



The Freedom of Information (Amendment) Bill 06-07

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This note sets out the background to the *Freedom of Information (Amendment) Bill 2006-07*, a Private Member's Bill introduced by David Maclean, a backbench member of the House of Commons Commission, which received an unopposed second reading on 19 January 2007. The Bill has two purposes; firstly it removes both Houses of Parliament from the list of public bodies included within the scope of Schedule 1 of the *Freedom of Information Act 2000 (Fol Act 2000)*; secondly, it makes correspondence from Members of Parliament exempt from the Fol Act 2000, although as the Bill is currently drafted, a public authority might still be able to release such correspondence if it considered that the public interest in disclosure was greater than the public interest in withholding the information. The Bill is due to begin its Public Bill Committee proceedings on 7 February 2007.

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A. Background

Although a white paper on Freedom of Information was published in December 1997, six months after the Labour Government took office,¹ legislation was not introduced to Parliament until May 1999 in the form of a draft bill.² However, the Commons had begun to engage with the white paper proposals in the form of a select committee report from the Public Administration Committee in May 1998.³ This report was the first to raise the question of including Parliament within the scope of the Act, expressing surprise at its exclusion, given the wide coverage proposed. The tone of the white paper had been to express legal difficulties with the inclusion of Parliament, in case the requirement of Article IX of the Bill of Rights 1688 might be affected - this Article prevents the questioning of parliamentary proceedings in the courts, and is explained further below. The Committee took a different approach, considering that exemptions for decision-making would be likely to protect private Committee proceedings and that papers held by Members, Ministers and parties would not fall within FOI, as these would not relate to Parliament's public functions. It noted:

Para 37...But there are many administrative functions carried out within Parliament which, it seems to us, do not need to be protected, any more than do those of the police. The justification for the exclusion of Parliament has not been made out. The exclusion may well convey the wrong impression to the general public, given the purpose of this legislation. We hope that the Joint Committee on Parliamentary Privilege will review this question, and we recommend that the Government re-examine the exclusion of Parliament in the light of its Report.⁴

The Government response of July 1998 raised no objection in principle to the inclusion of the administrative functions of Parliament within the scope of FOI, but looked to the Joint Committee on Parliamentary Privilege for guidance.⁵ This Committee had been established by the Leader of the House, Ann Taylor, as part of her Commons modernisation programme, to review the principles and practice of parliamentary privilege. This constitutional law protects the right of Parliament to operate independently without interference from external sources, but its reach extends more to the term 'proceedings in Parliament' (which are easier to describe than define) rather than the normal administrative functions of the Commons. As a public body, the House administration is supervised by the House of Commons Commission, chaired by the Speaker.

Responsibility for FOI policy moved from the Cabinet Office to the Home Office in July 1998, under the Home Secretary, Jack Straw, now Leader of the House of Commons. The Joint Committee reported in April 1999 but made no specific recommendation in relation to FOI. However a strong recommendation was that: 'The right of each House to administer its internal affairs within its precincts should be confined to activities directly and closely related to proceedings in Parliament. Parliament should no longer be a statute-free zone in respect of Acts of Parliament relating to matters such as health and safety and data protection.'⁶

¹ Your Right to Know Cm 3818

² *Freedom of Information: Consultation on draft legislation* Home Office May 1999 Cm 4355

³ Your Right to Know: The Government's proposals for a Freedom of Information Act HC398 1997-98 Recommendation 16

⁴ HC 398 1997-98, para 37

⁵ Fourth Special Report HC 1020 1997-98

⁶ Executive Summary HL 43-I/HC 214-I 1998-99

The Home Office introduced a draft Bill in May 1999, in the form of a consultation paper, which was subject to pre-legislative scrutiny. This accepted the case for including Parliament, but the draft did not yet include both Houses, as the accompanying consultation document noted that discussions were continuing with the House authorities.⁷ A further report from the Public Administration Select Committee on the draft FoI bill strongly supported the extension of the Bill to Parliament.⁸

The FoI Bill was therefore introduced into Parliament with the two Houses of Parliament already within its scope. On second reading, Jack Straw noted that the Bill had extended its coverage from the original white paper proposals of 1998:

We have extended the coverage of the Bill beyond that proposed in the White Paper, to include the operational activities of the police and Parliament itself.⁹

During the passage of the Bill the exemptions in sections 34 and 36 relating to the Houses of Parliament were made absolute, removing the public interest test. Further details are given in Library Research Paper 00/89 *The Freedom of Information Bill-Lords Amendments*.

