

Kirsty Haines

From: WILSON, Judy [WILSONJUDY@parliament.uk]
Sent: 18 July 2005 14:49
To: foi-enquiries
Subject: FS50079619

RECEIVED

18 JUL 2005

Dear Ms Duncan,

Please find a reply from the House of Commons to your letter of 1 July about Mr Thomas' appeal. Also attached, as requested, is a copy of Mr Speaker's letter to Members dated 16 December 2002.

Could you acknowledge receipt of this email please? Let me know if I can be of further assistance.

Judy

Judy Wilson
FOI Officer
House of Commons
London SW1A 0AA
020 7219 1178

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**MR THOMAS' APPLICATION
(ADDITIONAL COSTS ALLOWANCE CLAIMED BY MS M BECKETT)**

1. This note is the House of Commons answer to the observations and questions set out in the letter of Ms Nicole Duncan to Ms Judy Wilson of 1 July 2005 ("the letter").
2. The applicant sought information on claims for Additional Costs Allowances made by Ms Beckett in 2001/02, 2002/03 and 2003/04. The letter asks for further clarification of two points made in the House's refusal letter of 31 January, namely first, the assertion that the information requested is personal data relating to the Member of Parliament concerned as well as to any family or staff members to whom it may also relate and secondly, the assertion that Members can reasonably expect that information which has not already been disclosed will not be disclosed now.
3. With regard to the House's assertion that the information requested constitutes personal data, the Additional Costs Allowances arises because Members who live outside Greater London must, if they are to carry out their public functions effectively, maintain a residence within a convenient distance from Westminster (or, if they decide to establish their family residence within a convenient distance of Westminster, to maintain a secondary residence in their constituency for their and their family's use on those occasions when they visit the constituency). In either case, the Additional Costs Allowance is paid in respect of a Member's personal residence. It is personal information which is personal data, the disclosure of which in the detail sought would compromise the privacy of the Member and her family. Furthermore, there are security risks in disclosing where a Member lives.
4. As to the Members' legitimate expectations regarding disclosure, there is attached a copy of the letter sent to Members on 16 December 2002. In the House's view, it makes clear that Members were fully informed of the intended content of the publication scheme. In its view, it also follows from that letter that Members' reasonable expectations in respect of their data are that the data in the publication scheme will be freely available and all other data not at all available. In the House's view it would be unlawful to release this information because it would breach the Member's legitimate expectation as to the maintenance of confidentiality in the information. The data of which the complainant seeks disclosure were obtained for the purpose of determining the Additional Costs Allowance to which Ms Beckett was entitled in allowance years 2001/02, 2002/03 and 2003/04. They were not obtained for the purposes of publication generally or to a particular person. Members have a legitimate expectation, which the House is bound to respect, that disclosure of information on allowances would remain within the limits indicated to them at the time of the establishment of the House's publication scheme. It follows that disclosure of the information requested would breach the first data protection principle.
5. The letter states that it is not clear how the House has applied the Data Protection Act Schedule 1 Part I s. 1(a) to its decision to withhold the information. The House has considered whether any one of the conditions in Schedule 2 to that Act is met such that the

processing which would arise on disclosure of the information would be fair and lawful. The condition in Schedule 2 most relevant is that in paragraph 6(1) namely whether the processing is necessary for the purposes of legitimate interests pursued by the third party to whom the data might be disclosed. Clearly there is a public interest in transparency regarding the spending of public money and in the promotion of accountability for such expenditure. That public interest has been met by the disclosure of substantial information on allowances paid to Members of Parliament in the House's publication scheme. That interest in disclosure has to be balanced against the legitimate interests of the data subject. Information on Additional Costs Allowance claims by Members relates to the personal affairs of Members. For this reason, in the House's view, the balance as between these two competing interests is against further disclosure. Paragraph 3 above explains why Additional Costs Allowance relates to a Member's home.

6. The letter goes on to list factors which may be helpful when considering the appropriate application of section 40(2) of the Freedom of Information Act. The first such factor is how personal is the information really and is it about an individual in their professional or personal capacity. The letter then states that the Information Commissioner considers that the threshold for releasing "genuinely professional information" will be lower than that for releasing "genuinely personal information". In so far as it is possible to draw this distinction in relation to the information sought, the House's view is that the information is genuinely personal information since it relates to the Member's personal residence.
7. The letter then draws the House's attention to a number of factors¹, all of which concern the disclosure of information which is personal information of employees of public authorities. The House takes it to be the Information Commissioner's view that there is data, perhaps a considerable amount of data, which is both personal data of employees of public authorities and which, at the same time, constitutes information on the activities of the authority of a kind which it was the purpose of the Freedom of Information Act to put into the public domain.
8. Members of Parliament are not, of course, employees of the House of Commons. They are holders of an elected public office. They are not themselves public authorities subject to the Freedom of Information Act nor is their relation to the public authority which is subject to the Act, the House of Commons, analogous to that of an employee. Whereas the information which has been requested is undoubtedly held by the House, it is not information the release of which in the detail requested gives information on the activities of that public authority; rather it gives information on the activities of individual Members of Parliament who are not themselves a public authority and, as such, not subject to the requirements of the Freedom of Information Act. The House would be grateful if the Commissioner could consider how far his guidelines are applicable in these circumstances.
9. The sixth factor listed in the letter states that in general the more sensitive the information, the higher the threshold for its release. That element seems to be founded on the premiss that the Freedom of Information Act qualifies in some way the application of the data protection principles. In the House's view, the decision as to whether disclosure of

