

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 31 March 2008

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

Summary

The complainant wrote to the House of Commons to request the amounts spent by seven MPs since May 2005 on circulars and reports to their constituents. The House informed the complainant that disclosure of the requested information would breach the Data Protection Act and is therefore exempt from disclosure under section 40 of the Act (Personal information).

The Commissioner has decided that the House breached section 1 of the Act (General right of access to information held by public authorities) by not clarifying to the complainant the information held in relation to the request. He has further decided that the information held is not exempt from disclosure under section 40 and therefore requires it to be released.

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 4 May 2006, the complainant submitted the following request to the House of Commons (the 'House'):

"How much has been spent by each of the MPs for Gower, Swansea West, Swansea East, Neath, Aberavon, Ogmores and Bridgend since May 2005 on circulars and reports to their constituents? I would be grateful for a detailed breakdown."

3. On 12 May 2006, the House responded to the complainant, in which it informed him that it would not disclose the requested information. It provided the complainant with the following reasons for this decision (which are reproduced here as direct quotes):
 - Careful consideration has been given to the extent to which information which relates to expenses and allowances claimed by Members of Parliament can properly be disclosed with regard to the data protection principles, in particular the duty to process data fairly, and to the legitimate interests of third parties.
 - All the information considered is personal to the Members of Parliament concerned.
 - Such information could be properly disclosed to the extent provided in paragraph 7.4.8 of the House of Commons publication scheme....this information includes aggregate totals for the Incidental Expenses Provision from which the spending specified in the request would usually be funded.
 - Disclosure of information additional to that in the Publication Scheme would not be consistent with the data protection principles and is therefore exempt from disclosure under section 40 of the Act (Personal Information).
4. On 16 May 2006, the complainant contacted the House to request an internal review of its decision.
5. The House responded to the complainant's request for an internal review on 28 June 2006, in which it advised him that the review had upheld its original decision. It provided the following justification for this decision:
 - i. The requested information is personal data under section 1(1) of the Data Protection Act 1998. It is data which relates to living individuals who can be identified from that data.
 - ii. The Members concerned are the focus of the information, it affects their privacy both in their personal and professional capacity, and it is clearly personal to them.
 - iii. The requested information is within the scope of the exemption provided by section 40(2) of the Act. This states that the decision on disclosure has to be made exclusively under the Data Protection Act 1998 (DPA). Under that Act, processing of data (which includes its disclosure to a third party) is prohibited unless the data is processed 'fairly and lawfully'.
 - iv. For information to be processed 'fairly', it would generally be necessary to tell Members what uses are to be made of their data when the information was supplied by them. Furthermore, at least one of the conditions in Schedule 2 of the DPA has to be met....the relevant condition is that the disclosure sought is necessary for [the complainant's] legitimate interests, unless the disclosure 'is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the data

subject'. In essence this means that [the complainant's] interests have to be balanced against the interests of the Members of Parliament.

- v. No notice that [disclosure of the requested information] is contemplated has been given. Members can reasonably expect that [this] information which relates to their expenses and allowances will not be disclosed. Thus its disclosure would be unfair and, for that reason, in breach of the data protection principles.
- vi. The house accepts that there is a legitimate interest in public access to information relating to the use of public money by elected office-holders. But that interest has to be balanced against the proper interests of the data subject. Having regard to the degree of disclosure voluntarily made in the publication scheme, to the personal nature of information which relates to an individual's home, and to Members' anticipation that disclosure of their personal affairs will be limited to the information set out in that scheme, the House has concluded that the interests of the data subject outweigh [the complainant's] interest in obtaining access to the information.
- vii. The House considers that the balance between the competing interests has been fairly struck in the House's publication scheme and that the details already made available, including each Member's total Additional Costs Allowance expenditure, allow proper and informed scrutiny of Members' spending.

The Investigation

Scope of the case

6. On 3 July 2006 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:
 - i. As this expenditure is being used to fund political mailings it is legitimate that details should be released.
 - ii. This sort of expenditure would be disallowed under the rules of the National Assembly for Wales. If Parliament wishes to have different rules then it should operate them in a transparent manner.

Chronology

7. On 30 November 2006, the Commissioner contacted the House. He informed it that he understood that the expenditure requested by the complainant is paid out of the MPs' Incidental Expenses Allowance and that each MP must submit claim forms for individual items of expenditure up to a maximum set out by the House. He therefore asked the House for clarification as to what information it actually holds in relation to each MP covered by the request and, in particular, whether it

actually holds detailed information in relation to MPs' expenditure on circulars and reports for their constituents.

