

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 13 June 2007

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

Summary

The complainant asked for a detailed breakdown of MPs Additional Cost Allowance. Following clarification of her request she confirmed she wanted a breakdown of the Additional Cost Allowance claimed in 2005/6 for specifically named MP's. The House of Commons refused the request on the grounds that it was personal data and that disclosure would be unfair. The Commissioner decided that the requested information is personal data and that its fully itemised disclosure would be unfair. However he has decided that it would not contravene the data protection principles to disclose information showing the totals paid under specified headings within the Additional Costs Allowance. He has therefore ordered disclosure of the total amounts claimed by reference to each of these headings.

The Commissioner's Role

1. The Commissioner's role 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 on the 20 March 2006 a detailed breakdown of MP's additional cost allowance (ACA).
3. The House refused the complainant's request on 28 April 2006 stating that information relating to expenses and allowances is the personal data of the Members of Parliament (MPs).

4. The House advised the complainant that information about MPs' allowances and expenditure is available on the House of Commons' publication scheme. Further the House argued that it considered disclosure of information additional to that in its publication scheme would not be consistent with the data protection principles, and in particular the duty to process data fairly, and having regard to the legitimate interests of third parties.
5. On the 28 April 2006 the complainant requested that the House conduct an internal review of its decision to withhold the requested information. On the 12 June 2006 the House upheld its decision to withhold the information.
6. In its internal review the House informed the complainant that the requested information was personal data under section 1(1) of the Data Protection Act 1998 (the "1998 Act"). It considered the information to be exempt under section 40(2) of the Act because it was personal data about the MP's concerned. The House maintained that its release would breach the requirement of the first Data Protection Principle that personal data be processed fairly and lawfully. It considered that MPs had a legitimate expectation that disclosure of information on allowances would remain within the limits indicated to them at the time the House adopted its publication scheme. The House also argued that disclosure of the information was incompatible with the conditions set out in Schedule 2 of the 1998 Act unless the processing was necessary for the legitimate interests of the third party to whom the data was disclosed.

The Investigation

Scope and chronology of the case

7. On 21 August 2005 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider whether the House was correct to withhold the requested information on the basis that it is exempt from disclosure under section 40(2) of the Act.
8. The Commissioner considered the complaint along with a number of similar complaints that he had received. In order to ascertain whether the exemption under section 40(2) of the Act had been applied correctly, the Commissioner wrote to the House asking it to clarify its arguments for withholding the information.
9. In relation to the House's arguments for withholding information about the Additional Costs Allowance (ACA) claimed by the MP's, the Commissioner outlined his guidance in relation to personal information and asked the House to clarify how it had reached its decision to withhold the information. In particular the Commissioner asked the House to explain further how disclosure would breach any of the data protection principles.

10. In its response to the Commissioner of 19 September 2006, the House confirmed that it wished to rely on the arguments put forward in the refusal notice and in the other cases for similar information currently being investigated.
11. The arguments put forward in the refusal notice were as follows: The House argued that MPs can reasonably expect that information in addition to that included in its publication scheme would not be disclosed. In respect of MPs legitimate expectations regarding disclosure, the House argued that because MPs were informed of the intended content of the House's publication scheme in a letter of December 2002, it follows from that letter that MPs reasonable expectation is that nothing further would be disclosed.
12. The House argued further that it would be unlawful to release the requested information because it would breach the Members' legitimate expectation as to the maintenance of confidentiality in the information. The House stated that under schedule 2 of the Data Protection Act the relevant condition which could allow for processing of the information was 6(1) but that this also meant that the interests of the third part requesting the information had to be balanced with the interests of the MP's and that it considered that the balance has already been struck with the information already available in the publication scheme and therefore further processing was not necessary.
13. The House also stated that it had considered the recent guidance from the Information Commissioner which suggests that there are two notions which may assist when determining whether information is 'information that affects an individual's privacy and therefore relates to an individual'. The first is whether the information is biographical and the second is whether the information has the individual as its focus. The House concluded that the information about allowance claims, where it relates to identifiable MP's fits within these criteria.
14. The House argued that in the Court of Appeal case *Durant v FSA* personal data was defined as 'information that affects (a person's) privacy, whether in his personal or family life, business or professional capacity' and for these reasons the protections of section 40 extends to information about a person in his work or professional life.
15. The House also sought to apply section 12 of the Act in respect of the appropriate cost limits to the information requested. The House pointed out that the original request was very broad (in so far as it related to the expenses of all MPs). Therefore as little information regarding the ACA is available electronically to extract the data from around 600 files would exceed the cost limit of £600. The House pointed out that this would have been evident to the Commissioner in his recent visit to the House to inspect the records requested in similar cases.
16. On the 10 October 2006 the Commissioner wrote again to the House asking for further clarification of the nature of the information held by the House. In light of the House's arguments in respect of section 12, the Commissioner also asked the House to clarify the nature of the complainant's request with the complainant and highlighted the House's obligations under the Secretary of State's Code of

Practice under section 45 of the Act which outlines a public authorities duty to assist an applicant clarify his or her request.