¹ drawn from guidelines which the Information Commissioner has not yet published.

personal data would breach the data protection principles falls to be made exclusively under the Data Protection Act 1998. Information is (absolutely) exempt under section 40 (2) if it is third party personal data the disclosure of which to a member of the public *otherwise than under this Act* would contravene any of the data protection principles. The italicised words can only mean that a public authority's duties under the Freedom of Information Act are to be left entirely out of account in deciding whether a disclosure would contravene those principles.² The Data Protection Act requires, amongst other matters, that personal data be processed fairly and lawfully and in conformity with the conditions of Schedule 2, or as the case may be Schedule 3, to that Act. It is not clear to the House how the distinction between less or more sensitive personal data, which may or may not be lawfully disclosed, is related to the application of the requirements of the Data Protection Act. It would assist the House to consider these factors if the Information Commissioner could explain that connection.

10. The seventh factor listed in the letter refers to the possibility of redacting the information before release. The House does not consider that redaction is useful here because all the information requested is within the scope of the section 40(2) exemption.
11. The House remains satisfied that it has fully considered how section 40(2) applies in this case and trusts that the grounds for its decision to refuse disclosure are now clear. It will, of course, happily answer any further questions the Commissioner has and will, so far as necessary, give fuller reasons on those aspects about which it has sought clarification of his view, once that clarification is provided.

THE HOUSE OF COMMONS

² cf Jay and Hamilton, Data Protection Law and Practice, second edition at paragraph 4-59; Coppel on Information Rights argues at paragraph 24-010 that section 40 may not be relied on where the exemptions in Part IV of the Data Protection Act apply but none are relevant in this case



Speaker's House Westminster London SW1A 0AA

16 December 2002

Dear Colleague,

I am writing to all Members to tell you what the Freedom of Information Act 2000 will mean in connection with your parliamentary allowances.

The Act, which comes into effect on 1 January 2005, gives people a right of access to information held by public bodies. Our legal advice is that the House should publish the total sum for each allowance which each Member has used for each financial year.

This approach meets our Freedom of Information obligation and provides transparency and accountability, while respecting the reasonable personal privacy of Members and their staff.

Publication is planned for late 2004. It will include the annual total for each of:

- office expenses,
- staffing,
- additional costs allowance or London supplement and
- travel paid for from the central budget.

The first release will cover the three previous years (2001-02, 2002-03 and 2003-04). The Department of Finance and Administration will provide you with your figures in advance and you will have the opportunity to correct any errors or omissions.

I will be writing to you again with more details in the early summer.

Yours


Speaker

M
X

FS50079619 - Mr Thomas (re Margaret Beckett)

1. Thank you for your letter of 12th September. We have already corresponded about the information you have asked for in the final paragraph of your letter and about your proposed visit to the House to discuss Additional Costs Allowances in general. This letter is in response to the other points made in your letter.
2. Thank you for clarifying that you agree that the information requested by Mr Thomas constitutes personal data within the meaning of the Data Protection Act and hence that section 40 of the FOIA requires the application of the data protection principles. We seem also to agree that the test which the House has to apply in this case is that set out in paragraph 6 of Schedule 2 to the DPA ("the balancing test"), namely whether disclosure is necessary balancing the legitimate interests of the person requesting the information against the prejudice to the rights, freedoms or legitimate interests of the MPs concerned. The factors which the Information Commissioner intends to set out in the guidance to which you referred in your earlier letter are clearly factors which would be relevant to a data controller's consideration of that balance, to a greater or lesser extent in any particular case.
3. You say that the House appears to be arguing that the expenses claimed relating to the costs of maintaining a house near Westminster are not professional expenses simply because they relate to a Member's living costs and hence should not be disclosed. This is not correct; our point is rather that there is no clear or useful distinction between professional expenses on the one hand and personal or private expenses on the other. The expenses at issue here are clearly incurred by the MP in a professional capacity but relate in part to her private and family life in that they relate to her home and may benefit her family. The House does not believe that it is appropriate to substitute for the complex balancing test, some "rule of thumb" that professional expenses should be disclosed and private expenses should not. Such a division is particularly inappropriate in relation to Additional Cost Allowances which, as the House has tried to explain, contain both professional and private elements. You are right in thinking that disclosure of this information would not reveal anything about the MP's family.
4. Turning to the status of Members of Parliament and the relevance of the Commissioner's guidance on disclosure of information about employees, you stress, which is not in contention, that the House holds the material requested and that it is responsible for the administration and management of allowances claimed by Members from the public purse. However, the information requested does not really relate to the House's administration of allowances such that the activities of the MPs in making claims can be treated as part of the business of the House in the same way that an employee's activities are part of the business of the company he works for.
5. With regard to the point about less or more 'sensitive' personal data, we do not see that the fact that the Act expressly recognises and defines a distinction between personal data and sensitive personal data supports a contention that outside that class of sensitive personal data there is some further undefined subset of sensitive data entitled to greater protection than "ordinary" data. The Data

Protection Act enacted a broad definition of personal data and applied the obligations to data controllers in relation to all of that data. This is subject to specified exemptions which are carefully drawn, for example in the Data Protection (Notification and Notification Fees) Regulations 2000 made under section 17(3) of the Act. The rest of the Act does not therefore seem to rely on there being a sliding scale of sensitivity beyond the category of sensitive personal data as defined in section 3.

