

Freedom of Information Act 2000

Decision notice

Date: 15 February 2016

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

Decision (including any steps ordered)

1. The complainant requested a list of individuals who had been allocated parliamentary passes sponsored by political parties. The House of Commons refused the request under section 40(2) of the Freedom of Information Act 2000 (the Act) on the grounds that the relevant information was third party personal data and its disclosure would breach one of the data protection principles.
2. The Commissioner's decision is that the House of Commons rightly viewed the information as third party personal data. However, the Commissioner's view is that there is a legitimate interest in disclosure which outweighs the rights of the individuals concerned. Therefore, the Commissioner's decision is that the information should be disclosed.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the names of those individuals allocated passes by parliamentary parties.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 4 March 2015, the complainant wrote to the House of Commons and requested information in the following terms:

"Would you please provide a list of individuals allocated parliamentary passes sponsored by political parties (as opposed to individual MPs)?"

6. The House of Commons responded on 19 March 2015. It stated that the information was exempt under section 40(2) of the Act as it was third party personal data and disclosure would breach one of the data protection principles.
7. Following an internal review the House of Commons wrote to the complainant on 2 June 2015. The review upheld the decision to refuse the request under section 40(2) of the Act.

Scope of the case

8. The complainant contacted the Commissioner on 16 June 2015 to complain about the way his request for information had been handled. Specifically, he appealed against the House of Commons withholding the requested information under section 40(2) of the Act.
9. Whilst the complainant did not provide a timescale for this request the House of Commons and the Commissioner have all worked on the basis that the information requested is for the list of names of those individuals with current passes at the time of the request.
10. The Commissioner considers the scope of the case to be whether the House of Commons was correct to withhold the relevant information under section 40(2) of the Act.

Reasons for decision

11. Section 40 of the Act provides an exemption for information that can be categorised as third party personal data:

"(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) [requester's own personal data], 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,”

12. For the purposes of his decision, the Commissioner has focussed on the first condition of section 40(3). In its submissions to the Commissioner the House of Commons cited the first and second data protection principles from the Data Protection Act 1998 (DPA). These state:

“1. 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

...

2. Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes.”

13. The Commissioner considers that there is significant links between the two principles. This is especially true for the issue of processing the personal data. In the Commissioner’s Guide to the Data Protection Act 1998 it is clearly states the following regarding the second condition:

“[E]nsure that if you wish to use or disclose the personal data for any purpose that is additional to or different from the originally specified purpose, the new use or disclosure is fair.”¹

14. The Commissioner considers that this is essentially the same test as the first principle, which asks that processing is fair and lawful. Therefore, for the purposes of his decision the Commissioner will need to determine:

- Is the information personal data?
- Is it fair to process (disclose) the personal data?
- Are any of the conditions from Schedule 2 of the DPA met?

¹ <https://ico.org.uk/media/for-organisations/guide-to-data-protection-2-3.pdf> see page 23

Is the withheld information personal data?

15. Personal data is defined in the DPA as “data which relate to a living individual who can be identified from those data”. For the information to be considered personal data the Commissioner will need to establish that the names on the list were living individuals at the time of the request that could be identified from the withheld information.
16. The House of Commons confirmed that the list contained the names of living individuals. The Commissioner has reviewed the withheld information and is satisfied that the individuals can be identified from the list. He is also willing to accept the House of Commons assertion that all the individuals were living at the time of the request.
17. The Commissioner has considered whether the information could be considered sensitive personal data. This is defined within section 2 of the DPA:

“In this Act ‘sensitive personal data’ means personal data consisting of information as to –

...

(b) his political opinions”

18. The House of Commons argued that it had not treated the list as sensitive personal data because an individual being sponsored by a political party would not necessarily espouse that party’s political opinions.
19. The Commissioner’s view is that the requested information amounts to a list of names. Whilst it may be possible to identify which party sponsored the individuals using an internet search engine, this is not specifically contained within the withheld information itself. The Commissioner has proceeded on the basis that the information is not sensitive personal data.

Is it fair to process the personal data?

20. In considering whether it is fair to process the personal data the Commissioner has considered the following:
 - The consequences of disclosure
 - The reasonable expectations of the individuals
 - Balancing rights of the individual against any legitimate interest in disclosure of the information

Consequences of disclosure

21. In its submissions to the Commissioner the House of Commons did not include any arguments regarding potential consequences that would result from the disclosure of this information. The Commissioner considers that there is no obvious or immediate consequence that would occur from this information being disclosed.
22. The Commissioner's view is that similar information is already disclosed, such as a list of staff members for the House of Lords who are granted parliamentary access.² Were there to be any notable consequences to the disclosure of such information then the Commissioner considers that the House of Commons would not proactively publish similar information on its website.