17. The House responded on the 25 October 2006 providing further clarification of the information it holds. The House also confirmed it would be approaching the complainant to clarify her request.
18. The House contacted the complainant on the 7 November to clarify her request and explained that under the cost limits laid out in the Appropriate Fees and Cost Limit Regulations 2004, even if the Commissioner found section 40 did not apply they would be unable to supply her with the requested information within the £600 limit.
19. On the 30 November 2005 the complainant clarified her request was for the period 2005/6 and provided the House with a list of MP's for which she wanted the detailed breakdown of the ACA. This list included the following MPs: Tony Blair, David Cameron, Ming Campbell, Gordon Brown, George Osborne, John Prescott, George Galloway, Margaret Beckett, William Hague and Mark Oaten.
20. The Commissioner wrote again to the House on the 30 November to confirm that the House in light of the clarified request wished to precede on the basis of its section 40(2) arguments rather than section 12. The House responded on the 8 December 2006 confirming that this was the case and also confirming that it was content to rely on the section 40 arguments it has put forward in other cases. The Commissioner's investigation is therefore limited to the House's application of section 40(2) of the Act to the complainant's revised request.

Findings of fact

21. Since 2004, MPs' spend against allowances has been published each year on the Parliamentary website. 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).
22. The provision of an Additional Costs Allowance recognises that MPs who live outside Greater London need to maintain a residence within a convenient distance from Westminster if they are to carry out their public functions effectively. Alternatively, if they decide to establish their family residence within a convenient distance of Westminster, they need to maintain a secondary residence in the constituency for use on those occasions when they visit the constituency. According to the *House of Commons: Members Resource Accounts 2004-05 (for the year ended 31 March 2005)*, the total resource expenditure (excluding non-

cash transactions) under the Additional Costs Allowance was approximately £10.9 million for that year.

23. There are two forms submitted by MP's which are used by MP's to claim expenses:
- ACA1 form provides formal notification of the address of their main and secondary home
 - ACA2 form requires MP'S to list the expenses they've incurred, the period for the claim and to attach receipts and invoices in accordance with the rules governing the allowance. It also requires the address of the secondary home to be supplied.

Analysis

Exemption

Section 40 (Personal information)

24. The House relied upon section 40 of the Act to withhold the information:

40. - (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) ...*

25. The relevant part of the section is section 40(2) which the House argued was engaged by virtue of satisfying section 40(3)(a)(i).

26. The Commissioner is satisfied that the requested information 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...*

27. The first data protection principle 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”*

28. This case involves similar issues to those considered by the Information Tribunal in its ruling on the appeal by the House of Commons against his decision on travel expenses (Appeal Number: EA/2006/0015 and 0016) (“the MPs’ travel expenses case”). As elaborated below, the Commissioner has adopted the same analytical approach as was adopted by the Tribunal in that case, but there are important differences between travel expenses and money claimed under the Additional costs Allowance.

29. In the present case, the House argued that disclosure of information in addition to that which is already included in its 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 additional disclosure had been given, MPs could reasonably expect that nothing further would be disclosed and that disclosure of the requested information would therefore be unfair.

30. In respect of the ACA the House also argued that there is no useful distinction between professional expenses arising out of public office and personal expenses. Whilst acknowledging that the ACA expenses are incurred in an MP in his or her professional capacity the House pointed out that the expenses relate to the MPs private and family life in so far as they pertain to the MPs home and may benefit the MPs family.

31. The House also suggested that whilst the requested information is held by the House, it is not information the release of which would give information on the activities of the House; but rather the information would reveal details of the activities of individual MPs who are not themselves public authorities for the purposes of the Act. Further to this the House asserted that the requested information does not relate to the House’s administration of allowances such that MPs’ ACA claims can be treated as part of the business of the House in the same way that an employee’s expenses are a part of the business of the company he or she works for.

