# Freedom of Information Act 2000 (Section 50)

## Decision Notice

**Date: 8 December 2010**

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

## Summary

The complainant requested details of the expense claims, including copies of receipts, for Jim Knight MP. The House of Commons refused the request on the basis of 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 the House of Commons applied section 22 correctly and in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in favour of disclosing the information.

## The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

## The Request

2. The complainant submitted the following request to the House of Commons (HoC) on 10 February 2010:

> 'Parliament keeps promising to publish MPs allowances but has just failed to comply with their own deadline on publishing the Incidental Costs Allowances and the Communications Allowances since 07/08 and the new PAAE [Personal Additional Accommodation Expenditure] allowances have only been

> published for the first quarter of 09/10. I wish to receive the missing data for my own MP Jim Knight who I believe has been misappropriating resources for the benefit of the South Dorset Labour Party and for his own re-election campaign. I was previously refused this information on the basis that it would all be published by now'.

3. The HoC acknowledged receipt of the request on 12 February 2010 and in response to this the complainant sent the HoC an email in which he explained that:

> 'Having had further contact with the house authorities I have now discovered that I can search the records up to the end of June 2009 but I still need access to the scanned receipts for the period I am complaining about. The original request for information after June 2009 is still for both for the data and the scanned receipts. I understand the House agreed to put the records on line as soon as possible after each claim and clearly more than 7 months after claims is not reasonable nor what the public has been told.'

4. The HoC contacted the complainant again on 5 March 2010 and stated that it understood the request to be for 'copies of receipts for Jim Knight MP from June 2009, which have not yet been published'. The HoC went on to explain that detailed information about MPs' expenses, from which the complainant would be able to determine the information requested, was being prepared for publication. It was intended that the Incidental Expenses Provision (IEP) and Communications Allowances for 2008/09 will be published in due course, as will scans for 2009/10. Therefore the HoC explained that the information that had been requested was exempt from disclosure on the basis of section 22(1) and that in all the circumstances of the case the public interest favoured maintaining the exemption.

5. The complainant contacted the HoC on 5 March 2010 and asked for an internal review to be conducted. In doing so the complainant suggested that the HoC was using a device to prevent publication in a timely manner by announcing that the data would be published at a later but unspecified date. The complainant noted that the HoC announced last autumn that it would publish the data he requested and now appeared to be delaying the matter until after the General Election so that information would not be available to the electorate.

6. The HoC informed the complainant of the outcome of the internal review on 10 March 2010; the review upheld the application of section 22 of the Act. In doing so the HoC assured the complainant that its

intention was to publish the information he had requested namely the IEP and Communications Allowances for 2008/09, and the scans for 2009/10. The next stage of publication was due in June 2010 when the remaining 2008/09 scans would be published and the database would be updated with the quarter 2 and quarter 3 information for 2009/10. The remaining scans and transactional data would be published later in 2010. The HoC also noted that some of the information which the complainant had requested was available on the HoC website and it provided a link to this information.

## The Investigation

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### Scope of the case

7. The complainant contacted the Commissioner on 11 March 2010 in order to complain about the HoC's reliance on section 22(1). In submitting this request the complainant argued that it was clear that the HoC had all the material ready to be published and had decided to do so after the last possible date for the General Election and should not be allowed to rely on an exemption which was designed to give an organisation reasonable time to fully publish material and where individual publication would delay that progress.

8. The Commissioner contacted the complainant on 24 June 2010 in order to ask him to clarify the nature of his complaint and moreover to confirm that his understanding of what the request sought was correct.

9. The complainant provided the Commissioner with this clarification on 7 September 2010.

10. The Commissioner contacted the complainant again on 17 September 2010 in order to confirm that he now understood that his request sought details of any claim under the IEP, Communications Allowance or PAAE (e.g. date of claim, amount of claim and nature of claim) **and** copies of any receipts submitted in support of any such claims. Furthermore the information requested was all relevant unpublished data up to and including the date of the request – i.e. the date range of the request was not limited simply to the period from June 2009 to the date of the request.

11. In terms of the complaint itself, the Commissioner confirmed that he understood that the following information had still not been published (and by implication had not been published at the time of the request):

1. For the first two quarters of 2009/10 the details of individual claim expenditure had now been published. However, the individual receipts and claims forms to support these claims had not been published.
2. For the remaining period of the financial year 2009/10, i.e. quarters three and four, the HoC had not published any data.

12. The Commissioner therefore informed the complainant that his investigation would be limited to considering whether the HoC was correct to rely on section 22(1) of the Act to refuse to provide the unpublished information described at points 1 and 2 above. Furthermore in respect of point 2 although the HoC had not published any information for the latter two quarters of the financial year 2009/10, the complainant submitted his request on 10 February 2010 therefore the information falling within the scope of the request was limited to the data held by the HoC on that date. In other words, any expense claims submitted to the HoC by Mr Knight **after** 10 February 2010 did not fall within the scope of the request and thus could not fall within the scope of the Commissioner's investigation.