The *Freedom of Information Act 2000* came into effect in January 2005. Further details are available in Standard Note no 2950 *Freedom of Information requests*. Briefly, the legislation applies to public bodies, including both Houses of Parliament, which are separately listed in Schedule 1 to the Act. When in receipt of a FoI request from an individual, each House is required to respond under the terms of the Act. Information may only be refused where an exemption is applicable. Most exemptions are also subject to a public interest test. The Standard Note gives further details of the operation of exemptions and the role of the independent Information Commissioner.

1. Application of FoI to both Houses

Implementation of the FoI legislation also brought both Houses within the ambit of the *Data Protection Act 1998*.¹⁰ Previously, both Houses were excluded from data protection (DP) legislation, although not from EU directives on DP. There is a complex interaction between FoI and DP. A person wishing to obtain information about themselves uses DP; a person wishing to obtain information about another person uses FoI. However, the data protection principles apply when a public body considers an FoI request for personal information about another person. This is explained more fully below.

As part of the preparations for FoI implementation, each House announced details of Members' allowances (expenses for Lords) on 21 October 2004 which are available on the parliamentary website.¹¹ The information has been updated annually. The details of the processes leading to the decision to release a total sum for each allowance, rather than a detailed breakdown, is given in the Information Tribunal decision of 16 January 2007 (see below).

⁷ *Freedom of Information: Consultation on draft legislation* Cm 4355 May 1999 Home Office, para 53

⁸ HC 570 1998-99 para 24

⁹ HC Deb 7 December 1999 c726

¹⁰ See paras 2 and 3 of Schedule 6 to the FoI Act.

¹¹ <http://194.128.65.30/allowances.htm>

There are two special provisions allowing the Speaker of the Commons or Clerk of the Parliaments to certify that information is exempt. Such a certificate is conclusive and means that the Information Commissioner has no role to play. These are:

- section 34, where an exemption is required to avoid an infringement of the privileges of either House of Parliament
- section 36(6), where in the 'reasonable opinion' of the Speaker of the Commons or Clerk of the Parliaments disclosure would inhibit the free and frank provision of advice, or prejudice the effective conduct of public affairs. Such a certificate may also be used to ensure that the House does not have to confirm or deny whether it holds the information sought

However, the Speaker or Clerk may not issue a certificate on a class basis - each request for information must be considered on its merits. The House of Commons Commission has responsibility for the administration of the House. It consists of the Speaker, the Leader and Shadow Leader of the House and three backbench Members. The Commission was established under the *House of Commons Commission Act 1978*. Further details are available on the Commission website pages.¹² There is no statutory equivalent to the Commission in the House of Lords, although the House of Lords administration has many similar functions.

The Commons has its own FoI officer, based in the Department of Finance and Administration. A certificate has been issued by the Speaker of the Commons, under section 36(6) in 2006 in relation to a request for the names and salaries of Members' staff, on the grounds that the release of this information would be likely to prejudice the effective conduct of public affairs. A further five certificates have been issued under section 34 in response to requests for privileged information relating to proceedings in the House and its committees.

To date, each House has received a relatively small number of requests specifically logged as applications under the Act (rather than information about the workings of Parliament). It is estimated that since January 2005 the House has logged 360 applications. The subject of the application has included procurement, security, access to select committee papers. The most high-profile have however related to the provision of more detailed breakdowns of Members' allowances. 167 of these types of enquiry had been made by the end of 2006.¹³ The requests have been refused principally on the grounds of the DP exemption in section 40 of the FoI Act.