8. The House responded to the Commissioner on 8 December 2006, in which it informed him that there are four potential sources for the information requested, which are as follows (reproduced below as direct quotations):
- i. The electronic record/account held.....of Members' claims for Incidental Expenses Provision.....the cost of circulars and reports can be claimed from the Incidental Expenses Provision. Costs are claimed on the basis of reimbursement of expenditure already incurred or through the submission of invoices for direct payment to suppliers. However, only the amount claimed in respect of each category of expenses is included in the electronic record.....the electronic record does not contain a split out of printing costs but lumps together all the kinds of expenses that can be claimed under the IEP under several accounting codes. Printing costs are recorded under the broad heading of 'General Office Costs'. This heading would also include expenditure such as utility bills, rent and rates.
 - ii. The original claim form submitted by the MP for the Incidental Expenses Provision claim together with any invoices and receipts which were attached to that claim form (where required). The form which the Member completes does require them to state how much they are claiming for printing and other costs but does not require any further break down as to the kinds of items being produced.....expenses below the value of £250 do not have to be supported by invoices or receipts. Where such things are included they may reveal more information about the kind of printing work being claimed for.
 - iii. There are strict rules about what may or may not be included in publications funded by the IEP; they should not, for example promote a political party. In some cases Members seek.....advice about content. The Quality Assurance Team.....maintains a check sheet which records such advice. We have checked but found that no records of such checks are held that relate to the Members in question.
 - iv. From April 2006, as part of a data gathering exercise.....the Claims Validation Team.....has maintained a check sheet in which all newsletter, report and other communications related claims are recorded. Again we have checked and found one record held in relation to one of the MPs subject to the request....It is worth noting that this exercise is being undertaken because of the difficulty encountered in extracting relevant data from existing records.
9. The House also provided the Commissioner with a spreadsheet of expenses, the content of which it described in the following terms:

"The person reviewing the files for the purpose of responding to [the Commissioner's] query has produced a spreadsheet recording all print related expenditure (to the extent that it could be ascertained from the

claim forms and any invoices or receipts).....This is for [the Commissioner's] benefit only and the House does not agree to this being disclosed to the requester at this stage.”

10. It concluded its submission to the Commissioner of 8 December 2006 by providing the following explanation regarding the requested information:

“Strictly speaking we do not hold the material requested. A fair bit of work had to be done to produce the attached summary from the expenses claims records and even then it may not capture all relevant information. It is probably an accurate reflection of 'printing costs' but again details of some costs might be missing (e.g., if reimbursement is claimed for less than £250). Of course this would not cover any printing costs which the Member decided to bear him or herself without making a claim. I should stress that this summary sheet was created for the purposes of answering your query and it could be argued that the information is not “held” within the meaning of the Act.”

11. The House then stated that in order to request any information, the complainant should amend his request:

“In the spirit of s16 [Duty to provide advice and assistance], the closest that the requester could get to receiving the details he requires would be to recast the request to:

- a) printing costs in general (but the provision of this would require the creation of a summary and may go beyond the obligations imposed by the Act); or
- b) copies of all IEP claims and supporting documentation (which might be subject to redaction).”

12. On 10 October 2007 the Commissioner wrote to the House to enquire as to whether, in the light of the decision of the Information Tribunal in relation to MPs' travel expenses (details of which are provided in the 'Analysis' section below), it would be willing to reconsider its decision in relation to the complainant's request. Taking into account the House's representations on the information it actually holds in this matter, the Commissioner requested that any reconsideration focuses upon that which it has identified as being held.

13. The House replied to the Commissioner on 5 November 2007, in which it stated the following (which is presented as a direct quotation):

- Without knowing what the Commissioner considers to be the scope of [the Complainant's] request, it is not possible to provide a response to [the] question about disclosure.
- The House does not hold information about spending on circulars and reports since this is incorporated into a wider class of expenses claimed under the heading of the IEP allowance.