32. The Commissioner does not consider these arguments to be persuasive or conclusive. In his view the link with holding public office is clear. If individual MPs had not been elected to carry out their role as public representatives they would not be entitled to claim the related expenses. Expenses are claimed directly by

- the MP (and not his or her family) and are claimed in relation to his or her duties – due to the requirement to live within the vicinity of their Westminster and constituency work and to travel between the two locations and within the constituency. 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. Further whilst the Commissioner of course accepts that individual MPs are not public authorities for the purposes of Schedule 1 of the Act, the House is a public authority for these purposes and is responsible for ensuring that the ACA is utilized in accordance with the rules that govern the allowance. Further whilst the Commissioner accepts that MPs are not employees of the House, and again appreciates the unique position of MPs as holders of elected office, the fact remains that the House is required to manage and administer the ACA which involves significant public expenditure. Moreover, MPs are not entitled to claim reimbursement unless that expense was incurred in the course of their Parliamentary duties as outlined in “Green Book” which governs the allowance scheme.
33. The Commissioner accepts that disclosure of the requested information 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, and could not, give any assurances to MPs that additional information will not be provided should the Act require disclosure. In the Commissioner’s view a publication scheme is both a public commitment to make certain information available and a guide to how that information can be obtained. However, a publication scheme does not preclude further disclosure of information beyond that which is included in the scheme.
34. The Commissioner’s view is that, in determining whether processing would be fair, particular regard should be had to whether the personal data requested relates to individuals acting in an official as opposed to a private capacity. The Commissioner notes that the “Green Book”, published by the Department of Finance and Administration of the House of Commons in 2005, which outlines the rules governing Parliamentary salaries, allowances and pensions states that, “[t]he additional costs allowance (ACA) reimburses Members of Parliament for expenses wholly, exclusively and necessarily incurred when staying overnight away from their main UK residence...for the purpose of performing Parliamentary duties. **This excludes expenses that have been incurred for purely personal or political purposes.**” (*emphasis added*)
35. Further, both the claim forms (ACA1 and ACA2) submitted by MPs for reimbursement of costs associated with the ACA specify that the information provided by the MP will be processed for the purpose of administering and accounting for the Members’ Estimate making payments and keeping records in accordance with the rules agreed by the House of Commons and the Inland Revenue and that “[f]or the purposes of the Freedom of Information Act 2000 the House of Commons Administration is a Public Authority and therefore the information it holds will fall within the scope of the Act.” In other words, allowances are claimed by and paid to MPs in respect of their public duties. The purposes for which the information was processed were to enable allowances to

be paid and it is acknowledged that this extends to publishing details of allowances in accordance with the House's compliance obligations under FOI.

36. As noted above, in considering this case the Commissioner has taken account of the analysis made by the Information Tribunal's ruling in the MPs' travel expenses case. In that case a breakdown of the published figures of travel expenses claimed by each MP was ordered to be made by reference to the modes of transport employed.
37. At paragraph 77 of the Information Tribunal's decision it accepted the Commissioner's contention that it is correct to have regard for whether personal data relates to the private or public life of the data subject to the extent that the public function of an MP is the reason the data is being processed.
38. The Commissioner fully accepts that all MPs are entitled to a degree of privacy. They are entitled to expect that personal information about their private lives will be afforded appropriate protection from disclosure by the proper application of the Data Protection Act.
39. The Commissioner also recognises - and takes fully into account - that the role and responsibilities of most MPs in relation to their duties at Westminster and in their constituencies require them to maintain two homes and that their private lives and public functions as elected members are at times inextricably linked. He further recognises that as a result, the private life of any spouse, partner, child or other person living with an MP can also become entwined with the public functions of an MP. For instance, the Commissioner recognises that because of the nature of the ACA some of the requested information relates to the MPs private life; for instance the MP may claim for reimbursement of the cost of food, fuel, furnishings etc.
40. 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 of Schedule 2 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'.
41. The House recognised that information concerning the use of public money by elected office-holders is a matter of legitimate public interest. However, the House asserted 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 at the time was thought by the House to represent the appropriate balance between the interests of the public and the interests of MPs. This argument was also put

forward by the House in two other cases involving requests for information about MPs travel expenses which was heard on appeal to the Information Tribunal as referenced above. In its decision the Tribunal did not consider that this argument led inevitably to the conclusion that further disclosures would breach the data protection principles (see paragraph 76 of the Tribunal's decision).