Where a public body refuses a request, the applicant can complain to the Information Commissioner, who will review the decision of the public body. The Information Commissioner has already ruled against the House of Commons on a number of allowance cases, but the House of Commons Corporate Officer (the Clerk of the House) appealed to the Information Tribunal, which has the power to review decision notices issued by the Commissioner. The Information Tribunal issued a decision on two applications for

¹² http://www.parliament.uk/about_commons/house_of_commons_commission_.cfm

¹³ Andrew Walker, Director of Finance and Administration in the House of Commons told the Information Tribunal that the House had received approximately 167 requests for information on Members' allowances since the FoI Act had come into effect. *Information Tribunal Appeal no EA/2006/0015 and 0016*, para 20

information on allowances on 16 January 2007. One of the appellants was Norman Baker MP. The Tribunal found in favour of disclosure:

93. Having considered all these interests we find that the legitimate interests of members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of MPs. We consider our decision will only result in a very limited invasion of an MP's privacy considered in the context of their public role and the spending of public money. In coming to this decision we have noted that the Scottish Parliament has for some years disclosed the detailed travel claims of MSPs supporting mileage, air travel, car hire and taxis. Also we note that in the Scottish Information Commissioner's Decision 033/2005 in *Paul Hutcheon, The Sunday Herald and the Scottish Parliamentary Corporate Body* (SPCB) the Scottish Commissioner went further and ordered the release of the destination points of taxi journeys of an MSP.

It is only possible to appeal from the Information Tribunal to the courts on a point of law. The full text of the Information Commission decision may be found on the website.¹⁴

The Scottish Information Commissioner has also examined the issue, under separate but very similar legislation. Although his decisions have no legal effect for UK FoI legislation, clearly there is a persuasive influence, as noted in the Information Tribunal decision of January 2007:

David McLetchie MSP's travelling claims since 1999 – taxi journey destinations

Applicant: Paul Hutcheon, The Sunday Herald

Authority: The Scottish Parliamentary Corporate Body Case No: 200501974

Decision Date: 6 October 2005

Kevin Dunion

Scottish Information Commissioner

Facts

Paul Hutcheon, a journalist with The Sunday Herald, asked the Scottish Parliamentary Corporate Body (the SPCB) for a copy of David McLetchie MSP's travel claims supporting mileage, air travel, car hire and taxis since 1999. Copies of the travel claims were provided to Mr Hutcheon, but information, including the taxi destinations, was redacted. Mr Hutcheon asked the SPCB to review its decision to redact the destination in the taxi invoices. The SPCB subsequently carried out a review, but upheld its original decision, advising Mr Hutcheon that releasing the information would contravene the Data Protection Act 1998. Mr Hutcheon subsequently applied to the Commissioner for a decision on whether the SPCB was correct not to provide the taxi destinations to him.

Outcome

The Commissioner found that the SPCB had breached Part 1 of FOISA in failing to release the destination points of taxi journeys undertaken by Mr McLetchie. Although the information was personal data, the release of the data would not breach any of the data protection principles. Accordingly, the information was not exempt under section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA). In addition, the Commissioner was not satisfied that the release of the information would endanger the safety of Mr McLetchie and, accordingly, held that the information was not exempt under section 39(1) of FOISA.

¹⁴ http://www.informationtribunal.gov.uk/Files/ourDecisions/corpo officer_house_of_commons_v_infocomm.pdf

The Commissioner ordered the release of the information which had been withheld from Mr Hutcheon, but stressed that each case has to be treated on its own merits and that he will not order release of this information in future cases should the release of the information put a person at risk.¹⁵

2. Application of FoI to Members

Public authorities, not individuals, are subject to FoI which means that information held by Members in their individual capacity is not subject to FoI, even if stored, either physically or electronically, at either House.¹⁶ However, the House of Commons administration as a public body, headed by the House of Commons Commission, is subject to the Act, and the information it holds may be disclosable. This also applies to Members' communications with House officials on administrative business.

