

FREEDOM OF INFORMATION ACT 2000 (SECTION 50)

DECISION NOTICE

Dated 22 February 2006

Name of Public Authority: House of Commons

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

Nature of Complaint

The Information Commissioner (the "Commissioner") has received a complaint which states that on 20 January 2005 the following information was requested from the House of Commons (the "House") under section 1 of the Freedom of Information Act 2000 (the "Act"):

...a breakdown of the already published aggregate figure for travel claims by MPs, for the most recent year for which figures are available. Please could you provide the information in a format which shows for each MP the amount claimed by mode of travel, and therefore giving specific figures for rail, road, air and bicycle.

It is alleged that:

The House of Commons failed to provide him with that information in accordance with their obligations under Section 1(1) because it incorrectly applied the exemption under section 40(2) of the Act.

The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner's decision is as follows:

Section 40(2) states that:

(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.

In the Commissioner's view the requested information is personal information which can be disclosed without contravening any of the principles of the Data Protection Act 1998 and consequently the exemption provided by section 40(2) of the Act does not apply. Therefore the Commissioner's decision is that the House has breached section 1(1) of the Act in that it incorrectly withheld the requested information on the basis that it is exempt under section 40(2).

A further explanation of this decision is provided in the attached Statement of Reasons.

Action Required

In view of the matters referred to above the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act he requires that the House of Commons shall, within 30 days of the date of this Decision Notice, disclose the requested information to the complainant.

Failure to comply

Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act, and may be dealt with as a contempt of court.

Right of Appeal

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Reference: FS50072319

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 6000 277
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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 22nd day of February 2006

Signed:

Richard Thomas
Information Commissioner

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Statement of Reasons

In refusing to release the information requested the House cited section 40(2) of the Act. Section 40(2) (see above) exempts personal information of a third party where disclosure would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the "1998 Act"). The House stated that the requested information is the personal data of the Members of Parliament (MPs) concerned within the definition of the 1998 Act and that to release it would breach the first data protection principle pertaining to the fair and lawful processing of personal data.

Personal data

The Commissioner accepts that the information requested is personal data as defined in the 1998 Act. The 1998 Act defines personal data as:

- ...data which relate to a living individual who can be identified-*
- a) from those data, or*
 - b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller...*

The first data protection principle

The first data protection principle stipulates that:

- Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*
- (a) at least one of the conditions in Schedule 2 is met, and*
 - (b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met,*

The House argued that disclosure of information beyond that which is already included in the House's publication scheme would be unfair. In a letter of December 2002, MPs had been advised of the information which would be disclosed in the House's publication scheme. The House asserted that since no further notice of wider disclosure has been given, MPs can reasonably expect that nothing further will be disclosed and therefore to do so would be unfair.

In the Commissioner's view disclosure of the information sought would not be unfair. The Commissioner recognises that disclosure of the information requested goes beyond that which MPs were notified of in the letter of December 2002. However, the Commissioner also notes that the letter of December 2002 does not give any assurances to MPs that additional information will not be provided if there is an individual request made under the Act.

The Commissioner is of the view that the information requested relates to individuals acting in an official as opposed to a private capacity; and whilst the information sought is personal data, the disclosure of this additional information would not impinge on the personal privacy to which individual MPs

are entitled in their private lives. The Commissioner is minded that the information sought is personal data relating to MPs carrying out Parliamentary business for which they are receiving an official allowance. In addition, the Commissioner notes that the information sought in this case only differs from that already released into the public domain by dividing total figures for annual transport expenses into figures for four separate categories of transport. Therefore, it is the Commissioner's view that disclosure of the information in this case would not be unfair.

Schedule 2, Condition 6

As above, the first data protection principle requires that personal data be processed fairly and lawfully and in particular shall not be processed unless at least one of the conditions in Schedule 2 of the 1998 Act is met. In this case the House asserted that the only relevant condition which might be met in Schedule 2 is condition 6. Condition 6 stipulates that:

The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

The House recognises that information pertaining to the use of public money by elected office-holders is a matter of legitimate public interest. However, the House asserts that disclosure in this case would be prejudicial to the legitimate interests of the data subjects (the MPs). This is because the requested disclosure would go beyond that notified to MPs in December 2002 (and which now forms part of the House's publication scheme); this was a level of disclosure which was thought to represent the appropriate balance between the interests of the public and the interests of the data subjects.

The House also argues that in the application of condition 6 of Schedule 2 of the 1998 Act, MPs should not be required to produce evidence of specific prejudice arising from disclosure in order to counterweight the legitimate interest of the requestor in the application of condition 6 of Schedule 2. The House suggests that it would be unfair to require MPs to present evidence of a specific prejudice because "the requestor needs only to establish that his legitimate interest is a general one in the spending of public funds and not anything specific to him".

Further the House asserts that since the request was made under the Act and the House is not entitled to enquire as to the reasons the complainant is seeking the information, it does not believe that the legitimate interests the complainant has in disclosure, and the possible prejudice to an MP can be properly balanced unless the House knows why the complainant wants the information and what he intends to do with it. In addition, the House argues that it does not agree that the balance falls in favour of the complainant unless specific prejudice can be identified.

It is the view of the Commissioner that the Act takes no account of the purposes for which information might be sought and how it might be used. Any assessment as to whether or not disclosure of the information might cause prejudice must be undertaken by considering the nature of the information and the likelihood that this information could or would be used in such a way as to cause unwarranted prejudice to the legitimate interests of the data subject.

In any event the House has not produced evidence of any prejudice to the legitimate interests of MPs as a whole or to any individual MP.

As the House has acknowledged, the public (and the complainant as a member of the public) has a legitimate interest in access to information about how elected officials use public money. Again, the Commissioner notes that the disclosure sought in this case only differs from that already released into the public domain by dividing total figures for annual transport expenses into figures for four separate categories of transport. The Commissioner is of the view that in this case the legitimate public interest in this information being made available outweighs any prejudice that there might be to the legitimate interests of the data subject (the MPs) in withholding it. Therefore, it is the Commissioner's view that in this case condition 6 in Schedule 2 of the 1998 Act is met.

Summary of the Commissioner's decision

The Commissioner is of the view that, while the information is personal data for the purposes of the 1998 Act, disclosure in this case would be both fair and meet the criteria of condition 6 of Schedule 2. Therefore the Commissioner finds the House in breach of section 1(1) of the Act in withholding the information requested on the basis that it is exempt under section 40 (2).