

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 1 February 2011

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

### Summary

---

The complainant requested information concerning the number and names of MPs under investigation by the Parliamentary Commissioner for Standards. The public authority refused the request and cited the exemption provided by section 34(1) (Parliamentary privilege). During the Commissioner's investigation, the public authority provided a certificate signed by the Speaker of the House of Commons affirming that section 34(1) was engaged in this case. Section 34(3) of the Act provides that such a certificate must be accepted as conclusive evidence that this exemption is engaged. The conclusion of this Notice is, therefore, that the exemption provided by section 34(1) is engaged and the public authority is not required to disclose this 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 requested the following information on 25 March 2010:

*"(i) The number of MPs currently under investigation by the Parliamentary Commissioner for Standards.*

*"(ii) The names of any MPs currently under investigation by the Parliamentary Commissioner for Standards."*

3. The public authority responded to these requests on 9 April 2010. The requests were refused, with the public authority citing the exemption provided by section 22(1) (information intended for future publication) in response to request (i) on the grounds that this information was to be published in the "*Commissioner's Annual Report for 2009-10*".
4. In response to request (ii), the public authority cited the exemption provided by section 34 (Parliamentary privilege). No subsection from 34 was specified in this refusal notice.
5. The complainant responded on 9 April 2010 and requested an internal review. The public authority responded with the outcome of the internal review on 22 June 2010. Subsection 34(1) was now specified and the public authority stated that this was now cited in relation to both requests (i) and (ii).

## **The Investigation**

---

### **Scope of the case**

6. The complainant contacted the Commissioner's office in connection with this case on 3 August 2010. The complainant specified that he was not satisfied with the reasoning given for the refusal of his requests and asked that the Commissioner consider whether these grounds were legitimate.

### **Chronology**

7. The Commissioner's office contacted the public authority in connection with this case on 13 September 2010 to provide the public authority with the opportunity to respond with any further explanation it wished to advance for the refusal of the complainant's requests.
8. The public authority responded on 11 October 2010. In addition to further explanation for the citing of section 34(1), the public authority now also provided a certificate signed by the Speaker of the House of Commons confirming that exemption from section 1(1)(b) in relation to the complainant's requests was required for the purpose of avoiding an infringement of the privileges of the House of Commons.

## Analysis

---

### Section 34

9. The public authority has cited section 34(1) of the Act, which provides an exemption where required for the purposes of avoiding an infringement to the privileges of either House of Parliament. Section 34(3) provides that a certificate signed by the 'appropriate authority' certifying that section 34(1) is engaged is conclusive evidence of that fact. Section 34(4)(a) provides that the 'appropriate authority' for the House of Commons is the Speaker of the House.
10. As noted above, the public authority has provided to the Commissioner a certificate signed by the Speaker of the House of Commons relating to the complainant's requests that indicates that the exemption provided by section 34(1) is engaged. In light of this certificate, there are no grounds under the Act on which the Commissioner can conclude that this exemption is not engaged. Section 34 is an absolute exemption and so there is no public interest test. The conclusion of this Notice is, therefore, that the exemption provided by section 34(1) is engaged in relation to the complainant's requests and so the public authority is not required to disclose the information requested.

### The Decision

---

11. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act in that it applied the exemption provided by section 34(1) correctly.

## Right of Appeal

---

12. 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)

13. 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.
14. 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 February 2011**

**Signed .....**

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

## Legal Annex

---

### **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 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)."

### **Section 34(1) provides that –**

"Information is exempt information if exemption from section 1(1)(b) is required for the purpose of avoiding an infringement of the privileges of either House of Parliament."

### **Section 34(3) provides that –**

"A certificate signed by the appropriate authority certifying that exemption from section 1(1)(b), or from section 1(1)(a) and (b), is, or at any time was, required for the purpose of avoiding an infringement of the privileges of either House of Parliament shall be conclusive evidence of that fact."

### **Section 34(4) provides that –**

"In subsection (3) "the appropriate authority" means-

- (a) in relation to the House of Commons, the Speaker of that House, and

(b) in relation to the House of Lords, the Clerk of the Parliaments.”