

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 24 August 2010**

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

### Summary

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In July 2009 the House of Commons asked Sir Thomas Legg, a former civil servant, to review the payments that had been made to MPs under the Additional Costs Allowance and to deliver a report detailing his findings. Sir Thomas provided the House of Commons with the final version of his report in early 2010. The complainant requested copies of correspondence exchanged between the Sir Thomas Legg review and a particular MP during the course of this review. The House of Commons explained that although Sir Thomas was acting on behalf of a committee of the House of Commons in conducting the report, he did not hold information on behalf of the committee in question for the purposes of the Act. The House of Commons therefore refused the request on the basis that it did not hold the information requested. Having considered the circumstances of this case, the Commissioner agrees with the House of Commons that it does not hold the requested information.

### The Commissioner's Role

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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.

## Background

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2. On 19 May 2009 the leaders of the main political parties and the members of the House of Commons' (HoC) Members Estimates Committee agreed that there should be a review of past payments to MPs of the Additional Costs Allowance (ACA).
3. The provision of the ACA recognised that MPs who live outside Greater London needed to maintain a residence within a convenient distance from Westminster if they were to carry out their public functions effectively. Alternatively, if they decided to establish their family residence within a convenient distance of Westminster, they needed to maintain a secondary residence in the constituency for use on those occasions when they visited their constituency.
4. Sir Thomas Legg, a former senior civil servant, agreed to conduct the review into past ACA payments. The terms of reference of the review were agreed on 1 July 2009.
5. On 23 November 2009 the Members Estimates Committee agreed that sums recommended for repayment by Sir Thomas should be recovered from MPs. This process was however subject to MPs having the opportunity to show in an independent appeal process any special reasons why it would not be fair to require them to make the repayments. The Rt Hon Sir Paul Kennedy agreed to conduct the appeals process.
6. Sir Thomas initially reported to the Members Estimates Committee on 16 December 2009 but subsequently carried out further work. This further work was incorporated into a revised report received by the Members Estimates Committee in early February 2010, by which time Sir Paul had completed the appeals process.
7. On 4 February 2010 the Members Estimates Committee published, in full, Sir Thomas' report and Sir Paul's decisions on the appeals.<sup>1</sup>

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<sup>1</sup> The information in the Background section is taken from the House of Commons Members Estimate Committee's report '[Review of past ACA payments](#)'. This report includes both Sir Thomas' report, along with his terms of reference, and details of Sir Paul's decisions on the appeals.

## The Request

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8. The complainant submitted the following request to the House of Commons (HoC) on 23 November 2009:

‘Under the Freedom of Information Act please provide me with copies of any correspondence between the Sir Thomas Legg Review and John Baron MP and any correspondence between John Baron MP and the Sir Thomas Legg Review since the review began.’
9. The HoC responded on 14 December 2009 and explained that information generated by the review was not held by the HoC and therefore it could not disclose the information that had been requested.
10. The complainant contacted the HoC on 5 January 2010 and asked for an internal review of this request to be conducted. The complainant set out a number of reasons why he believed that the HoC did hold the information he requested.
11. The HoC informed the complainant of the outcome of the internal review on 12 January 2010. The review upheld the earlier refusal of 14 December 2009. The review outcome also confirmed that although the HoC was obviously a public authority for the purposes of the Act, Sir Thomas was not a public authority to whom the Act applies.

## The Investigation

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### Scope of the case

12. The complainant contacted the Commissioner on 23 March 2010 and asked him to consider the HoC's refusal to provide him with the information that he requested. The complainant highlighted a number of reasons why he believed that the HoC did hold requested information for the purposes of the Act and the Commissioner has set these out in the Analysis section below.

### Chronology

13. The Commissioner contacted the HoC on 23 April 2010 and confirmed that he had received a complaint regarding its handling of this request.

14. The HoC contacted the Commissioner on 26 April 2010 and asked him to clarify which request the complainant had in fact complained about because it had corresponded with the complainant about a number of different requests.
15. On 29 April 2010 the Commissioner wrote to the HoC and confirmed exactly which request this particular complaint referred to. The Commissioner also explained that at this stage in his investigation he did not need any submissions from the HoC in order to be able to consider this complaint. This was because the Commissioner believed that the internal review appeared to clearly set out the HoC's position.

## Analysis

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### Substantive Procedural Matters

16. Section 1 of the Act requires a public authority, subject to the application of a number of exceptions, to confirm to an applicant whether it holds information of the nature requested and if so to disclose that information to the applicant.
17. Section 3(2)(b) of the Act takes into account situations where information may be under the control of a particular public authority, even though the public authority is not in the physical possession of that information. This section states that:

'For the purposes of this Act, information is held by a public authority if...

...(b) it is held by another person on behalf of the authority'.
18. An obvious example where section 3(2)(b) would be relevant would be where a public authority receives a request for information which it has transferred to a private storage company. The private storage company is holding the information 'on behalf of' the public authority and therefore this information falls within the scope of the Act even though it is not physically in the possession of the public authority at the time of the request.
19. In the circumstances of this case, the Commissioner believes that the application of section 3(2)(b) depends upon the nature of the relationship between the HoC and the Sir Thomas Legg review. The Commissioner has set out below the HoC's and the complainant's view

on this relationship – and its impact on the application of section 3(2)(b) – before setting out his conclusions in relation to this request.

