

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Date: 16<sup>th</sup> January 2008

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

### Summary

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The complainant asked for full details, including receipts and invoices, of spending by Tony Blair, John Prescott, Gordon Brown, Michael Howard, Charles Kennedy and Jonathan Sayeed during the year 2003 – 2004. The House of Commons refused the request on the grounds that it the personal data of the MPs concerned and that







- 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 their constituency.
24. **Central IT provision** includes the provision of computers and other IT equipment, free of charge, on loan to MPs for Parliamentary use only.
25. **Centrally purchased stationery** includes the provision of stationery items ordered from a central supplier for use in direct connection with a Member's Parliamentary duties. Postage associated with the use of centrally purchased stationery includes pre-paid postage ordered from the central supplier for use in direct connection with a Member's Parliamentary duties.
26. The House also advised the Commissioner that during the relevant period there was a change to the documentation required from MPs submitting claims under the ACA. In particular the claim form changed in 2003 and MPs were required to submit receipts or invoices for amounts over £250 for any single item. Further invoices were required for food amounts over £400 per month. Prior to this the House required less in the way of documentary evidence. Further examples of allowable expenditure can be found via the following link to the Department of Finance and Administration- Green Book:  
<http://www.parliament.uk/documents/upload/HofCpsap.pdf>

## Analysis

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### **Section 1(1) (Duty to communicate information on request)**

27. "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 40 (Personal information)**

28. The House relied upon section 40 of the Act to withhold the information Section 40 states the following:
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) ...*

between the Tribunal's travel expenses decisions and the current case being considered by the Commissioner in respect of the level of detail requested. In this case, the complainant requested details of spending including copies of documents such as receipts and invoices in relation to a number of named MPs.

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 related to individuals acting in an official as opposed to a private capacity.
35. As noted above, in considering this case the Commissioner has taken account of the analysis made by the Tribunal in its ruling in the MPs' travel expense cases. In the Tribunal's decision (appeal number EA/2006/0015 and 0016) a breakdown of the published figures for travel expenses claimed by each MP was ordered to be made by reference to the modes of transport employed. At paragraph 77 of that decision the Tribunal 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. This contention was also accepted by the Tribunal at paragraph 49 of its most recent decision pertaining to the disclosure of travel expense information (appeal number EA/0006/0074/0075/0076). In this case the Tribunal reiterated its findings in paragraph 79 of appeal number EA/2006/0015 and 0016 pertaining to the general fairness of processing personal data under the first data protection principle, namely that:
  - (1) the interests of MPs as data subjects are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives; and
  - (2) it is possible to draw a distinction between personal data related to an MP's public and private life.
36. The Commissioner has considered the legitimate interests of the individual data subjects, namely Mr Prescott, Mr BrownJ0.00bec 0or nyHowrd or nyKenne-4(Idyand )]TJE0.0

appeal number EA/2006/0015 and 0016 and reiterated at paragraph 63 of appeal number EA/0006/0074/0075/0076 (see Annex A for a complete list of these interests).

38. Further in considering the legitimate interests of members of the public concerned in access to the requested information the Commissioner has taken account of the legitimate interests set out by the Tribunal in the MP's travel expense cases at paragraphs 91 of appeal number EA/2006/0015 and 0016 and reiterated at paragraph 52 of appeal number EA/0006/0074/0075/0076 (see Annex B for a complete list of these interests).
39. 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 to individual MPs. In the 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.
40. The Commissioner recognises that disclosure of the 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 its 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.
41. In considering whether the personal data requested relates to individuals acting in an official as opposed to a private capacity the Commissioner considered the "Green Book", published by the Department of Finance and Administration of the House of Commons, which outlines the rules governing Parliamentary salaries, allowances and pensions. The Green Book clearly sets out that any expenditure claimed by an MP from the allowances must be "wholly, exclusively and necessarily incurred for the purpose of performing [an MP's] Parliamentary duties."
42. 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, for instance, 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. The Commissioner's view is that that the requested information relates to individuals acting in an official as opposed to a private capacity. Purely private expenses, for example those for recreational purposes, are not subject to reimbursement.

43. The Commissioner considers that the information sought in this case is personal data about the money claimed by MPs as reimbursement from the public purse



54. In the Commissioner's view this approach is in line with the Tribunal's conclusions at paragraph 81(1) of its decision in appeal number EA/0006/0074/0075/0076 in which it states:

We are inclined to agree that disclosure of travel details which could reveal the times, origins and destinations of journeys, and the modes of transport likely to be used at particular times and circumstances could be of potential use to malevolent individuals, especially where such information was not otherwise available to them...we find that information that relates to the total number or average costs of journeys can be distinguished from information giving details about particular journeys. While the latter could give rise to a credible increase in security risks, the former is much less likely to do so and we find that the information in the generalised form ordered to be disclosed by the Commissioner is unlikely to worsen security risks or concerns;

#### IEP

55. To the extent that some limited information held in this case includes the details of other third parties, namely the MP's staff, it would be unfair to disclose the names of individuals alongside the sums paid. However, the Commissioner is of the view that the legitimate interests of the requestors and members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of the MPs concerned in respect of the remaining information and as such that the individual amounts claimed under this allowance for the year requested with a description of what the expense pertains to (e.g. £20 for the cost of office supplies, or £100 for postage) should be disclosed.