Although Members are not public bodies under the Act, their correspondence with public bodies may be disclosable under certain circumstances. Members' correspondence on constituency matters is not covered by parliamentary privilege. For further details on this point, see Library Standard Note no 2024 *Qualified Privilege in relation to Parliament and absolute privilege*.

Members as individuals have to comply with the requirements of DP legislation and advice pages are available on the DFA intranet. There are specific legislative provision in an order of 2002 to allow Members and other elected representatives to process sensitive personal data about a constituent in the course of undertaking in the course of a Member's "functions as a representative". The order also allows but does not require data holders to disclose sensitive personal data about others to assist the Member in its representative function.¹⁷ Further explanation is given in Library Standard Note 1936 *Data Protection and Constituency Casework*.¹⁸

Under FoI legislation, information held by public bodies may be releasable, even if the public body was not the originator of the material. Therefore a local authority may hold on file a letter from a Member which it may decide to release in response to an FoI request (see below).

B. Data protection and Members

The *Data Protection Act 1998* (hereafter DPA) gave effect in UK law to EC Directive 95/46/EC (the *Data Protection Directive*). It replaces the *Data Protection Act 1984*. Under the Act, anyone who holds personal information about living individuals on computer is required

¹⁵ The full transcript of the decision is available at <http://www.itspublicknowledge.info/appealsdecisions/decisions/Documents/Decision033-2005.pdf>

¹⁶ See for example the guidance on exemptions from the Department of Constitutional Affairs *Section 34 Parliamentary Privilege*, which points out that FoI does not apply to individual MPs, as opposed to the two Houses, as public bodies (para 1.4)

<http://www.dca.gov.uk/foi/guidance/exguide/sec34/chap01.htm>

¹⁷ *Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002*, which came into force on 17 December 2002.

¹⁸ http://10.160.3.10:81/PIMS/Static%20Files/Extended%20File%20Scan%20Files/LIBRARY_OTHER_PAPERS/STANDARD_NOTE/snha-01936.pdf

to register certain specified details of their processing activities. Registered data users must comply with eight data protection principles contained in the Act. The Information Commissioner ensures that the principles are observed. The Act gives various rights to individuals about whom information is recorded on computer (data subjects). Individuals may find out information about themselves, challenge it, have it corrected or erased if appropriate and claim compensation in certain circumstances. Further information about data protection is available from Library Standard Notes no's 830 *Data Protection: Access to Personal Information* and 2962 *Data Protection Law: problems of interpretation*.

1. The *Durant* case

In 2003 the Court of Appeal delivered an important judgement with implications for the interpretation of the *Data Protection Act*.¹⁹ The Court considered in particular two issues: 1) what makes data “personal” within the meaning of “personal data” and 2) what is meant by a “relevant filing system”. As the result of the *Durant* judgement there has been a narrowing of the definition of “personal data”. The judgement identifies two notions to determine whether information affects an individual’s privacy, firstly whether the information is biographical and secondly whether the individual is the focus of the information. So simply because an individual’s name appears on a document does not mean it is “personal data” and they are entitled to protection under the *Data Protection Act 1998*. It is more likely that when an individual’s name is accompanied by other information relating to the individual, then this would be “personal data”. The *Durant* case also has implications for the definition of a ‘relevant filing system’ for the purposes of data protection law, which is explained in Standard Note no 830. Mr Durant has been refused leave to appeal to the House of Lords, but is expected to apply to the European Court of Human Rights.²⁰ In the light of this judgement, the Information Commissioner has in February 2006 updated his guidance on the definition of personal data.²¹

C. Requests for information about third parties under Fol

Section 40 of the Fol Act provides an exemption for personal data. The potential operation of the exemption was the source of much debate during the passage of the Bill in the 1999-2000 session. Now that the legislation has been in operation and following *Durant* and decisions by the Information Commissioners in the UK and in Scotland the operation of the exemption is becoming clearer. The key principle appears to be the question of fairness to the third party about whom a request for information has been received. However, every case needs to be examined on its merits.