### The HoC's position

20. The HoC explained that in its opinion the letters which Sir Thomas sent to, and received from, MPs as part of his review of ACA payments were not held by the HoC in its own right or by another person on behalf of the HoC. In support of this position the HoC explained that Sir Thomas is an independent person who was not subject to the direction or control by the HoC or by any of its committees in respect of the communications which he had with individual MPs. Furthermore, neither did the HoC nor its committees have access to, or any control over, the information which Sir Thomas held. Therefore, in the HoC's opinion, although Sir Thomas was acting on behalf of a committee of the HoC, he did not hold information on behalf of that committee.

### The complainant's position

21. The complainant has argued that the HoC as the body which commissioned the review of the ACA payments, was responsible for releasing information held by the review or individuals involved with it. Therefore, even if the HoC does not physically hold the letters he requested, the complainant suggested that the HoC was in a position to obtain them from Sir Thomas and disclose them under the Act.

### The Commissioner's position

22. In addition to considering the points made by both parties the Commissioner has also examined the terms of reference upon which Sir Thomas' review was conducted. These were:

'To conduct an independent review of all claims made by Members of Parliament (except those who have since died) for the Additional Costs Allowance during the financial years 2004-05 to 2007-08;

To examine all payments made on such claims, against the rules and standards in force at the time, and identify any which should not have been made, and any claims which otherwise call for comment;

To allow Members who received such payments or made such claims a fair opportunity to make representations about them;

Subject to any such representations, to recommend where necessary any repayments which Members should make and otherwise to comment as seems appropriate; and

To report as soon as possible to the Members Estimate Committee.'

23. In the Commissioner's opinion for the purposes of this complaint, the key word in the terms of reference is in the first sentence, i.e. Sir Thomas' review was one which was to be 'independent'. That is to say it was independent of the HoC and any of its committees, including the Members Estimate Committee which commissioned the review itself. The Commissioner understands that such independence therefore meant, as the HoC has explained, it did not have any direction or control over Sir Thomas' communications with MPs nor did the HoC have any access to the information held by Sir Thomas during or after the review.
24. Furthermore, the final sentence of the terms of reference make it clear that Sir Thomas simply had to deliver a 'report' to the Members Estimate Committee; there was no obligation on Sir Thomas to also provide the HoC with access to, or copies of, communications which he may have exchanged with MPs.
25. In light of the independent nature of the review and the practicalities of the relationship between the HoC and Sir Thomas, the Commissioner is persuaded that the communications Sir Thomas exchanged with MPs for the purposes of his review were not held by Sir Thomas on behalf of the HoC. Rather, they were simply held by Sir Thomas in his own right as the independent reviewer of past ACA payments. The Commissioner therefore disagrees with the complainant's line of argument that simply because the HoC commissioned the review it must hold, for the purposes of the Act, any or all paperwork generated by Sir Thomas as he undertook this review. It follows that the Commissioner also disagrees with the suggestion that the HoC was in a position to obtain the relevant documents from Sir Thomas in order to fulfil this request.
26. In considering this complaint, the Commissioner has taken into account the fact that the request sought correspondence with the 'Sir Thomas Legg Review' which implies that the request is not limited to correspondence with Sir Thomas himself but also to any others that were involved in the review. The Commissioner notes that 'Review of past ACA payments' report confirms that Sir Thomas was provided with support from individuals both within, and external to, the HoC:

'My supporting team for this review ranged in number from 54 down to 10 over the successive phases of the task. It was widely based, and included colleagues drawn from PricewaterhouseCoopers, various branches of the House service, including the Department of Resources and the Internal Audit team, and former members of the Office of National Statistics. The discussions leading to the development of my approach to the system and rules included observers from the National Audit Office, and in determining individual cases I received critical challenge from a representative of the Audit Commission.'

27. Therefore the Commissioner accepts that it is possible that the members of the HoC staff, and not simply Sir Thomas himself, may have exchanged correspondence with John Baron MP. However, in the Commissioner's opinion it is reasonable to conclude that any such correspondence would have been sent in such individuals' capacity as working for the review rather than in their capacity as HoC employees. In other words, when working for the review the HoC employees were in effect acting independently of the HoC. Therefore in the Commissioner's opinion even though HoC employees were working on the report, and may potentially have even exchanged correspondence with John Baron MP, this does not mean that such correspondence was held by the HoC for the purposes of the Act.
28. The Commissioner therefore finds that section 3(2)(b) is not applicable to this request and the HoC was correct to state that it could not fulfil this request on the basis that it did not hold the information that had been requested.

## The Decision

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

## Steps Required

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30. The Commissioner requires no steps to be taken.

## Right of Appeal

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31. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
Arnhem House,  
31, Waterloo Way,  
LEICESTER,  
LE1 8DJ

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 sent.

**Dated the 24<sup>th</sup> day of August 2010**

**Signed .....**

**Alexander Ganotis  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## 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 3(1)** provides that –

"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"

**Section 3(2)** provides that –

"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."

**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."