- It is not clear whether [the Commissioner] has established with the requester that he would now like to recast his request so that the request is now a request for the disclosure of “copies of all IEP claims and supporting documentation (which might be subject to redaction)”. This would be on the basis that we do not hold any split out of the printing costs to be able to provide the information actually requested.
- If the Commissioner confirms that the requester is now pursuing this different request....the House would regard the information being requested as more akin to the ACA cases considered in the decision notices published in June 2007 than to the Tribunal cases relating to travel costs....In those decisions, in relation to ACA expenses claims, the Commissioner held that the House was not obliged to provide the level of detail required to respond to a request such as “copies of all IEP claims, etc”. In other words, the same points that the House is making in its appeal against the Commissioner’s decision in relation to the ACA claims decision are likely to apply in relation to the supporting detail of the IEP claims.

Findings of fact

14. The Commissioner understands that the Incidental Expenses Provision is a payment which is provided to MPs to meet the costs of accommodation for office or surgery use; equipment and supplies for office or surgery; work commissioned or other services; and certain travel and communications.
15. In its response to the Commissioner of 5 November 2007, the House referred to the ACA. The Commissioner understands this to be the Additional Costs Allowance, which is paid to reimburse Members for necessary costs incurred when staying overnight away from their main home for the purpose of performing parliamentary duties.
16. Since 2004, MPs’ spend against allowances has been published each year on the Parliamentary website. The first release of information included the years 2001-2003. The figures comprise annual totals claimed for the following elements:
 - MPs’ Additional Costs Allowance and/or London Supplement
 - Incidental Expenses Provision
 - Staff Costs
 - MPs’ travel
 - MPs’ staff travel
 - Centrally purchased stationery
 - Central IT provision
 - Other central budgets (such as temporary secretarial allowance)

Analysis

Procedural matters

Section 1 – General right of access to information held by public authorities

17. Section 1(1)(a) of the Act states 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 to the description specified in the request....

18. The spreadsheet provided to the Commissioner by the House on 8 December 2006 was, according to the House, a record of all print related expenditure to the extent that it could be ascertained from the claim forms and any invoices or receipts produced from the expenses claims records. The spreadsheet listed the seven MPs referred to in the complainant's request and next to each listed the amount claimed on printing costs by reference to each type of printed material for which a claim was made and the date each was submitted. The spreadsheet included, among other items, numbers of leaflets, newsletters, reports, calendars and posters.

19. The Commissioner accepts that the requirements of the IEP are such that the House does not hold total spend figures and accurate breakdowns on circulars and reports to the constituents of each MP. However, it is clear from the spreadsheet that it does hold some recorded information of the description detailed in the request. This is as a result of the relevant information which these MPs have supplied to the House, from which the spreadsheet was compiled.

20. 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

21. Although the House stated that "a fair bit of work had to be done to produce the [spreadsheet] from the expenses claims records", the fact that the records contained the details reproduced in the spreadsheet indicates that it is not correct to say that this information was not held by the House. Rather, it is the case that the *full extent* of the information requested by the complainant was not held.

22. In an earlier Decision Notice (FS50070854) where the request involved the creation of a schedule of information, the Commissioner stated that: "The information already exists: the public authority cannot be said to be creating it. And, while producing a list of the documents in which the relevant information is

contained may be a new task, it is not creating new information; it is simply a representation of existing information as a by-product of responding to the information request.”

23. Taking into consideration the information held by the House in relation to the complainant's request, the Commissioner therefore considers that the creation of the spreadsheet produced for him by the House would have, if supplied to the complainant, sufficiently fulfilled his request. The complainant specifically asked about the amount spent on circular and reports to their constituents and the spreadsheet provides as much detail about this as the House was able to derive. Therefore, the Commissioner does not believe that the complainant needed to recast his request as the House is able to provide information falling within the scope of the request, even if it did not have sufficient information to fulfil it in full. As such, the Commissioner considers the House to have breached section 1(1)(a) in not having informed the complainant of the information held in relation to his request.
24. Although the Commissioner considers the House to hold information falling within the scope of the complainant's request, he accepts the House's reasons as to why the information it holds does not provide an accurate or full record of the amount actually spent on circulars and reports. However, a complainant should not be asked to modify the scope of their request to take into account the accuracy or context of the information falling within the scope of the request. Nor should a public authority take such matters into account when interpreting a request or in deciding whether to provide the requested information to the complainant.
25. In this case, the Commissioner believes that the House would have been able to address its concerns about the context, completeness and potentially inaccurate nature of the information it holds by providing the complainant with an appropriate explanation of what it holds. This would prevent the misinterpretation of the information supplied. The 'Other Matters' section of this Notice sets out the Commissioner's advice as to how the House might formulate such an explanation in this case.