The Lord Chancellor has issued a Code of Practice under s45 of the Fol Act, which advises public bodies as follows:

IV Consultation with Third Parties

There are many circumstances in which:

¹⁹ *Michael John Durant v Financial Services Authority* [2003] EWCA Civ 1746, Court of Appeal (Civil Division) decision of Lord Justices Auld, Mummery and Buxton dated 8th December 2003. A full text of the judgment is available from the Court Service website at www.courtservice.gov.uk

²⁰ “House of Lords ends Durant’s data protection saga” *Outlaw News* 30 November 2005

²¹ http://www.ico.gov.uk/cms/DocumentUploads/Durant_27_feb_06.pdf

Commissioner has been preparing guidance for public authorities which is likely to state that they must consult the relevant Member before releasing correspondence.²⁴

D. The Freedom of Information (Amendment) Bill

1. The Bill's provisions

a. Removal of both Houses from the list of public bodies covered by Fol

The Bill would remove both Houses from Schedule 1, which lists the bodies to which the Fol legislation is applicable. The Bill does not attempt to remove either House of Parliament from inclusion within the *Data Protection Act 1998*, although the exclusion of Parliament from the list of public bodies subject to Fol may raise some issues with regard to the application of section 1(1)(e) of the *Data Protection Act 1998* (unstructured manual data) to both Houses.

Mr Maclean has tabled amendments which would remove the certification powers of the Speaker in relation to the effective conduct of public affairs, as the House would no longer be a public body subject to the Act. This can be seen as tidying up the Act, if the Houses have already been removed from Schedule 1. However, the Bill will remove from the reach of Fol information which may not relate to House administration at all, since public bodies subject to the Act may be required to release information which originated from another public body. The House administration may well hold information from government departments or the Prime Minister's office.

According to Mr Maclean, the Speaker has agreed that the type of information relating to allowances will still be released by the House on a voluntary basis.²⁵ There is no public information about commitments from the House of Lords administration. The publications schemes of both Houses would no longer be approved by the Information Commissioner.

The Government are currently consulting on the levels of fees payable under Fol. Their proposals would enable the time taken to read, consult and come to decisions on release to be taken into account in the calculation of the fee. Critics of the proposals have claimed that the proposed arrangements would take politically sensitive Fol requests over the fees threshold of £600 for central Government. Under the regulations, requests which cost more than £600 may be refused.²⁶ In order to reach decisions on the question of the release of information about allowances, the House of Commons administration has necessarily involved the time of senior staff and counsel and so there may be speculation as to the need for legislation to remove both Houses from Fol at all, if the draft fees regulations are approved.

²⁴ Bill may allow MPs to escape Fol Inquiries" 25 January 2007 *Guardian* http://politics.guardian.co.uk/foi/story/0,,1998096,00.html#article_continue

²⁵ "Bill may allow MPs to escape Fol Inquiries" 25 January 2007 *Guardian* Bill may allow MPs to escape Fol Inquiries" *Guardian* http://politics.guardian.co.uk/foi/story/0,,1998096,00.html#article_continue

²⁶ See Library Standard Note no 4169 *Fees for Fol requests*

b. Members' correspondence

The Bill's proposes a new s37A to be added to the FoI Act 2000. This would exempt any form of correspondence from Members to public bodies. Mr Maclean has subsequently tabled amendments to rename the new clause section 34A, to link it with the special exemption for parliamentary privilege. The drafting of the Bill raises some questions.

Firstly, the Bill as it stands, does not attempt to amend the substance of s2(3) of the FoI Act, although Mr Maclean has now tabled amendments to redraft this section, to be discussed at Public Bill Committee stage. This subsection lists a number of exemptions which are classified as absolute- that this, they are not subject to a public interest test. Therefore, although there is an exemption which can be used by public bodies to refuse the disclosure of correspondence by Members, the public body may still decide that the correspondence should be released, if it considers that there is a greater public interest in disclosure than in withholding the information. So the bill as currently drafted does not offer Members a guarantee that their correspondence will not be disclosed.

