guidance notes that in assessing reasonableness, 'generally, the sooner the intended date of publication, the better the case for maintaining the exemption'.
39. In this case the HoC argued that it was reasonable to withhold the requested information on the following basis:
40. The HoC explained that it held detailed information about expense claims submitted by MPs for the financial years 2004/05 to 2008/09. However, very little of this information was held on electronic systems. Therefore preparing the information for publication involved looking in detail at the paper records of the claims and receipts submitted by all MPs and former MPs. The paper records comprised around 1.3 million sides of paper contained in 2,600 large files. The HoC explained that in order to prepare this information for publication it was electronically scanning all documents and then each MP would have to review their claims prior to publication. The HoC explained that the scanning and editing process involved around 50 staff working across the summer months of 2008.
41. In its internal review the HoC explained that since the various decisions of the Commissioner, Tribunal and High Court, it had received around 150 separate requests for breakdowns of allowance expenditure involving individual MPs, several MPs or small or large groups of MPs, the cumulative effect being that the requests relate to all MPs.
42. The HoC argued that if it had to respond to these individual requests, including the request which is the focus of this notice, the process of preparing all of the expense information for disclosure to the public in general would be seriously disrupted if staff as well, or instead, had to deal with individual requests, particularly given the large number of requests it had received.
43. On the basis of these facts the Commissioner accepts that in the circumstances of this case it was reasonable for the HoC to have relied on section 22 as a basis to refuse to disclose the requested information at the time of the request. In reaching this decision the Commissioner has placed particular weight upon the complex and time consuming nature of the process the HoC had to undertake in order for the full data set of expense information to be prepared for publication. The Commissioner accepts that this process would have been significantly impaired if the HoC had to respond to this request for information given that the HoC had also received around 150 similar requests and it would have been difficult for the HoC to justify responding to one request but refusing the others. Finally in reaching this conclusion the Commissioner accepts that at the time the HoC refused this request it had a clear deadline by which it aimed to publish the requested information, along with all other expense information, namely late autumn 2008, and that this deadline was not arbitrarily arrived at but had been estimated on the basis of the time taken to undertake the various stages in the

---

3

[http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/awareness\\_guidance\\_7\\_-\\_information\\_intended\\_for\\_future\\_publication.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_7_-_information_intended_for_future_publication.pdf)

process of publishing all expense information, i.e. scanning, reviewing and editing the 1.3 million pieces of paper.

44. In relation to the last factor the Commissioner is of course aware that the HoC did not meet its own deadline of late autumn 2008 to publish all expense information and in fact the deadline for publication has shifted to June 2009. (The Commissioner understands that initial date of publication was not met because the process of preparing the information for publication proved more time-consuming than had been expected). The Commissioner accepts that on the face of it his decision that section 22 had been correctly relied upon and is 'reasonable' in all the circumstances of the case could be seen as somewhat incongruous given that the HoC did not meet its deadline for publication. However as set out above in paragraphs 14 to 17 the Commissioner can only look at the application of an exemption at the time of the request and cannot take into account events which occur in the period between the request being refused and the Commissioner issuing his decision notice. Therefore, although with the benefit of hindsight the Commissioner is aware that the proposed publication of late 2008 was not met, he cannot use knowledge of this to influence his analysis of whether section 22 has been correctly applied by the HoC. However the Commissioner has commented on the HoC's failure to publish the expense information by its first proposed date further in the 'Other Matters' section at the end of this decision notice.
45. On the basis of the above the Commissioner is satisfied that section 22(1) is engaged.
46. However, section 22(1) is subject to the public interest test set out at section 2(2)(b) of the Act and therefore the Commissioner must decide whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **Public interest test**

#### **Public interest arguments in favour of maintaining the exemption**

47. The HoC has argued that the public interest in providing the public with access to information about MPs' expenses was best met not by fulfilling individual requests such as the one which is the focus of this request, but to provide the public with access to all information about all MPs' expenses, and moreover to disclose this complete set of information as soon as practicably possible. For the reasons set out above, as the process of publishing all expense information would be delayed by responding to this request, the HoC argued that this provides a compelling argument in favour of maintaining the application of section 22.