Reasonable expectations

23. The House of Commons argued that the individuals concerned would have a reasonable expectation that the information would be withheld. It argued the personal data comes into its possession when it is submitted on a form, and this form clearly states that the personal data will be handled in the "strictest confidence". However, the Commissioner notes this statement comes from a section regarding criminal convictions, which the complainant has not requested. The House of Commons acknowledges this but maintains that it should be seen as a general statement for all of the personal data provided.
24. The Commissioner disagrees. The form does state that there should be restricted access to the form's contents once completed, but nothing along the lines that the House of Commons alleges for the personal data the complainant asked for. The scope of the request is for a list of names, whereas the form asks for more sensitive personal data – such as criminal convictions – or information that the individuals concerned would be less likely to want in the public domain – such as their date of birth, passport number, and information about their partner/spouse. Information of this nature would likely pose security issues, and even the possibility of fraud or identity theft. The Commissioner's view is that the security markings on the form are more with that type of information in mind, rather than just the names of the individuals. So whilst the Commissioner acknowledges that there might be a reasonable

² <http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/register-of-interests-of-lords-members-staff1/>

expectation that an individual's name would be withheld he does not consider this argument carries much weight because of the specific nature of the information.

25. Part of the Commissioner's consideration is whether the personal data relates to an individual's private or public interests. The Commissioner considers that it is much fairer to disclose information which is strictly about an individual's public life rather than their private one. The House of Commons was asked to comment on this, and stated that it did not ask questions to this effect on the form so it was unable to say either way. The Commissioner disagrees. He has carried out research into the individuals concerned, and the vast majority of them can be found online. The results showed that those who could be found online demonstrate the withheld information to be relevant in a professional and political capacity. Therefore, for those individuals the Commissioner's view is that the requested personal data relates to the individuals' public life. For the individuals who could not be located online the Commissioner has not made a determination either way on whether the information relates to their public or private life.
26. The Commissioner has considered the circumstances in which the personal data was obtained, and his view is that these do not suggest that disclosure would be unfair. The information is freely given in order to receive access to restricted areas, which would likely have benefits for the individual's working life. The Commissioner does not consider that there is anything about the circumstances in which the information was obtained which would suggest disclosure would be unfair.
27. One consideration when considering the reasonable expectations of an individual is to look at the seniority of the position that individual holds. From the Commissioner's research the individuals concerned have a variety of job roles at different grades of seniority, which would make specific analysis of those roles problematic. However, the Commissioner does consider that the allocation of a pass is in itself recognition of an individual's seniority within their respective party. The House of Commons confirmed to the complainant that the Conservative Party had only allocated 40 passes, whereas the party itself has close to 150,000 members³ and received in excess of 10 million votes in the last general election. The Commissioner's view is that this strongly suggests that parliamentary passes are allocated to those individuals who have an

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<http://researchbriefings.files.parliament.uk/documents/SN05125/SN05125.pdf>

important function within the party, or those who hold roles which afford them a strong degree of authority. This would bring a reasonable expectation that there should be an argument for accountability in their actions through transparency of the personal data caught within the scope of the request.

28. The complainant referred the Commissioner to examples of similar information being made public. One example was the aforementioned list of members of staff that House of Lords Peers have registered to allow their staff access to the Houses of Parliament. A similar list also exists for MPs parliamentary secretaries and research assistants.⁴ The complainant has argued that this shows there is a reasonable expectation that information of this nature is allowed in the public domain.
29. The Commissioner considers that this argument has merit. The Commissioner acknowledges that there is a distinction between individuals employed by a Lord – who would be paid by parliamentary authorities – and individuals who have obtained a pass through work with a political party. However, there is a direct correlation between the two roles. The individuals with parliamentary passes may not be paid directly through public funds - which brings a strong argument for transparency - but in the context of this request they are involved in functions of the state. The Commissioner's view is that there is a reasonable expectation that this would result in a level of transparency over those individuals who have parliamentary passes and who are involved to some degree in parliamentary activities. This has led the Commissioner to the conclusion that it would not necessarily be unfair for the requested information to be disclosed as comparable information is already available in the public domain.

Balance rights of the individuals against legitimate interests in disclosure

30. Despite any reasonable expectations of an individual that their personal data would be withheld, when determining whether it is fair to disclose the information the Commissioner must consider whether there is a legitimate interest in disclosure.
31. The Commissioner's view is that there is a direct and reasonable public interest in the disclosure of the information. The personal data reveals the individuals whom the then leading political parties considered

⁴ <http://www.publications.parliament.uk/pa/cm/cmsecret/151230/staff-02.htm>

important enough to be allowed parliamentary passes. The House of Commons has made it clear that it does not run extensive checks over those who apply for passes, as it does not have a business reason to do so. This means that the identity of those who are granted passes is left solely with political parties. The Commissioner does not consider that this poses any great threat to the security of the House of Commons, but given the example the complainant cited of a donor being offered a pass to secure his support, the lack of transparency over the names on the list does leave the possibility that access to a parliamentary pass may be open to misuse. The Commissioner considers that this has wider implications for society at large and should be given considerable weight in the decision of whether it is fair to disclose the withheld information.

