

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 1 August 2011

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

### Summary

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The complainant requested from the public authority information relating to a prior information request that led to the issuing of a certificate pursuant to section 34 of the Act. In its refusal notice the public authority said it was unable to answer his request. Upon review it issued a certificate pursuant to section 36(7) signed by the Speaker of the House of Commons and stating that in his reasonable opinion the requested information was exempt from disclosure on the grounds provided for by section 36(2)(b) of the Act. The Commissioner's decision is that, given the section 36(7) certificate is conclusive, section 36 (2)(b) is engaged. As this exemption is absolute in relation to information held by the House of Commons, there is no public interest test to consider. Therefore the Commissioner has found that the public authority lawfully withheld 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

2. The Complainant in 2008 made an information request to the House of Commons. The House of Commons refused that request by issuing a certificate pursuant to section 34(3) of the Act signed by the then House of Commons Speaker, Mr Michael Martin. When Mr Martin was replaced by a new Speaker (Mr John Bercow), the complainant asked the House

of Commons to re-consider the matter. On review the House of Commons ceased to rely on the section 34 certificate and met the complainant's request.

## **The Request**

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3. The complainant made a request to the House of Commons on 12 April 2010 for

"...documentation as to how the release of previously privileged information occurred without the matter first being referred back to Mr Speaker as I was told in July 2009 would happen. I would like to understand how the legal authority of the former Speaker was overridden and on what basis given the circumstances around the original production of the section 34 certificate after my request had been turned down by the Clerk of the Committee of Public Accounts in 2008."

4. The public authority provided its response on 20 May 2010. Although some explanation was given as to what information was held and what was not, it did not disclose the information requested. No exemption was specified. The complainant requested an internal review of the public authority's decision on 14 June 2010.
5. On 13 October 2010 the public authority wrote to the complainant with the details of the result of the internal review it had carried out. It informed him that the Speaker of the House of Commons had signed a certificate pursuant to section 36(7), therefore it would not disclose the information he had requested. A copy of the certificate was provided to the complainant.

## **The Investigation**

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### **Scope of the case**

6. On 21 October 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:
- The public authority's delay in dealing with his review request.
  - The exemptions claimed were not applicable in the circumstances

- The certificate signed by the Speaker made no reference to the wording of section 36(2)(c).
7. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

## Chronology

8. By way of a letter dated 7 December 2010 the public authority provided the Commissioner with a copy of the certificate issued to the complainant by the Speaker of the House of Commons dated 6 October 2010.

## Analysis

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### Substantive Procedural Matters

### Exemptions

#### 9. Section 36(2) provides that –

“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-

(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.”

#### Section 36(5) provides that –

“In subsections (2) and (3) “qualified person”-

(d) in relation to information held by the House of Commons, means the Speaker of that House,”

#### Section 36(7) provides that –

A certificate signed by the qualified person referred to in subsection (5) (d) ...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.
10. The Commissioner has viewed a copy of the certificate signed by the Speaker of the House of Commons, dated 6 October 2010, in relation to this request. The certificate states (i.e. 'certifies') that in the reasonable opinion of the Speaker disclosing the requested information would be likely to inhibit the free and frank provision of advice, and that the disclosure of any such information held by the House of Commons would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.
  11. Although the actual section and sub section of the Act is not specified in the certificate its wording directly and unequivocally relates to section 36(2)(b)(i) and (ii). The fact that there is no explicit or implicit reference in the certificate to section 36 (2)(c) does not invalidate its effectiveness as it relates to section 36 (2) (b)(i) and (ii).
  12. Given the nature and provenance of the certificate, the Commissioner is obliged by virtue of section 36(7) to accept the certificate as "conclusive evidence" that the opinion is reasonable and the alleged inhibition would be likely to occur; therefore the Commissioner must accept that section 36 is engaged and the withheld information is exempt.
  13. The exemption afforded by section 36 is, for information held by the House of Commons, absolute, by virtue of section 2(3)(e) of the Act, and is therefore not subject to the public interest test.

## **Procedural Requirements**

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14. Section 17(1) requires a public authority, which is relying upon an exemption in order to withhold requested information, to issue a refusal 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.

As mentioned in paragraph 4 above, the public authority did not specifically inform the complainant that it would not provide the requested information, nor state the relevant exemption and why it applied until it wrote to him of 13 October 2010 informing him of the outcome of the internal review. This was six months after his initial request. This places the public authority in breach of sections 10 (1) and 17(1) (b) and (c) of the Act as they should have done so within 20 working days of receiving the request. The Commissioner notes that Parliament was dissolved for five weeks during that period, but clearly this does not obviate the breach in this case.

## **The Decision**

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15. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act, save for the procedural breaches of sections 17(1)(b) and (c) and 10 of the Act.

## **Steps Required**

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16. The Commissioner requires no steps to be taken.

## Right of Appeal

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17. 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)

18. 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.
19. 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 1<sup>st</sup> day of August 2011**

**Signed .....**

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

## Legal Annex

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### General Right of Access

#### **Section 1(1) provides that -**

"Any person making a request for information to a public authority is entitled –

- (c) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (d) if that is the case, to have that information communicated to him."

#### **Section 2(3) provides that –**

"For the purposes of this section, the following provisions of Part II (and no others) are to be regarded as conferring absolute exemption –

- (a) section 21
- (b) section 23
- (c) section 32
- (d) section 34
- (e) section 36 so far as relating to information held by the House of Commons or the House of Lords
- (f) in section 40 –
  - (i) subsection (1), and
  - (ii) subsection (2) so far as relating to cases where the first condition referred to in that subsection is satisfied by virtue of subsection (3)(a)(i) or (b) of that section,
  - (iii) section 41, and
  - (iv) section 44"