

Detail

1. The original request

On 21 July 2008 you made a request under the Freedom of Information Act for electronic copies of any documents produced by PICT discussing or evaluating the possible deployment of electronic petitioning systems in Parliament. The request was submitted via the website whatdotheyknow.com, which is a vehicle for the automatic publication on the internet of responses to FOI requests.

2. The response

The Data Protection and Freedom of Information Officer, Bob Castle, wrote to you on 14 August stating that:

- i. he had a response and information to send in relation to the request;
- ii. it was not appropriate for this to be automatically republished on the internet as the information was subject to Parliamentary copyright; and
- iii. he would send the response and information on receipt of an alternative email address.

You replied expressing a preference under section 11(1) of the Freedom of Information Act 2000 [FOIA] to receive a reply via the email addressed you were using, which under section 11(2) the authority was obliged to comply with if reasonably practicable.

3. Subsequent correspondence

There were then further exchanges on 14th and 19th August 2008. On 28th August you asked for an internal review of the case and made the following points which you asked the review to cover:

- That I still have not received the information that I requested.
- That a reason under the FOI act for my request being rejected has not been given.
- Why the House will not send a response to this email address, which will automatically publish the response. Whereas the House seemingly would happily send a response to another address which would result in the response being manually republished.
- Under what law, and why, the House is considering copyright law in relation to the future actions of others when replying to a request. As opposed to simply sending the reply, and then dealing



with any consequence breach of copyright later.

- Why the House would not accept a reassurance that when emailing the automatically republishing address, they were not considered to be waiving copyright in this case.
- Separate from FOI law, a review of why the House will not waive copyright on the information I requested and allow republication of it, when that would be in the public interest, and the information is available to anybody in the world who wants it simply by requesting it privately.
- Any other points I raised in the correspondence with Bob Castle to be considered and addressed.

4. The review

All of the above exchanges and points were carefully considered in the review. I can also confirm that the reviewer was not a party to the original decision on whether to release information in response to your request. The review was a fresh inquiry into the request rather than taking as a starting point the decision already reached. The reviewer also conducted the review in the light of a general presumption of openness.

The conclusions of the review were:

1. The House had not refused to provide the information which is the subject of the request, but it had instead refused to provide the information to the specific address used by you.
2. The reviewer noted the House's willingness to provide the information to another e-mail address or in other formats.
3. The information which as been requested is subject to Parliamentary copyright which restricts the production of Parliamentary material. Some of the information is subject to copyright owned by third parties.
4. It is 'practicable' for the House to provide the information requested to the e-mail address being used in the sense that it is not physically difficult to send the information to that e-mail address.
5. However it is not considered to be 'reasonably practicable' to do so because it is considered that the House doing so may involve it in surrendering its copyright in the requested information. This is because sending the information to the chosen e-mail addresses results in automatic publication to the world at large. The effect of this means that it would be the supply of the information by the House to that e-mail address which would immediately



cause the publication. This situation was distinguished from a situation where information is sent to another e-mail address which does not operate in the same way and some activity on the part of a third party is required before the information is published.

6. Nothing in the Freedom of Information Act requires the House to surrender its intellectual property rights, and it was considered that it would be prejudicial to the commercial interests of the House and third parties to do so. Therefore in the alternative if it is concluded that the House has refused to provide the information requested, it was considered appropriate to withhold the information under section 43(2) to protect commercial interests.
7. As regards the balancing of the public interest required for s.43(2), although it is considered to be in the public interest to disclose this information, it was not considered to be in the public interest that such disclosure be at the expense of the House's and third party intellectual property rights when viable alternative methods of disclosure have been offered and remain available.
8. The requested information should be provided if doing so does not mean that information subject to copyright will be published automatically without the intervention of a third party.
9. The requested information which is subject to Parliamentary copyright should be provided to the whatdotheyknow.com e-mail address if the whatdotheyknow.com website has entered into a licence agreement which authorises republication.