Commissioner's decision on fairness

32. The Commissioner has given appropriate consideration to the numerous factors that support the view that disclosure of the information would be fair: there is a clear legitimate interest in the information being made public, there are no apparent consequences of disclosure, for the majority of those on the list it relates to the individuals' public lives, and there are clear parallels of similar information being made freely available by the House of Commons.
33. The Commissioner notes the House of Commons arguments on reasonable expectation of the individual's personal data, as the data is obtained from a security form which has markings stating that access to this information would be restricted. The Commissioner acknowledges that there would likely be a reasonable expectation about an individual's name being disclosed having been obtained from a form with the described security markings. However, the Commissioner's view remains that this is more in relation to information that would pose a serious consequence if disclosed – such as an individual's criminal convictions or passport number. No such consequences are present for the disclosure of an individual's name.
34. Therefore, the Commissioner's decision is that it would be fair to process the personal data. This applies even for those who he could not identify online and confirm that the personal data related to the individuals' public role. The Commissioner considers the arguments are strong enough without this, especially given that there is no evidence – and it is not inherently reasonable to assume – that the passes would relate to an individual's private life. In order to determine whether the information can be disclosed the Commissioner has gone on to consider whether any of the conditions from schedule 2 of the DPA have been met.

Schedule 2 conditions

35. Personal data can only be disclosed providing that it meets with one of the conditions in Schedule 2 of the DPA. In this instance, the Commissioner has considered the sixth condition. This is because the other conditions all refer to disclosure for a specific purpose, which cannot apply as disclosures under the Act are to the public at large and therefore the public authority cannot take the identity, intentions or purpose of the applicant into account. The sixth condition states:

“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.”

36. When considering the sixth condition the Commissioner applies a three part test:

- there must be a legitimate interest in disclosure to the public;
- the disclosure must be necessary to meet that legitimate interest; and
- the disclosure must not cause unwarranted harm to the interests of the individual.

Legitimate interest in disclosure

37. In the Commissioner's view he has already demonstrated that there is a legitimate interest in disclosure to the public. The information contains names of individuals who have been given parliamentary passes, and there is a legitimate interest in transparency surrounding this. The complainant has demonstrated that this is open to misuse, and provided an example where this has happened.

38. The Commissioner also wishes to emphasise again that there are examples of similar information that the House of Commons proactively publishes on its own website. Whilst the Commissioner recognises the two sets of information are not identical in nature, there is a parallel that can be drawn between them. This demonstrates that the House of Commons has recognised the legitimate interest in disclosure of information of this nature, and the Commissioner would agree that transparency in this matter would be beneficial to the wider public.

39. Additionally, the complainant referenced the article in the Daily Telegraph which demonstrated an individual with a political pass had used it to try and achieve favour with potential donors; the complainant argued that this raised legitimate concerns about whether individuals

with passes were trying to conduct fundraising activities within the House of Parliament – which is against Commons rules. The complainant also highlighted the comments from Sir Alistair Graham – the former chair on the Committee of Public Standards – who said the names of party officials granted parliamentary passes “should be in the public arena”.⁵

Is disclosure necessary to meet that legitimate interest?

40. The legitimate interest is to increase transparency over party sponsorship of political passes, and the Commissioner considers that this can only be met through disclosure of the withheld information. Disclosing the names of the individuals concerned is necessary to increase oversight of who political parties sponsor for passes.

Would disclosure cause any unwarranted harm to the individuals?

41. The Commissioner maintains his view as he found in the section regarding consequences of disclosure when determining whether disclosure would be fair. There are no obvious or even tenuous consequences apparent which would suggest disclosure would cause harm, let alone unwarranted harm. Despite being asked to justify why the information was withheld the House of Commons has not offered any either. Therefore, the Commissioner’s decision is that disclosure would not cause any unwarranted harm to the individuals.

Commissioner’s decision

42. The Commissioner is satisfied that it would be fair for the House of Commons to process withheld personal data. Additionally, he considers that condition 6 of schedule 2 from the DPA has been met because there is a legitimate interest in the information being disclosed which outweighs the individuals’ right to privacy. The Commissioner’s decision is that the House of Commons was incorrect to withhold the requested information under section 40(2) and that the information should be disclosed.

⁵ <http://www.telegraph.co.uk/news/politics/liberaldemocrats/11463493/Ex-Lib-Dem-fundraising-chief-Ibrahim-Taguri-used-Commons-pass-to-woo-donor.html>

Right of appeal

43. 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,
LEICESTER,
LE1 8DJ

Tel: 0300 123 4504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: <http://www.justice.gov.uk/tribunals/general-regulatory-chamber>

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

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