#### ACA

56. In respect of the ACA the House 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 by an MP in his or her professional capacity the House pointed out that the expenses relate to the MP's private and family life in so far as they pertain to the MP's home and may benefit the MP's family.
57. The Commissioner is not persuaded by the House's argument. 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 The Final Expense Limit is £25,705 that is a 16.0% increase on the 2019/2020 Final Expense Limit of £22,150.

any spouse, partner, child or other person living with an MP can also become entwined with the public functions of an MP.

59. The Commissioner is of the view that the legitimate interests of the requestors and members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of the MPs concerned and that the total amount claimed by the MP concerned for the year outlined in the complainant's request by category of expense should be disclosed. The information should 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). The Commissioner's decision in respect of this case accords with four previous decisions issued by the Commissioner in relation to the ACA (FS50071451, FS50070469, FS50079619 and FS50124671).

#### Staffing

60. In this case the House holds information in respect of the exact sums paid to named staff members during the year covered by the scope of the request. In determining whether it would be fair to disclose this information the Commissioner has considered the seniority of the staff concerned, the extent to which their role is public facing and the extent to which such staff can be said to have a legitimate expectation that such information will be kept confidential. Most MPs' staff are not particularly senior and although some staff do perform public facing roles the Commissioner has concluded that it would be unfair to disclose the specific sums paid to named individuals during the year covered by the request. The Commissioner is aware that some information regarding the names, pay bands and corresponding job titles of MPs' staff are already a matter of public record. In the Commissioner's view staff would have a legitimate expectation that the exact sums paid to them in a particular year would not be disclosed to the public. In this case the legitimate public interest in access to the exact sums paid to named staff members during a particular year does not outweigh any prejudice to the rights and freedoms of the staff concerned.
61. However, in the Commissioner's view the disclosure of the total staffing cost broken down by month for the year requested and the number of staff this pertains to each month anonymised to exclude any reference to particular members of staff would not be unfair. This information pertains to the amount of money claimed by the MP from the public purse in respect of his or her staffing allowance and in the Commissioner's view there is a legitimate public interest in access to this high level figure which outweighs any prejudice to the rights and freedoms of the MP or staff concerned.

#### Central IT provision

62. Central IT provision includes the provision of computers and other IT equipment, free of charge, to MPs for Parliamentary use only. The House currently publishes the annual cost of providing this equipment to each MP. The Commissioner

understands that in publishing this annual cost the House carries out a valuation of the equipment during each of the four years it is on loan to the MP concerned. The Commissioner is of the view that the legitimate interests of the requestors and members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of the MPs concerned in respect of this information. As such the Commissioner considers that a breakdown of the total cost of the provision of this equipment for the year requested including a description of what this cost pertains to should be provided.

#### Centrally purchased stationery

63. Centrally purchased stationery includes the provision of stationery items ordered from a central supplier for use in direct connection with a Member's Parliamentary duties. Postage associated with the use of centrally purchased stationery includes pre-paid postage ordered from the central supplier for use in direct connection with a Member's parliamentary duties. In respect of each MP the House currently publishes the annual cost for both centrally purchased stationery and separately reports the cost of postage. The Commissioner is of the view that the legitimate interests of the requestors and members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of the MPs concerned in respect of this information. As such the Commissioner considers that a breakdown of the cost of stationery during the year requested including a description of what this cost pertains to and a separate breakdown of the cost of postage should be provided.

### The Decision

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64. 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

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65. The Commissioner requires that the House of Commons shall provide the complainant with the following information in respect of each of the named MPs:

**Travel-** The disclosure of the individual amounts claimed for the year requested broken down by mode of travel under the following three main headings: MPs travel (further broken down into European and travel on Parliamentary business

within the UK), Spouse and Family travel and Staff travel. This should include summary details of the number and cost of individual journeys undertaken.

**IEP-** The disclosure of the individual amounts claimed with a description of what the expense pertains to (e.g. £20 for the cost of office supplies, or £100 for postage).

**Staffing-** The aggregate sum paid out for each month during the year requested including the number of staff members this pertains to but excluding any reference to named staff members.

**Central IT provision-** A breakdown of the total cost of the provision of this equipment for the year requested including a description of what this cost pertains to (e.g. 4 PCs or 2 printers).

**Centrally purchased stationery-** A breakdown of both the cost of stationary during the year requested including a description of what this cost pertains to (e.g. £20. for envelops) and a separate breakdown of the corresponding cost of postage.

**ACA-** 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. The 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).

66. The public authority must take the steps required by this notice within 35 calendar days from the date of this notice.

### **Failure to comply**

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67. 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**

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68. 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

References: FS50083202 and FS50134623



Information Commissioner's Office

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)

69. If you wish to appeal against a decision notice, you can obtain information on how

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