## Chronology

13. The Commissioner contacted the HoC on 20 September 2010 and confirmed the scope of this complaint. The Commissioner asked the HoC to provide any further submissions it wished to provide to support its reliance on section 22(1).

14. The HoC responded on 18 October 2010 and provided the Commissioner with some further reasoning to support its application of section 22(1). In doing so the HoC clarified that when the request was made in February 2010 it had just made available searchable data for the relevant allowances for all MPs for the period 1 April 2009 and 30 June 2009, i.e. the first quarter of the financial year 2009/10. At the same time it had also published scans of receipts submitted in respect of claims for the 'second homes allowance covering the same period', (i.e. the PAAE allowance). The HoC's response went on to confirm that as explained in its internal review, in June 2010 it updated its searchable database with the details of claims made for the period 1 July 2009 to 31 December 2009 (quarters two and three of the financial year 2009/10). Therefore between the period of the internal review response and the HoC receiving the Commissioner's letter of 20 September 2010 a further six months' worth of data had been published. The HoC also explained that as noted in its internal review it intended to publish the data for the final quarter of 2009/10 (1 January to 31 March) later in 2010. The work to publish the remaining scans

was also ongoing and it was the intention to hopefully also publish this by the end of the year.

## Findings of fact

15. There would appear to be some variance between the amount of information that the complaint believed he could access in September 2010 when he clarified the scope of his complaint with the Commissioner and the amount of information that the HoC has stated that it had published online in June 2010. The complainant explained that in September 2010 he could only access the data for the first two quarters of the data of 2009/10 whereas the HoC has stated that the data for the first three quarters of this financial year was in fact published in June 2010.

16. However such apparent confusion does not have a bearing on the Commissioner's consideration of this complaint because his role is limited to considering the circumstances as they existed at the time of the request. The rationale behind this approach is explained in the following paragraphs.

## Analysis

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17. The Commissioner's 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:

18. 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).

19. 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).[1]

20. The consequence of this approach is that when determining whether exemptions have been correctly applied 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.

21. The one exception to this approach is where a public authority discloses further information after the issuing of an internal review but prior to the issuing of a Decision Notice. In such circumstances the Commissioner considers aspects of the complaint to be informally resolved.

22. In the circumstances of this case given the scope of the complaint the Commissioner has therefore only considered whether at the time of the request in February 2010 the HoC was entitled to rely on section 22 of the Act to refuse to disclose:

> 1. The details of claims (but not the scanned documentation) for the third and fourth quarters of 2009/10 up to and including 10 February 2010.
> 2. The scanned documentation to support all of the claims made in 2009/10 (with the exception of the documentation for the PAAE from the first quarter which the HoC has clarified was available in February 2010 at the time of the request.)

## Section 22 – information intended for future publication

23. 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.

[1] 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)

24. Section 22(1) states that:

> 'Information is exempt information if-
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> (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).'

25. 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?
- When the request was submitted, did the HoC have an intention to publish the information at some date in the future?
- 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)?

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

26. Under rules set out in detail in 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 HoC is responsible for the processing of these claims and therefore the Commissioner is satisfied that at the time of the request the HoC held the information requested by the complainant.

**When the request was submitted, did the HoC have an intention to publish the information at some date in the future?**

27. In June 2009 the HoC published details, including copies of scanned receipts and supporting paperwork, of all MPs' expenses claims for the period 2004 to 2008. The HoC committed to publish a similar level of detail of information for more recent, and future, expense claims. Therefore at the time of the request in February 2010 the Commissioner is satisfied that the HoC had a commitment to publish the information that falls within the scope of this complaint.

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

28. At the time of the refusal notice the HoC simply stated that the information would be published in due course. At the internal review stage the HoC clarified that some of the information for quarters two and three would be published in June 2010 and the remaining information would be published later in 2010.

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

29. 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 guidance on the exemption: Freedom of Information Act Awareness Guidance No 7 – Information Intended for Future Publication.[2]

30. This guidance notes that in assessing reasonableness, 'generally, the sooner the intended date of publication, the better the case for maintaining the exemption'.

31. In this case the HoC argued that it was reasonable to withhold the requested information on the following basis:

32. The HoC explained that the approach it had adopted in respect of publishing details of MPs' expense claims was to simultaneously publish details for all MPs at the same time rather than for each one in a piecemeal fashion. Ensuring that all of this data was ready for publication involved a substantial – and time consuming – administrative exercise with thousands of lines of account entries having to be transferred into a publishable format and subject to checks for accuracy. The publication of the scans involved a further time consuming administrative exercise, which the HoC noted it was undertaking at a time when it, as with other public authorities, was being called upon to make savings and reduce expenditure.

33. The complainant has argued that a delay of several months before the requested information was published could not be described as reasonable.

