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FOI/EIR	EIR	Section/Regulation	Regs 2(2)(b)(i), 2(2)(c), 3(3) and 3(4)	Issue	Coverage of the Houses of Parliament by the EIR

Line to take:

The Houses of Parliament are covered by EIR, but to a limited extent. Expenses-related information, which is excluded from the coverage of FoIA by virtue of an amendment to Schedule 1 of FoIA, may be covered by the EIR (if the information is environmental).

Further Information:

### FoIA

Schedule 1 of FoIA has been amended in respect of the Houses of Parliament by The Freedom of Information (Parliament and National Assembly for Wales) Order 2008, so that whilst the Houses are otherwise subject to FoIA, certain information regarding expenses is excluded.

A "public authority" is defined in section 3 of FoIA as, inter alia, "*any body which...is listed in Schedule 1*".

Schedule 1 FoIA now reads as follows:

2. *The House of Commons, in respect of information other than—*

(a) *information relating to any residential address of a member of either House of Parliament,*

(b) *information relating to travel arrangements of a member of either House of Parliament, where the arrangements relate to travel that has not yet been undertaken or is regular in nature,*

(c) *information relating to the identity of any person who delivers or has delivered goods, or provides or has provided services, to a member of either House of Parliament at any residence of the member,*

(d) *information relating to expenditure by a member of either House of Parliament on security arrangements.*

*Paragraph (b) does not except information relating to the total amount of expenditure incurred on regular travel during any month.*

3. *The House of Lords, in respect of information other than—*

(a) *information relating to any residential address of a member of either House of Parliament,*

(b) *information relating to travel arrangements of a member of either House of Parliament, where the arrangements relate to travel that has not yet been undertaken or is regular in nature,*

(c) *information relating to the identity of any person who delivers or has delivered goods, or provides or has provided services, to a member of either House of Parliament at any residence of the member,*

(d) *information relating to expenditure by a member of either House of Parliament on security arrangements.*

*Paragraph (b) does not except information relating to the total amount of expenditure incurred on regular travel during any month.*

### EIR

Regulation 2(2) of the EIR defines "public authority" as, inter alia:

*2(2)(b)(i) any other public authority as defined in section 3(1) of the Act, disregarding for this purpose the exceptions in paragraph 6 of Schedule 1 to the Act, but excluding –*

*(i) any body or office-holder listed in Schedule 1 to the Act only in relation to information of a specified description...*

A further definition is contained in regulation 2(2)(c):

*any other body or person, that carries out functions of public administration.*

### Coverage of information held by the Houses of Parliament under FoIA

The effect of the amendments to Schedule 1 of FoIA is that the Houses of Parliament are no longer covered by FoIA in respect of certain expenses-related information.

### Coverage of information held by the Houses of Parliament under the EIR

The effect of the latter FoIA amendments on the EIR is that, since the Houses of Parliament are now "listed in Schedule 1 to the Act only in relation to information of a specified description" (regulation 2(2)(b)(i) of the EIR), namely in relation to

information other than certain expenses-related matters, they no longer fall within the regulation 2(2)(b) definition of "public authority" for the purpose of the EIR.

However, despite this, a body may still be a public authority under the definition in regulation 2(2)(c) if it "carries out functions of public administration".

The Tribunal and the Courts have discussed the meaning of this definition, as follows:

- In *Parochial Church Council of the Parish of Aston Cantlow and Wilmcote with Billesley, Warwickshire v. Wallbank & Anor* [2003] UKHL 37 (26 June 2003) and [2004] 1 AC 546

Lord Nicholl said: "Factors to be taken into account include the extent to which in carrying out the relevant function the body is publicly funded, or is exercising statutory powers, or is taking the place of central government or local authorities, or is providing a public service". The parties in the case broadly agreed that the degree of government control and the performance of any regulatory function were also relevant.

- In *Network Rail Ltd v the Information Commissioner & others* [EA/2006/0061 and 0062, 17 July 2007] the Tribunal concluded that to meet this definition a body must not only carry out public functions, but public functions of an administrative nature.
- The Upper Tribunal has also added its guidance for assessing whether a body is a public authority within the regulation 2(2)(c) definition in *Smartsources v Information Commissioner and a Group of 19 additional parties* [2010 UKUT 415 AAC, 23 November 2010]: "We agree with, and approve of, the multi-factor approach taken by the Information Tribunal in both the *Network Rail* and the *Port of London Authority* cases, namely that the decision on whether a body is a "public authority" within regulation 2(2)(c) of the EIR 2004 depends on a range of factors". The Upper Tribunal also referred approvingly to the points made, above, in the *Aston Cantlow* case.

Taking into account all of the above, and looking at the roles of each of the Houses of Parliament, it is plain that both Houses meet the section 2(2)(c) definition, in that they clearly carry out "functions of public administration".

### Do the EIR apply to all environmental information held by the Houses of Parliament?

Turning to the question of whether the Houses of Parliament are covered by the EIR in respect of all its purposes, including the expenses-related matters that are excluded by the FoIA definition, the Upper Tribunal in *Smartsources* also provided some guidance on this point. It considered arguments that an organisation could be regarded as a public authority under the EIR in relation to only some of its functions, but rejected such a view, preferring the argument that a body was either a public authority in respect of all of its functions or in respect of none.

This supports a conclusion that, under the EIR, the Houses of Parliament are public authorities within the meaning of regulation 2(2)(c) and that they are covered by the EIR in respect of all environmental information that they hold. Such information is not limited only to information relating to the Houses' public administrative functions.

Despite that, the application of the EIR to the Houses of Parliament is specifically restricted by regulations 3(3) and 3(4):

- 3(3) These Regulations shall not apply to any public authority to the extent that it is acting in a judicial or legislative capacity.
- and*
- 3(4) These Regulations shall not apply to either House of Parliament to the extent required for the purpose of avoiding an infringement of the privileges of either House.

For example, regulation 3(4) could encompass certain environmental information held by a Select Committee and subject to Parliamentary Privilege.

### Are expenses-related matters covered by the EIR?

The net effect of the above is that where information is environmental, the expenses-related matters that are specifically excluded from the coverage of FoIA remain potentially available under the EIR, unless Regulation 3 applies. It is unlikely that Regulation 3 will be relevant to expenses related information. This is not the first instance where an apparent discrepancy has arisen between information subject to FoIA and to the EIR.

Source	Details	
LD / SW		
Related Lines to Take		
Related Documents		
Contact		LD / VA
Date	23/09/2011	Policy Reference <b>LTT230</b>

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- Information Commissioner's Office intranet