6. Further we do not think it would be fair to make assumptions about what a particular MP would regard as sensitive or not, as part of the balancing test. The FOIA entitles a person to request information without explaining why he wants the information or the use to which he intends to put it. The House assumes therefore that, when applying the balancing test, it cannot reject the request simply on the basis that the third party has not explained what legitimate interests he is pursuing or if the House concludes that no legitimate interest is discernible from the request. It would therefore be unfair, in the House's view, to treat the data subject less favourably by applying some high threshold to establishing a legitimate interest on the part of the data subject to protection of his or her personal data.
7. You make the point that the concept of fairness is one which can evolve over time so that disclosure which is "intrinsically unfair" at one time may become "intrinsically fair" in future. Assuming this to be the case (which the House does not concede) we would make two points. First, one must be very careful in applying such evolution retrospectively to information which a person gave at a time that the concept of fairness militated against disclosure. It may be appropriate to say that information given hence forward is covered by the evolved concept of fairness but it will rarely be appropriate to apply a new test to information given in the past. This is particularly the case in relation to information which the data subject effectively had no choice but to provide to the data controller knowing that it is going to be retained for some time.
8. Secondly we do not see what changes in the general regulatory environment have occurred since December 2002 which would indicate that the disclosure of the data is now fair whereas it would have been unfair at that time. We would be grateful if you would identify what has changed in the past two and a half years which would cause the concept of fairness to evolve in a way which should override the legitimate expectations created by the letter of 16th December.
9. Finally, you ask whether the House is arguing that disclosure of the information would not only be unfair but also unlawful within the meaning of the first data protection principle. We have in mind the principle that a decision of a public authority which breaches a person's legitimate expectations is unlawful and is liable to be quashed by the Divisional Court. It follows that an MP who is the data subject might well contend that disclosure of their personal data was unlawful in the sense that it was contrary to the legitimate expectations created by the House's decisions in relation to the publication scheme.

From: Nicole Duncan
Sent: 18 October 2005 15:52
To: Nicole Duncan
Subject: FW: H of C/ICO Meeting 20.10.05

-----Original Message-----

From: WILSON, Judy [mailto:WILSONJUDY@parliament.uk]
Sent: 18 October 2005 11:44
To: Nicole Duncan
Subject: RE: H of C/ICO Meeting 20.10.05

Dear Ms Duncan,

Thank you for your email. I have discussed with colleagues in the House your request to review information relating to Members' expense claims. Roger Sands (Clerk of the House of Commons and Chief Executive) is today writing to Richard Thomas to request an urgent meeting with him to discuss your request.

Officials do not at present have the authorisation to show you Members' files so we cannot comply with your request at the meeting scheduled for this Thursday morning (20.10.05). However, subject to your agreement, Andrew Walker (Director of Finance and Administration for the House of Commons) would like to go ahead with the meeting so that he can arrange for you to be given an explanation of the allowances system and to see example blank claim forms (and possibly anonymised completed claim forms).

Could you please let me know whether you would like to proceed on that basis, and if so, perhaps you could confirm the names of those who would be attending from your office.

Judy Wilson
 FOI Officer
 House of Commons
 London SW1A 0AA
 020 721 8364

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-----Original Message-----

From: Nicole Duncan [mailto:Nicole.Duncan@ico.gsi.gov.uk]
Sent: 17 October 2005 15:00
To: WILSON, Judy
Cc: Pam Clements
Subject: Re: H of C/ICO Meeting 20.10.05

Ms Wilson

In advance of Thursday's meeting I thought it best to clarify in which cases we would like to review information. Please find attached a list of the cases in which we are expecting to view information. I understand that we have already received a copy of the relevant information in the Carr-Brown case- FAC0071194 and as such will not require an additional copy. I also acknowledge that I have not to date formally requested a copy of the information in the Baker case- FS50072319, however I would appreciate it if you could make the necessary arrangements and provide a copy of this information on Thursday.

Please feel free to contact me if you have any questions or concerns. Thanks in advance.

Regards,

Nicole Duncan
 Complaints Resolution Officer
 (0)1625 545774

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<http://www.ico.gov.uk> or e-mail: mail@ico.gsi.gov.uk

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Tel: 01625 545 700 Fax: 01625 524 510

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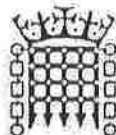
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Nicole Duncan

FS50079619

Phil Boyd.