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2 http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_7_-_information_intended_for_future_publication.pdf

34. In determining whether it was in fact reasonable to withhold the information that is the focus of this complaint the Commissioner recognises the different classes of information that were in fact being withheld:

35. In relation to details of the claims for the third quarter of 2009/10 – which covered the months October to December 2009 – the Commissioner is prepared to accept that in February 2010 it was not reasonable to expect the HoC to be in a position to publish this information. This is because of the time consuming process described by the HoC above which needed to be undertaken for all 650 MPs in order for the expense data for this period to be published. In light of this process the Commissioner believes that it would have been unreasonable for the HoC to have been expected to publish this data by 10 February, only 6 weeks after the end of the relevant accounting period. Moreover in light of the work that was needed in order prepare this information for publication the Commissioner is satisfied that it was reasonable for the HoC to take until June 2010 to publish this information, which was the date specified at the internal review stage.

36. In relation to the details of the claims for the fourth quarter of 2009/10 – which covered the months January to March 2010 – in light of the HoC's logical approach to publish details of claims in quarterly sections it would of course be unreasonable to expect that HoC to publish expense details for the fourth quarter before that accounting period had in fact finished. (Indeed in submissions to the Commissioner the HoC explained that claims for the fourth quarter could be made up until the end of May 2010 and the final payments left the accounts in June/July 2010.) Furthermore, and for the reasons set out in the preceding paragraph, the Commissioner accepts that a delay of approximately six months from the date of the final payments being made in respect of the fourth quarter in question to the date of publication, is a reasonable one.

37. On the same basis as these two findings the Commissioner believes that it was reasonable for HoC to withhold the supporting scans in relation to the expense claims for quarters three and four (up to 10 February 2010) for the financial year 2009/10.

38. However, in respect of the scanned receipts and supporting paperwork for the first and second quarters of 2009/10 the Commissioner believes that the decision as to whether it was 'reasonable' to withhold this information at the time of the request is much more finely balanced. This is because a much greater period of time had passed since of the end of the first quarter in June 2009, and a lesser but still notable period of time since the end of the second quarter in September, and

the date of the request and the proposed date for publication of these scans in late 2010. In respect of the scans for the first quarter nearly 18 months would have elapsed since the end of that quarter and the publication of the relevant scans. As noted above the greater delay in information being published the less likely it is for it to be reasonable for a public authority to rely on section 22.

39. Nevertheless the Commissioner is prepared – just - to accept that the delay in publishing the scans can be described as reasonable on the basis that the HoC has committed its limited resources to primarily focus on publishing the data itself in what the Commissioner accepts is a reasonably timely manner. If the HoC focused more of its resources on publishing the scans, alongside the data for the earlier quarters of 2009/10 this could presumably affect the timetable within which data for the later quarters could be published.

40. Underlying the Commissioner's findings in respect of all classes of the withheld information is the rationale that if the HoC fulfilled this request before its planned publication dates then it would find it very difficult not to comply with similar requests which it also received during the period in question and which it also refused on the basis of section 22(1). Responding to these requests would undermine the HoC's ability to meet its deadlines.

41. On the basis of the above the Commissioner is satisfied that section 22(1) is engaged.

**Public interest test**

42. 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 arguments in favour of maintaining the exemption**

43. 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 this 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(1).

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

44. 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 the Information Tribunal and the High Court. It follows that there is therefore a public interest in such information being available to the public as soon as practicably possible.

45. In the particular circumstances of this case, the complainant explained that he had submitted a complaint to the Commissioner for Standards in relation to allegations over Jim Knight's misuse of allowances. However, in order to be in a position to fully evidence such a complaint the complainant argued that he needed to be provided with full details of expense claims in question, including scans of receipts. Furthermore the complainant argued that the lack of complete details of Mr Knight's expense claims prevented further timely complaints to additional bodies such as the Electoral Complaints Commission. Moreover, the complainant highlighted the fact that publication of parts of the requested information after the General Election of May 2010 prevented the electorate from taking into account how their MP had used their expenses for the previous financial year.

**Balance of the public interest arguments**

46. 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.

47. The Commissioner has some sympathy with the complainant's frustrations in not being provided with the information he requested in a timelier manner given his concerns, justified or otherwise, about the expense claims of this particular MP. Furthermore, the Commissioner believes that the point about being provided with this information in advance of the General Election of May 2010 is a valid one. As noted

above the Commissioner believes that such transparency and accountability in relation to the expenses claimed by elected officials is vital in order to improve confidence in the democratic process.

48. 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 favours maintaining the HoC's application of section 22(1). If the HoC could not rely on section 22, and thus would have to fulfil this request within 20 working days, then 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 favours 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.

49. 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

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

## Steps Required

51. The Commissioner requires no steps to be taken.

## Right of Appeal

52. 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.
Website: www.informationtribunal.gov.uk

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

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

**Dated the 8th day of December 2010**

**Signed ……**

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

**Legal Annex**

**Freedom of Information Act 2000**

**General Right of Access**

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

> "Any person making a request for information to a public authority is entitled –
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> (a) to be informed in writing by the public authority whether it holds
> information of the description specified in the request, and
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> (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."

**Effect of Exemptions**

**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 –
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> (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"

**Information intended for future publication**

**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)."