Exemption

Section 40 – Personal Information

26. The House stated that the information it does hold which falls within the scope of the request is exempt under section 40 of the Act.
27. The relevant subsections of section 40 provide that:
 - (1) *Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.*
 - (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).....*

28. In relation to section 40(2)(a), the Commissioner is satisfied that the requested information is personal data as defined in the Data Protection Act 1998. That 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...*

29. As the requested information relates to the personal expenses of named individuals, the Commissioner considers it to be personal data. In this context, the nature of the expenses have no bearing on this assessment.

30. The Commissioner understands the House's argument to be that section 40(2)(b) is engaged by virtue of satisfying section 40(3)(a)(i).

31. In respect of section 40(3)(a)(i), the Commissioner understands the House to consider this provision to be satisfied by virtue of the first data protection principle, which requires 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 2 is also met"*

32. Condition 6 in Schedule 2 of the DPA legitimises the processing of personal data in cases where:

'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'.

33. In determining whether processing would be fair, the Commissioner's view is that regard should be had to whether the personal data requested relates to

individuals acting in an official as opposed to a private capacity. In a separate Decision Notice [FS50071451] regarding details of MPs' expenses, the Commissioner stated that:

“Expenses are claimed by individual MPs in relation to their duties...it is only because such costs are considered to be expenses arising from the holding of public office that they are subject to reimbursement from the public purse.”

In this case, the expenses details held by the House relate to MPs' official duties and exclude personal or political activities. In this respect, the Commissioner believes that MPs must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives.

34. The Commissioner also notes that no assurances have been given to MPs that information in addition to the expenses details provided for in the House's publication scheme will not be provided should the Act require disclosure. Furthermore, the Commissioner does not accept that disclosure which goes beyond that in the publication scheme inevitably breaches the data protection principles.
35. The Commissioner also considers that there is a legitimate and general interest in access to information in relation to the expenditure of funds falling within the Incidental Expenses Provision (where this information is held). Furthermore, disclosure of the information in *this* case (i.e. a fully itemised breakdown of the requested information held in relation to each MP's expenses on reports and circulars) would not constitute an intrusion into the private lives of the MPs to any significant extent.
36. In this case, the Commissioner therefore considers that the legitimate interests of the public in the disclosure of the requested information outweigh any possible prejudice to the rights, freedoms and legitimate interest of MPs. This analysis is supported by the analysis and conclusion of the Information Tribunal relating to MPs' travel expenses in *The Corporate Officer of the House of Commons v The Information Commissioner and Norman Baker MP* [Appeal Number: EA/2006/0015 and 0016].
37. As such, the Commissioner concludes that although the requested information is the MPs' personal data, disclosure would not be unfair and therefore would not breach section 40(2) of the Act. He therefore considers that the information contained within the spreadsheet supplied to the Commissioner by the House should be disclosed to the complainant.

The Decision

38. The Commissioner's decision is that the House has not dealt with the complainant's request in accordance with the following requirements of the Act:

- i. Section 1(1) in that it failed to clearly confirm whether it holds information of the description specified in the complainant's request.
- ii. The reliance upon Section 40 of the Act to withhold the information falling within the scope of the complainant's request.

Step Required

39. The Commissioner requires the public authority to take the following step to ensure compliance with the Act:
 - i. Supply to the complainant the information contained within the spreadsheet sent by the House to the Commissioner on 8 December 2006.
40. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Other matters

41. Although they do not form part of this Decision Notice the Commissioner wishes to highlight the following matter:
42. The Commissioner recommends that, as a matter of best practice, the House provides the complainant with clarification to enable him to understand the accuracy, context and nature of the information for which disclosure is required.
43. The Commissioner considers that such an account could reasonably consist of the following:
 - An explanation that the expenses form which the Member completes does require them to state how much they are claiming for printing and other costs but does not require any further break down as to the kinds of items being produced.
 - Clarification that expenses below the value of £250 do not have to be supported by invoices or receipts.
 - An explanation that the spreadsheet being provided only records print related expenditure to the extent that it could be ascertained from the claim forms and any invoices or receipts.
 - Clarification that the figures do not include any printing costs which the MP decided to bear him or herself without making a claim.
 - An explanation that the relevant rules do not permit claims for publications which promote a political party.

Failure to comply

44. 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

45. 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.
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 served.

Dated the 31st day of March 2008

Signed

**David Smith
Deputy Commissioner**

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