#### **Public interest arguments in favour of disclosing the information**

48. The HoC acknowledged that the public interest in providing detailed information about the expenditure of the public funds is not in dispute. The Commissioner would add that the public interest in disclosing detailed information about MPs' expenses in order to improve accountability and transparency has been

compellingly made by previous Information Tribunals and the High Court. For example the Tribunal in the third of its decisions referenced above concluded that in relation to the ACA system it was 'so deeply flawed, the shortfall in accountability is so substantial, and the necessity of full disclosure so convincingly established, that only the most pressing privacy needs should in our view be permitted to prevail'.<sup>4</sup>

49. Disclosure of information in response to this request, rather than until the HoC's proposed deadline of late autumn 2008, would obviously have ensured that further information – in addition to that about MPs' expenses already disclosed under the Act – would have been placed in the public domain in early 2008. This would have added to the public's understanding of how expenses were used and thus further address the compelling need for detailed disclosure acknowledged by the High Court. Moreover, in the particular circumstances of this case, given that the HoC had already disclosed information of exactly the same description for an earlier time period by disclosing the information which was the focus of this request the public would have been able to draw specific comparisons about the amount spent by these 7 MPs on circulars and reports over a period of three financial years.

### **Balance of the public interest arguments**

50. The Commissioner's guidance note on section 22 explains that because the application of this exemption presupposes that the requested information will be disclosed, in balancing the public interest the focus is not on the harm that may arise from release of the information itself. Rather the balance of the public interest must focus on whether in the circumstances of the case it would be in the public interest for the public authority to keep to its original timetable for disclosure or whether in the circumstances of the case the public interest would warrant an earlier disclosure.
51. In this case the Commissioner has some sympathy with the complainant's frustrations in not being provided with the information within 20 working days of making his request. As the 'Chronology' section above implies, it would appear that the complainant requested details of spending on circulars for the periods 2006/07 and 2007/08 so that some comparison could be made with the same information for period 2005/06 with which he had recently been provided. The Commissioner accepts that disclosure of the requested information within 20 working days of this request would have allowed such a comparison to be immediately made and thus would have contributed to the public's understanding of the how these MPs had used their allowances to fund spending on circulars. As the Commissioner has argued strongly in his previous decision notices involving requests for MPs' expenses, he considers there to be a very strong public interest in disclosure of information that adds to the transparency and accountability surrounding such spending.
52. However, it is precisely because of this very strong public interest that the Commissioner believes that in the circumstances of this case the public interest

---

<sup>4</sup> [EA/2007/0060/0061/0062/0063/0122/0123/0131](#), para 82.

favours maintaining the HoC's application of section 22. If the HoC could not rely on section 22, and thus would have to fulfil this request within 20 working days, then for the reasons set out in paragraph 43 the Commissioner accepts that the process of preparing for publication details of all MPs' expense information would be impaired. In the circumstances of this case, in the Commissioner's opinion the public interest must favour ensuring that all the information about MPs' expenses is disclosed by the HoC as soon as practicably possible even if this is at the expense of delaying the publication of a relatively small proportion of that information, i.e. the information requested by this complainant, by a number of months.

53. Therefore, the Commissioner believes that in the circumstances of this case the public interest in maintaining the exemption contained at section 22(1) of the Act outweighs the public interest in disclosing the requested information.

### **The Decision**

---

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

### **Steps Required**

---

55. The Commissioner requires no steps to be taken.

### **Other matters**

---

56. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matters of concern:
57. For the reasons set out at paragraphs 14 to 17 above, the Commissioner can only look at the application of exemptions at the time a request is submitted to a public authority; he cannot take into account changes in circumstances following the request. In this case there were significant changes in circumstances following the request, namely HoC's failure to meet its deadline of late autumn 2008 to publish all expense information submitted by MPs. As noted in the main body of the decision notice the information was disclosed in June 2009. The Commissioner wishes to make it clear that he does not consider it good practice for a public authority to fail to meet a proposed date for publication particularly by the margin of around 8 months as in this case.

## Right of Appeal

---

58. 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](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://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 27<sup>th</sup> day of July 2009**

**Signed .....**

**Steve Wood  
Assistant Commissioner**

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

## Legal Annex

### 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 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.”