The exemption creates a new class of documents which are to be withheld, without reference to the information set out in the documents. Other FoI exemptions relate to the information at issue; for example there is no exemption for Cabinet papers as such, simply exemptions relating to policy advice, whether or not this is contained in a paper to Cabinet.

There is no definition of correspondence in the Bill, and so the term must be assumed to apply to all types of correspondence, not just constituency-related. Moreover, correspondence by Ministers is not excluded in the Bill, so a letter from a Minister to another department or public body might well fall under this exemption. All types of correspondence are subject to the new exemption, including correspondence which does not raise data protection issues. The term correspondence may also conceivably relate to internal memos from a Minister to a civil servant, so broadening the exemption considerably.

The intention of the Bill appear to be to include peers within the term Member of Parliament, so covering peers' correspondence. But Members of the House of Lord do not have constituency correspondence. The *Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002* refer to Member of the House of Commons, rather than Members of Parliament. The Bill does not deal with Members of the National Assembly for Wales and the Northern Ireland Assembly. These bodies are listed separately in paras 4 and 5 of Schedule 1 to the 2000 Act. Nor does it deal with local authority councillors, in contrast to the special provisions made for elected representatives in the data protection amendment regulations. See Library Standard Note 1936 *Data Protection and Constituency Casework* for more details.

Finally, the Scottish Parliament has enacted separate FoI legislation, applicable to subject areas devolved to Scotland. The Bill does not attempt to amend the Scottish legislation to remove MSPs from FoI. Scottish MPs would be covered by the Bill, which also extends to Northern Ireland.

2. Progress of the Bill

The Bill had its second reading on 19 January 2007, without debate. No objections were raised at the end of that day's business, so it proceeded to the next stage. The Bill now

awaits a Public Bill Committee. As a Private Member's Bill, it is not subject to the new standing orders allowing oral evidence sessions. The Bill is sponsored by David Maclean, a backbench Member of the House of Commons Commission, but the Commission has not commented publicly on the Bill.

The Bill was referred to a Public Bill Committee on 31 January 2007. The first meeting is on 7 February. The Member in charge of a bill allocated to this committee has some influence with the Committee of Selection in relation to which Members are nominated to it in respect of his or her own bill.²⁷ The Members of the Committee are as follows:

James Arbuthnott
Tim Boswell
Nicholas Brown
Tom Clarke
David Clelland
Jim Dowd
Mike Hall
Nick Harvey
George Howarth
Greg Knight
Martin Linton
Peter Luff
David Maclean
Bridget Prentice
David Simpson
John Spellar
Don Touhig
John Whittingdale

Bridget Prentice is the junior Minister at the Department of Constitutional Affairs, which is responsible for Fol policy. Nick Harvey is a member of the House of Commons Commission. The Bill has reached the Public Bill Committee stage before the first Private Member's Bill to be given a second reading, the *Sustainable Communities Bill*.

E. Reactions to the Bill

Maurice Frankel, of the Campaign for Freedom of Information, has expressed strong objections:

To suggest that parliament might now arrange for itself to be removed from this important legislation by an undebated private members' bill is extraordinary. Where is the explanation for this drastic step? Where are the arguments? Where is the public consultation? Where is the debate? For parliament to amend its own status without full scrutiny, and for government to collude in it, would be a disgrace.²⁸

²⁷ *Handbook of House of Commons Procedure* 5th ed 2004 Paul Evans

²⁸ "Less is not more" 1 February 2007 *Guardian comment*

http://commentisfree.guardian.co.uk/maurice_frankel/2007/02/less_is_not_more.html

Article 19, English PEN and *Index on Censorship* have written directly to David Maclean to raise their objections to the bill. For further details see the Index on Censorship website.²⁹ The proposals have also been discussed in the *Guardian*, where both Mr Maclean and Mr Baker set out their views on the impact on the disclosure of Members' allowances:

Mr Maclean said he had already discussed the bill with the Speaker, Michael Martin, who had assured him that parliament would still publish general details of MPs' expenses and allowances as now, even though they would not be obliged under his amendment. The bill would also prevent challenges to the information commissioner or to an information tribunal if a member of the public wanted an MP to provide more information.