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12 APR 2006

HOUSE OF COMMONS

LONDON SW1A 0AA

19 October 2005

Tel. No. 020 7219 1310

Fax No. 020 7219 3727

E-mail: sandsrb@parliament.uk

From the Clerk of the House of Commons

R B Sands

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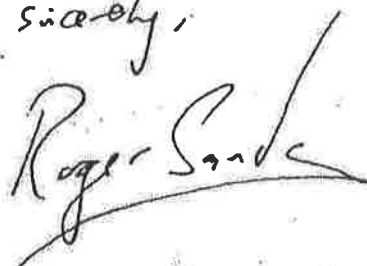
Dear Mr. Thomas,

As you know, a number of complaints are before you relating to FoI requests for the release of information about Members' expenses claims and expenditure, additional to the comprehensive information which the House of Commons released last October and will be updating on Thursday week. In every case the House is resisting release on grounds of principle, primarily relating to the reasonable expectations of MPs to enjoy some degree of personal privacy in accordance with the Data Protection Principles. Your eventual decisions will set precedents which will be of general applicability. If, for example, you were to decide that we must accede to a request to release details of a particular Members' accommodation claims, including addresses and other personal details, the same ruling would almost certainly apply to any future request we might get (and would be bound to get) for the release of the equivalent details of any other Member of Parliament.

It is against that background that the House is considering the request by your Complaints Resolution Officer, Nicole Duncan, and her team to be given access to the personal files of the Members who are the subjects of the disputed requests. I can appreciate that direct sight of requested documents is essential when, for example, you have to determine whether a particular departmental memorandum is or is not "held" by a public authority for the purposes of the Act or whether collation of information would be too costly. But I cannot understand why, in these Members' expenses cases, it is not adequate for your purposes to see generic or anonymised samples of the documentation held in Members' personal claim files, as we had originally agreed to provide when your team visits the Department of Finance and Administration.

To accede to this request would entail granting your staff access to the most sensitive personal files of some of the most senior politicians in the country, files which I myself would never conceivably be allowed to see. To do this would, I feel, be a breach of faith and could damage the relationship of trust which exists between House officials and Members, without it being apparent to them or us why it is considered to be essential.

I would welcome the opportunity for a meeting if you feel it would be helpful to come and discuss these problems face to face. In the meantime I hope you will encourage your staff to take up the offer to be shown how our Members' expenses records are kept and see anonymised examples of the documentation; as previously proposed.

Yours sincerely,


Mr Richard Thomas
Information Commissioner
Wycliffe House
Water Lane, Wilmslow
Cheshire SK9 5AF

Phil Boyd Esq
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel : 0207 219 2032
Fax :
Email : [REDACTED]@parliament.uk

27 June 2006

Dear Mr Boyd

Information Notice Dated 6 June 2006

You wrote to the Speaker of the House of Commons on 6 June with an information notice under Section 51 of the FOI Act covering five cases (FS50071451, FS50070469, FS50079619, FS50073293 and FS50083202). I am replying on behalf of the Clerk of the House, who is the Data Controller. This letter sets out the House's response and summarises the agreement reached between Deputy Commissioner Graham Smith and the House's Director of Finance and Administration, Andrew Walker, about the arrangements for the inspection of the records as required by the notice.

I can confirm the House's agreement to comply with the information notice. The House Authorities are naturally concerned about the sensitivity and confidentiality of the records in question, and Graham Smith and Andrew Walker have therefore agreed that it is in the mutual interests of both bodies that the inspection of the records should be undertaken at the House of Commons, and that copies should not be taken. In addition, they have agreed that the ICO's review should be overseen by the Deputy Commissioner himself. Following the visit, we will of course be happy to respond to follow-up questions or to provide points of clarification as they arise.

The Deputy Commissioner suggested that a date some time in the mid-to-late July would be convenient for his visit. The House rises for the summer recess on Tuesday 25 July and while this should have no impact on the availability of the records it does mean that key staff may be unavailable through annual leave. Therefore, can I suggest that the visit is made sometime during the week 17-21 July?

While the House will, of course, comply with the terms of the information notice, I have been asked to place on record our concern about the section dealing with the "Nature of the complaints". The final two paragraphs of this section suggest that the House has failed to cooperate with the Commissioner and has wilfully withheld access to the information he

HOUSE OF COMMONS

DIRECTOR OF FINANCE AND ADMINISTRATION ANDREW WALKER DEPUTY DIRECTOR [REDACTED]
DIRECTORATES: [REDACTED] (OPERATIONS) [REDACTED] (HUMAN RESOURCE MANAGEMENT)
[REDACTED] (FINANCIAL MANAGEMENT) [REDACTED] (INTERNAL REVIEW SERVICES)
DEPARTMENT OF FINANCE AND ADMINISTRATION HOUSE OF COMMONS LONDON SW1A 0AA

needs to make a determination in each of the cases relevant to the notice. In support of this representation of the facts, you attached to the notice copies of two emails dealing with a proposed visit by a team from the Commissioner's office to the House. The earlier email, from the ICO to the House dated 17 October 2005, describes the information the team would like to view, while the House's response on 18 October sets out why this would not be possible but goes on to suggest that, nevertheless, the visit might still go ahead.

What the notice fails to record is the fact that, on 19 October, the Clerk of the House wrote to the Commissioner to set out the House's concerns about providing access to the personal files of the people involved and to invite him to a meeting if he felt that it would be helpful to discuss these problems face to face. As far as I am aware, no such discussion took place. The notice also makes no mention of the visit made to the House on 20 October by an ICO team headed by the Deputy Commissioner. At this meeting, the team were given a comprehensive briefing on the nature and scope of the information held in anticipation that this would be sufficient for the Commissioner to make his determination. At this time, the ICO team was asked to let the House know as soon as possible if the information provided to the team at that meeting would not be sufficient. It is only now, some eight months later, that any indication has been given that the information was indeed insufficient for your review.

We hope that the Commissioner will agree that the House has cooperated fully at all stages of his consideration of the cases before him that deal with House of Commons information.

I look forward to receiving confirmation that the arrangements for complying with the terms of the notice match the Deputy Commissioner's understanding of our agreements. I should also be grateful if you would let me know as soon as possible if the suggested period for his visit is convenient for him and his team.

I am sending copies to Graham Smith, Brian Payne and Nicole Duncan.

Yours sincerely

[Redacted signature block]

-----Original Message-----

From: [redacted] [mailto:[redacted]@parliament.uk]

Sent: 27 June 2006 15:58

To: Nicole Duncan; foi-enquiries

Subject: FAO Nicole Duncan response to information notice, case ref: FS50071451, FS50070469, FS50079619, FS50073293 and FS50083202 - *FOI*

Dear Nicole

Information Notice Dated 6 June 2006

Case Numbers (FS50071451, FS50070469, FS50079619, FS50073293 and FS50083202)

A copy of the House's response is attached, the signed copy has been sent to Phil Boyd. I should be grateful if you would forward copies to Graham Smith and Brian Payne.

As you will note, Andrew Walker and Graham Smith have reached agreement on the inspection of the records. If Graham agrees with the outline described in the letter perhaps you and I could manage the administrative arrangements. I have suggested a visit during the week of 17-21 July and for safety's sake we should put a whole day aside (if it takes shorter or longer, so be it!). For my side I would be happiest with any day Mon to Thursday but I am happy to fit in if Friday 21st would best suit your team.

I will be out of the office between 3-7 July.

I look forward to hearing from you

Yours sincerely

[redacted]

<<HoC response to the information notice.doc>>

[redacted]
0207 219 2032

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CMEH

Phil Boyd Esq
Assistant Commissioner
Information Commissioner's Office
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Cheshire
SK9 5AF

Tel : 0207 219 2032
Fax :
Email : [REDACTED]@parliament.uk

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I am sending copies to Graham Smith, Brian Payne and Nicole Duncan.

Yours sincerely

A large black rectangular redaction box covering the signature and name of the sender.

From: [REDACTED] [REDACTED]@parliament.uk]
Sent: 27 June 2006 16:24
To: Nicole Duncan
Subject: HoC - dates for visit

Any day 12-14 July would also be fine.
[REDACTED]

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-----Original Message-----

From: [REDACTED]
Sent: 27 June 2006 15:58
To: 'Nicole Duncan'; 'FOI-Enquiries@ico.gsi.gov.uk'
Subject: FAO Nicole Duncan response to information notice, case ref: FS50071451, FS50070469, FS50079619, FS50073293 and FS50083202

Dear Nicole

Information Notice Dated 6 June 2006

Case Numbers (FS50071451, FS50070469, FS50079619, FS50073293 and FS50083202)

A copy of the House's response is attached, the signed copy has been sent to Phil Boyd. I should be grateful if you would forward copies to Graham Smith and Brian Payne.

As you will note, Andrew Walker and Graham Smith have reached agreement on the inspection of the records. If Graham agrees with the outline described in the letter perhaps you and I could manage the administrative arrangements. I have suggested a visit during the week of 17-21 July and for safety's sake we should put a whole day aside (if it takes shorter or longer, so be it!). For my side I would be happiest with any day Mon to Thursday but I am happy to fit in if Friday 21st would best suit your team.

I will be out of the office between 3-7 July.

I look forward to hearing from you

Yours sincerely

[REDACTED]
<< File: HoC response to the information notice.doc >>

0207 219 2032

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From: [REDACTED] [REDACTED]@parliament.uk]

Sent: 27 June 2006 16:55

To: Nicole Duncan

Subject: RE: HoC - dates for visit

The 14th it is then. Please confirm who will be coming and the time you might arrive and I will do the rest. Do your rules of process permit modest hospitality? If so I will see if I can arrange lunch.

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-----Original Message-----

From: Nicole Duncan [mailto:Nicole.Duncan@ico.gsi.gov.uk]

Sent: 27 June 2006 16:28

To: [REDACTED]

Subject: RE: HoC - dates for visit

Hi [REDACTED]

The 14 July would work best for us.

Thanks

Nicole

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Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF

Tel: 01625 545 700 Fax: 01625 524 510

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From: [REDACTED] [mailto:[REDACTED]@parliament.uk]

Sent: 27 June 2006 17:29

To: Nicole Duncan

Subject: RE: HoC - dates for visit

Thanks, by the end of this week I should have retrieved the relevant files from the archive - they will be made available for your inspection. A bit nearer to the 14th I will call to ask if there are any specific issues you would like to address. At the meeting I will have an allowance expert on hand (hopefully [REDACTED] who was also at our last meeting).

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-----Original Message-----

From: Nicole Duncan [mailto:Nicole.Duncan@ico.gsi.gov.uk]

Sent: 27 June 2006 17:07

To: [REDACTED]

Subject: RE: HoC - dates for visit

Thanks for the offer of lunch, it is much appreciated. I can confirm that Deputy Commissioner, Graham Smith and Complaints Resolution Officer, Brian Payne and I will be attending. I will get back to you as soon as I know what time we should arrive.

Regards

Nicole

-----Original Message-----

From: [REDACTED] [mailto:[REDACTED]@parliament.uk]

Sent: 27 June 2006 16:55

To: Nicole Duncan

Subject: RE: HoC - dates for visit

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Nicole Duncan
Complaints Team Leader
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Ref : PDN FS50070469, FS50079619 and
FS50071451

Tel : 0207 219 2032

Fax :

Email : [REDACTED]@parliament.uk

16 October 2006

Dear Ms Duncan

Preliminary Decision Notices: FS50070469, FS50079619 and FS50071451

1. Thank you for your letter of 2 October enclosing Preliminary Decision Notices relating to the requests for information made by Mr Thomas and Mr Leapman.
2. We have raised a number of points in our correspondence with you on these complaints and we will not rehearse them again here. However, that should not be taken as indicating that we no longer rely on those points or would not do so if the matter proceeded further to the Tribunal. We therefore limit our comments on the PDNs to the following points.

FS50070469 Thomas – Blair: Details of the ACA claims in 2001/2, 2002/3 and 2003/4.

3. The drafting of paragraph 18 of the PDN is inaccurate and unfair. The impression that the reader would gain from the paragraph is that the House ignored the Commissioner's request for disclosure of the information and that it was only after the Commissioner repeated his request, over a month later, that the House responded with the invitation to visit. This is entirely untrue. The House's FOIA Officer Judy Wilson responded by email on 15th September 2005 to the request for information contained in the letter of 9th September. That email stated that the House's Director of Operations, who is in charge of allowances services for Members, wanted to invite Ms Duncan and any other of her colleagues investigating allowances cases to come to the House so that he could assist you with these requests. Further exchanges took place concerning the arrangements for this visit, as reflected in the opening paragraph of the House's reply of 10th October and the exchange of emails on 17th and 18th October. As you know, the visit to the House's premises took place on 20th October.

HOUSE OF COMMONS

DIRECTOR OF FINANCE AND ADMINISTRATION ANDREW WALKER DEPUTY DIRECTOR [REDACTED]

DIRECTORATES: [REDACTED] (OPERATIONS) [REDACTED] (HUMAN RESOURCE MANAGEMENT)

[REDACTED] (FINANCIAL MANAGEMENT) [REDACTED] (INTERNAL REVIEW SERVICES)

DEPARTMENT OF FINANCE AND ADMINISTRATION HOUSE OF COMMONS LONDON SW1A 0AA

4. Your limited chronology also fails to mention the letter dated 19th October 2005 sent by the Clerk of the House to the Information Commissioner stressing the highly sensitive nature of the information requested and proposing a meeting to discuss the issues. Further, the meeting on 20th October was not, as stated, to "discuss in general terms" the types of information the House holds. At that meeting the Commissioner's team were given a comprehensive briefing on the nature and scope of the information held and it was expected that that would be sufficient to enable the Commissioner to make his determination. The Commissioner's staff were asked to let the House know as soon as possible if the information provided to the team at that meeting would not be sufficient. Nothing was heard further until the service, 8 months later of the information notices. If the PDN is going to refer to this matter at all, it should do so accurately and provide some explanation of why no reply was sent to the Clerk's letter and why there was a gap of 8 months between the date of the meeting and the service of the information notices.
5. In paragraph 46 of the PDN the Commissioner requires the House to: "... disclose a list of items totalling £43,029 claimed by Tony Blair under the ACA in 2001/2, 2002/3 and 2003/4. In respect of each individual claim the breakdown should include the amount spent, what it was spent on and the date of the expenditure or claim."
6. That proposed requirement, however, is inconsistent with the statement of findings of fact in paragraphs 22 and 23 of the PDN. Those findings, which were based on the visit of the Commissioner's staff to view the information acknowledge in particular that
 - (a) the information held by the House in relation to the financial year 2001/2002 is limited because data has been destroyed in line with the House's retention policy and
 - (b) it is not possible to provide a complete breakdown of the items making up the total for each year because prior to 2003 MPs did not generally provide invoices or receipts evidencing the amounts claimed and, since 2003 MPs were only required to do so for single items in excess of £250 and for food in excess of £400 per month.
7. Further, as you may recall from your visit to view the information, the relevant data consists of a computer record of the total claimed on each claim form, the claim form itself and any information submitted in support of each claim such as an invoice or statement. The list as described does not exist. As the Act does not, as we understand it, require a new set of information to be brought into being, one solution, should it prove to be necessary, would be to provide copies of relevant documentation subject to the redactions described in PDN FS50071451 .
8. It is important therefore that paragraph 46 of the PDN is amended to take account of both these points, namely (i) that the requirement should be limited to disclosure of material actually held by the House and (ii) that if a list of items making up the total does not exist, the requirement can be satisfied by the disclosure of the individual receipts and invoices with appropriate redactions to ensure that no personal data beyond that requested is disclosed. The Commissioner might consider also describing the redaction process in his final Notice in respect of this case (and FS50079619).

FS50079619 Thomas – Margaret Beckett: ACA Claims 2001-2004

9. With regard to paragraphs 18 and 19 of the PDN, the same points arise as raised in paragraphs 3 and 4 above. The member of the Commissioner's staff handling this complaint was the same as the member handling the Thomas (Rt Hon Tony Blair) complaint and the email of 15th September extending the invitation to visit related to this complaint as much as to that one.

10. With regard to the proposed requirement, in this case the House is required to disclose: "...a list of items claimed by Margaret Beckett under the ACA in 2001/2, 2002/3 and 2003/4. In respect of each individual claim the breakdown should include the amount spent, what it was spent on and the date of the expenditure or claim".
11. As described in paragraph 7 above, the information held is the same as in Thomas (Rt Hon Tony Blair) and again the proposed requirement set out at paragraph 46 is inconsistent in important respects with the findings of fact in paragraphs 22 and 23 of the PDN. The same qualifications to the proposed requirements need to be made as described above.

FS50071451 Leapman -

12. With regard to paragraphs 16 and 17 of the PDN, the same points arise as raised in paragraphs 3 and 4 above. Ms Wilson sent an email to the member of the Commissioner's staff handling this complaint dated 15th September 2005, extending the same invitation to visit. That visit took place on 20th October. The account of this in the PDN is partial and inaccurate.
13. Paragraphs 22 and 23 of this PDN appear to be based on a misunderstanding. Paragraph 23 states:

"The House does not hold information such as rental agreements, or mortgage interest statements in respect of the six named MPs. However, the House failed to advise the applicant that it does not hold part of the information covered by his request."
14. The House does hold the information described where an agreement or mortgage has been entered into by the MP and forms the subject of a claim (but, one of the subjects of the request neither rents a property nor submits claims for a mortgage so that the House cannot of course hold the information). There has however been no failure on the part of the House to fulfil its duties. This information formed part of the data set viewed by the ICO team in July. If the Commissioner intends to pursue this, the House would request an opportunity to consider whether section 40(5)(b) applies since to tell the requester that MP Mr X does not submit a claim for a mortgage or for rental property in itself discloses personal information about that MP's living arrangements. These two paragraphs and paragraph 43(a) should be deleted from the final version of the Decision Notice.

Please let me know if I can assist further,

Yours sincerely

A large black rectangular redaction box covering the signature and name of the sender.



Nicole Duncan
Complaints Team Leader
Information Commissioner's Office
Wycliffe House
Water Lane
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SK9 5AF

Ref : PDN FS50070469, FS50079619 and
FS50071451

Tel : 0207 219 2032

Fax :

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18 OCT 2006

17 October 2006

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13. Paragraphs 22 and 23 of this PDN appear to be based on a misunderstanding. Paragraph 23 states:

"The House does not hold information such as rental agreements, or mortgage interest statements in respect of the six named MPs. However, the House failed to advise the applicant that it does not hold part of the information covered by his request."
14. The House does hold the information described where an agreement or mortgage has been entered into by the MP and forms the subject of a claim (but, one of the subjects of the request neither rents a property nor submits claims for a mortgage so that the House cannot of course hold the information). There has however been no failure on the part of the House to fulfil its duties. This information formed part of the data set viewed by the ICO team in July. If the Commissioner intends to pursue this, the House would request an opportunity to consider whether section 40(5)(b) applies since to tell the requester that MP Mr X does not submit a claim for a mortgage or for rental property in itself discloses personal information about that MP's living arrangements. These two paragraphs and paragraph 43(a) should be deleted from the final version of the Decision Notice.

Please let me know if I can assist further.

Yours sincerely

A large black rectangular redaction box covering the signature and name of the sender.

Nicole Duncan
Operations Team Leader
information Commissioner's Office
Wycliffe House, Water Lane
WILMSLOW
SK9 5AF

Tel : 0207 219 2032
Fax :
Email : [REDACTED]@parliament.uk

8 December 2006

Dear Ms Duncan

FOI Complaints FS50070469, FS50071451, FS50079619

Thank you for your letter of 30 November 2006 in response my letter of 16 October and email of 31 October.

FS50070469 and FS50079619: Thomas, Blair/Beckett

We note the points made about the above complaints in the relevant paragraphs of your letter. The House reserves its position on whether putting together a list of the items claimed by an MP under the ACA amounts to the creation of new information which is not required by the Act or is the provision of a digest or summary of the information in a form acceptable to the applicant. Since you accept that the House could comply with the Decision Notice by the provision of the raw data this issue does not need to be resolved. The House is grateful to the Commissioner for the consideration given to its comments and suggestions about the nature of the response that can be given to Mr Thomas.

FS50071451: Leapman, 6 Members

The House rejects outright any suggestion that by not explaining at the outset that the House does not in all cases hold mortgage and rental agreements, it failed to comply with section 1(1)(a) of the Act.

Mr Leapman asked for the following information:

"Copies of original submissions with copies of receipts, rental agreements, or mortgage interest statements from six named individual MPs in support of their claims for Additional Costs Allowance (ACA) in each of the financial years 2001/2, 2002/3, 2003/4.

HOUSE OF COMMONS

DIRECTOR OF FINANCE AND ADMINISTRATION **ANDREW WALKER**

[REDACTED] (DEPUTY DIRECTOR) [REDACTED] **BSc MPhil FCIPD** (HR PROJECTS)

DIRECTORATES: [REDACTED] (OPERATIONS) [REDACTED] - ACTING (HUMAN RESOURCE MANAGEMENT)

[REDACTED] (FINANCIAL MANAGEMENT) [REDACTED] (INTERNAL REVIEW SERVICES)

DEPARTMENT OF FINANCE AND ADMINISTRATION HOUSE OF COMMONS LONDON SW1A 0AA



INVESTOR IN PEOPLE

The six MPs were: Tony Blair, Barbara Follett, Alan Keen, Ann Keen, Peter Mandelson, John Wilkinson."

As explained in the course of our correspondence, mortgage and rental agreements are only held on file in cases where individual Members enter into such agreements and enter claims for consequent expenditure. This is explained on page 8 of the Green Book.

In our letter of 18 October we suggested that as the fact that whether or not such agreements were held by individual Members was undoubtedly personal data, section 40(5)(b) of the Act was relevant. While we note the Commissioner comments on the applicability of this section, the House's response to the initial request was based on its interpretation of section 40(2)(b) of the Act.

The matter can be tested in the following way. If the question Mr Leapman had asked was "Do the following MPs have mortgages or rental agreements for which they claim allowances under the ACA?", that question would clearly be a request for the disclosure of personal data. In deciding whether to release that data the House would have to undertake the same balancing test under paragraph 6 of Schedule 2 to the Act as is the subject of the current complaint. We do not see that reformulating the question as one asking the House to confirm or deny whether it holds the information can change the nature of the information requested or the nature of the test to be applied. We accept that if the question was "Does the House hold mortgage statements or rental agreements in respect of those MPs who claims allowances for that kind of expenditure?" then it would be simply a matter of confirming or denying that the House does hold such information and no disclosure of personal data would be involved.

As it is, the House considered that it would be a breach of the fairness provisions of the first data protection principle to provide any personal data relating to an individual MP's claims including information as to whether part of their allowances claim is in respect of mortgage or rental payments. Therefore, it is the House's view that until the case is finally determined it is released from its obligations under section 1(1)(a) of the Act by virtue of section 2(2)(a).

We do not understand the position that the Commissioner is taking on this as expressed in the penultimate paragraph of your letter. In particular we are not clear whether you accept that the arguments on section 1(1)(a) are exactly the same as the arguments on section 1(1)(b) so that they stand or fall together or whether you are saying that even if the House is right that disclosure of the information was exempt under section 40, nonetheless the House was in breach of its obligation to confirm or deny whether it held the documents under section 1(1)(a).

We would be grateful if you would clarify whether the Commissioner accepts that information about whether a particular MP claims for a mortgage or rental agreement is personal data for the purposes of section 40 of the FOIA. Or is he saying that because an MP might actually have a mortgage, even if he does not claim an allowance for the mortgage payments or even if the House does not hold a copy of the agreement, this somehow prevents it from being personal data about that MP? The House cannot accept that

information about the expenses claimed under the ACA by a named MP is only to be regarded as personal data if it discloses something about the MP's living arrangements.

We should be grateful if the Commissioner would give further consideration to this issue.

Issue date

In the final paragraph of your letter you ask if the issue of the decision notices referred to above in the week prior to Christmas would cause the House any practical difficulties. The timing of the issue is of course a matter for the Commissioner and we are grateful to him for taking into account our views. However, the House rises for the recess on 19 December 2006 and returns on 8 January 2007. During this period we could not be confident about our ability to alert all of the Members concerned. Given the identity of the data subjects and the fact that the requesters are prominent journalists who are unlikely to consider holding back on publicising the outcome, it is vital that fair warning is provided to the Members concerned. In addition, neither would it be possible to consult the relevant representative bodies to the extent required to provide a response early in the New Year. Therefore, the House would much prefer it if the issue could be delayed until the first week of January at the earliest.

Yours sincerely

[Redacted signature block]

From: Brian Payne
Sent: 23 November 2006 17:33
To: Nicole Duncan
Subject: New para 14
Nicole

I've attached the new para 14 as well as you'll need this to place para 15 in context.

Brian

Brian Payne

14. On 11 October 2005 the Commissioner asked the House to provide a copy of the requested information in order that he could examine this. The House responded by inviting the Commissioner's representatives to the House for a meeting on 20 October 2005. At the same time, the Clerk of the House had also responded (on 19 October 2005) with an invitation to discuss the issues. In the event, the meeting on 20 October was considered to serve the purposes of both invitations. In the House's opinion the meeting was considered sufficient to enable the Commissioner to make his determination. However, although the meeting provided a comprehensive briefing on the nature and scope of the information held by the House, the requested information was not available for examination.