42. In the context of condition 6 of Schedule 2 of the DPA, the House had argued in relation to another complaint that MPs should not be required to produce evidence of specific prejudice arising from disclosure in order to provide a counterbalance to the legitimate interest of the requestor (ICO reference FS50067986). The House maintained that it would be unfair to require MPs to present evidence of specific prejudice whilst the requestor needed only to establish that his legitimate interest in the spending of public funds is a general one.
43. In this case the House argued that it would be unfair to make an assumption about what a particular MP would regard as sensitive or not, as part of the balancing test. In addition the House asserted that since the Act does not require the requestor to explain why he wants the information or what he intends to use it for, it would be unfair to apply a higher threshold to establishing a legitimate interest on the part of the MP to the protection of his or her personal information.
44. The Act however is purpose-blind. In the Commissioner's view any assessment of whether disclosure of information would cause prejudice must be based entirely on consideration of the nature of the information and whether its disclosure would cause unwarranted prejudice to the rights and freedoms or legitimate interests of MPs.
45. In the MPs' travel expenses case, in respect of two requests for information about MPs travel costs, the Information Tribunal found that, *"...when assessing the fair processing requirements under the DPA ...the consideration given to the interests of data subjects, who are public officials where data are processed for a public function, is no longer first or paramount. Their interests are still important, but where data subjects carry out public functions, hold elective office or spend public funds they 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. This principle still applies even where a few aspects of their private lives are intertwined with their public lives but where the vast majority of processing of personal data relates to the data subject's public life."* (para. 78)
46. In that case the Tribunal spelt out (paragraph 91) that condition 6 of Schedule 2 of the DPA:

"involves a balance between competing interests broadly comparable, but not identical, to the balance that applies under the public interest test for qualified exemptions under FOIA. [Condition] 6 requires a consideration of the balance between: (i) the legitimate interests of those to whom the data would be disclosed which in this context a member of the public... and (ii) prejudice to the rights, freedoms and legitimate interests of the data subjects. However, because the processing must be "necessary" for the legitimate interests of members of the

public to apply we find that only where (i) outweighs (ii) should the personal data be disclosed.”

In that case, after setting out the respective considerations, The Tribunal went on (paragraph 94) to conclude that the legitimate interests of the public did outweigh the prejudice to the rights, freedoms and legitimate interest of MPs.

47. In similar vein, the Commissioner considers that there is a legitimate and general public interest in access to information in relation to the expenditure of the public funds falling within the Additional Cost Allowance. However, in this case there is greater potential than with travel expenses for intrusion into the private lives of MPs and their families or households through disclosure of information about expenditure incurred in relation to an MP's constituency or London home. In the Commissioner's view disclosure of the full itemised details of anything which occurs in the private home of an MP which does not relate directly to the discharge of the MP's public functions would not pass the "weighing test" set out above. It is not necessary for fully itemised amounts to be disclosed in order meet the legitimate interest of members of the public in knowing how public money has been spent. In other words, the full details of spending by an MP for use or consumption exclusively or predominantly in the course of his or her private life (and that of other members of his or her family or household) is personal information which should remain private, so long as any public funding for such items was properly obtained through the approved scheme for paying or reimbursing MPs' expenses.
48. That conclusion, however, relates to the fully itemised details. The same conclusion does not apply to a more aggregated account of the requested information. The Commissioner has considered the advice provided to MPs in the House of Commons Green Book on parliamentary salaries, allowances and pensions which is publicly available. At paragraph 3.11.1 of the Department of Finance and Administration - Green Book 2005 (paragraph 3.13.1 of the Green Book for 2006) categories of expense are set out as follows:
- mortgage costs;
 - hotel expenses;
 - other food;
 - service charges;
 - utilities;
 - telecommunications charges;
 - furnishings;
 - maintenance & service agreements;
 - cleaning;
 - insurance;
 - basic security measures;
 - other.

49. The Commissioner considers that these headings indicate how to strike the right balance. Information, setting out the totals under each of these headings as the amounts claimed for the additional costs allowance by each individual MP, can be disclosed without invading the privacy of the MP or his family or household. Applying the tests as articulated by the Tribunal, and summarised above, the Commissioner accordingly considers that the amount claimed by each of the named MPs within each of those heads of expenditure can be disclosed without breaching the Data Protection Principles. While not fully satisfying the request for information as submitted by the complainant such disclosure would in the Commissioner's view strike the right balance between the legitimate interests of the public in terms of transparency and accountability and the rights, freedoms and legitimate interests of the MPs who are the data subjects in this case.
50. Finally the House also sought to withhold information concerning the ACA claimed by the MPs on the grounds that there are security risks in disclosing information as to where an MP lives. However, the Commissioner is not satisfied that the disclosure of information in the terms required by this Notice would lead to any additional security risk to individual MPs, even if it is combined with information about their home addresses, which may already be in the public domain or otherwise accessible.

The Decision

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

Section 1(1) – in that it failed to communicate to the complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the House to refuse access.

Steps Required

52. The Commissioner requires that the House of Commons shall provide the complainant with the total amount claimed by the named MPs under the Additional Costs Allowance for the year outlined in the complainant's request by category of expense. This information shall be provided by reference to the categories of expense set out in paragraph 3.11.1 of the Department of Finance and Administration - Green Book 2005 (3.13.1 of the Department of Finance and Administration - Green Book 2006).
53. The House of Commons must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

54. 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

55. 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@dca.gsi.gov.uk

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 13th day of June 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
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