Norman Baker, Liberal Democrat MP for Lewes, who last month won a decision at the information tribunal forcing the disclosure of more details of MPs' travel expenses, said last night: "This proposal is outrageous. What particularly amazes me is that everyone knows government whips can easily object to a private member's bill and stop it going anywhere. In this case the government whips were silent, which I can only assume means they are secretly sympathetic to this proposal as it fits in with their plans to curb the Freedom of Information Act."³⁰

The *Guardian* reported on 31 January that there had been discussion within Cabinet about the Government position on the Bill, with the Leader of the House, Jack Straw, pressing for the bill to make progress in order for the issue to be debated in Parliament.³¹

The Bill has also been discussed on various blogs, for example <http://www.bbc.co.uk/blogs/opensecrets/>

F. Text of the bill

The current text of the Bill is as follows:

- 1 Exemption of House of Commons and House of Lords
 - (1) The Freedom of Information Act 2000 (c. 36) is amended as follows.
 - (2) In Schedule 1, Part 1 (Public Authorities), delete paragraphs 2 and 3.
 - (3) After section 37 insert—

"37A Correspondence between Members of Parliament and public authorities

 - (1) Information is exempt information if it consists of correspondence between a Member of Parliament and a public authority, as listed in Schedule 1 of this Act.
 - (2) The duty to confirm or deny does not arise in relation to information which is exempt information by virtue of subsection (1)."
- 2 Short title, commencement and extent
 - (1) This Act may be cited as the Freedom of Information (Amendment) Act 2007.
 - (2) This Act comes into force at the end of a period of two months beginning with

²⁹ "MP bids to exempt parliament from Fol law clauses" Index for Freedom of Expression News January 2007 at <http://www.indexonline.org/en/news/articles/2007/1/britain-mp-bids-to-exempt-parliament-from-fo.shtml>

³⁰ "Bill may allow MPs to escape Fol Inquiries" 25 January 2007 *Guardian* Bill may allow MPs to escape Fol Inquiries" *Guardian* http://politics.guardian.co.uk/foi/story/0,,1998096,00.html#article_continue

³¹ "Lord Chancellor gives warning on secrecy" 31 January 2007 *Guardian*

the day on which it is passed.
(3) This Act extends to Northern Ireland.³²

The following amendments have been tabled by the Bill's sponsor:

David Maclean

1

Clause 1, page 1, line 3, leave out subsections (2) and (3) and insert—

'(2) In Part 1 of Schedule 1 (public authorities) omit paragraphs 2 and 3 (which relate to the House of Commons and House of Lords).

(3) After section 34 insert—

“34A Communications with members of the House of Commons

(1) Information is exempt information if it is held only by virtue of being contained in any communication between a member of the House of Commons, acting in his capacity as such, and a public authority.

(2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority to which the request is made would be) exempt information by virtue of subsection (1)'.
(4) In section 63 (removal of exemptions: historical records generally), in subsection (1), after “33”, insert “34A”.

(5) Omit the following—

(a) section 2(3)(e),

(b) section 36(5)(d) and (e) and (7), and

(c) in section 81(4), the words “on behalf of either House of Parliament or”.'. .

David Maclean

2

Clause 2, page 1, line 15, at end insert—

'(2A) This Act does not apply in relation to any request for information which is made to a public authority before the Act comes into force.

(2B) In subsection (2A) “request for information” and “public authority” have the same meaning as in the Freedom of Information Act 2000.'

³² http://www.publications.parliament.uk/pa/pabills/200607/freedom_of_information_amendment.htm: