



## MPs' allowances and Fol requests

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This Standard Note sets out details of the major Freedom of Information (Fol) requests made to the House of Commons since the introduction of the right to make individual requests in January 2005. It also describes the actions taken by the House of Commons in response to the requests and subsequent decisions by the Information Commissioner, the Information Tribunal and the High Court. It sets out the proposals contained in the draft *Freedom of Information (Parliament) Order 2009* which was due to be debated by both Houses on 22 January 2009, but was withdrawn by the Leader of the House on 21 January 2009.. This draft Order would have exempted from Fol details of allowances claimed by MPs and peers, although the total annual expenditure would still have been available. The Commons published on its website on 18 June printed documents and receipts relating to MPs' claims dating back to 2004/05 and up to 2007/08. These were redacted to remove addresses and other items, to ensure security of Members in line with the *Freedom of Information (Parliament and the National Assembly for Wales) Order 2008*, passed in July 2008.

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## 1 Introduction

The Labour Government's white paper of December 1997 did not include both Houses of Parliament within the ambit of the proposed Freedom of Information (Fol) legislation. However, at the suggestion of the Public Administration Select Committee, the Home Secretary, then Jack Straw, included Parliament within the Bill which was introduced in the 1999-2000 session. Because it focused on other matters, the Commons did not debate the principle of extending Fol to Parliament during the passage of the Bill, which became law in 2000. The Act also applied the provisions of the *Data Protection Act 1998* to Parliament. However, the individual right of Fol access was not brought into force until January 2005. There are two absolute exemptions in the legislation applicable to Parliament; section 34 protects parliamentary privilege and section 36(6) confidential advice.

The Speaker has the power to issue a certificate indicating that these exemptions apply and these may not be challenged in the courts. A certificate was 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.<sup>1</sup>

It should be noted that Fol does not apply to individual MPs who are not public authorities for the purpose of the legislation. Advice is available from the Department of Resources for MPs who receive Fol requests.<sup>2</sup> Correspondence from MPs held by a public authority may be disclosable, however.<sup>3</sup>

The interaction between Fol and data protection (DP) is complex. DP is used when someone wants to find out about information held about themselves, and Fol is used when someone wants to find out information about another person (or third party). However, section 40 of the Fol Act prevents the disclosure of personal data where this would breach the data protection principles set out in the DPA.

Where a public body refuses a request, the applicant can complain to the Information Commissioner, who will review the decision of the public body. A further appeal lies to the Information Tribunal. An appeal can be made to the High Court from the Tribunal only on a point of law.

## 2 Release of information on allowances October 2004

As preparation for implementation, the administration of both Houses released information on individual Members' allowances in October 2004. In the Commons, this followed decisions of the House of Commons Commission, the statutory body responsible for the administration of the House.<sup>4</sup> There is no statutory equivalent to the Commission in the House of Lords, although the House of Lords administration has many similar functions. The allowances information has been updated annually. The process leading to the decision by the Commission 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).

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<sup>1</sup> The certificate is referred to in a Information Commissioner Decision Notice FS50073128: *Heather Brooke vs House of Commons*

<sup>2</sup> *Advice for Members' Offices: Data Protection Act 1998*  
<http://dfaweb.parliament.uk/members/publications/membersguide.pdf> inside front cover

<sup>3</sup> For full analysis, see Library Research Paper 07/18 *The Freedom of Information (Amendment) Bill 2006-7*

<sup>4</sup> [http://www.parliament.uk/about\\_commons/house\\_of\\_commons\\_commission\\_.cfm](http://www.parliament.uk/about_commons/house_of_commons_commission_.cfm)

On 29 January 2004, the House agreed to delegate a number of responsibilities concerning the House of Commons: Members Estimate (the budget from which Members are paid and their allowances funded) and some responsibilities previously conferred on the Speaker relating to allowances and insurance, to the House of Commons Members Estimate Committee.

The House agreed a new Standing Order which set the terms of reference of the Committee, stipulated that its membership should be the same as that of the House of Commons Commission, and required it to report to the House at least once a year. The new Standing Order<sup>5</sup> was agreed without a division.<sup>6</sup>

In a press notice on 21 October 2004, Sir Archy Kirkwood, speaking on behalf of the House of Commons Commission, said that the release of summaries of expenditure on allowances was a “significant step towards openness and accountability and I welcome it. It’s the first time that we have ever published so much information. The tax payer can really see how their money is being spent”.<sup>7</sup>

The information released in 2004 covered the financial years from 2001/2 and was released under 9 categories: Additional Cost Allowance (ACA), London Supplement, Incidental Expenses Provision, Staffing Allowance, Members’ Travel, Members’ Staff Travel, Centrally Purchased Stationery, Centrally Provided Computer Equipment and Other Costs. The Speaker wrote to MPs in December 2002 and June 2003 in connection with the publication of annual totals for each of the different allowances. The first letter of December 2002 reminded MPs that it would meet the House’s obligations under Fol.<sup>8</sup>

### **3 Allowances decisions from Information Commissioner and Information Tribunal**

Since 2005, there have been a number of Fol requests to the House of Commons for a more detailed breakdown of allowances information. The House of Commons authorities decided to appeal against these requests to the Information Commissioner and then the Information Tribunal. The Clerk of the House is the corporate officer under the *Parliamentary Corporate Bodies Act 1992* and so the person named in legal actions.

The Information Tribunal issued a decision on two applications for information on travel allowances on 16 January 2007. One of the appellants was Norman Baker MP, the other was the *Sunday Times*. 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*

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<sup>5</sup> HC Deb 29 January 2004 c406; Standing Order No. 152D

<sup>6</sup> HC Deb 29 January 2004 c418. More details of the debate are given in RP 05/42, section III.A.1

<sup>7</sup> ‘MPs publish their expenses and allowances’ 21 October 2004 Department of Finance and Administration Press Notice

<sup>8</sup> See para 44 of Information Tribunal Decision Notice 26 February 2008 EA/2007/1060, 0061,0062,0063,0122,0123,0131

<http://www.informationtribunal.gov.uk/Documents/decisions/HOCfinaldecisionwebsite260208.pdf>

*Scottish Parliamentary Corporate Body* (SPCB) the Scottish Commissioner went further and ordered the release of the destination points of taxi journeys of an MSP.

The full text of the Information Tribunal decision may be found on the website.<sup>9</sup> The Commons complied with the decision, releasing details of Members' travel allowances from 2001-2 on 16 February 2007.<sup>10</sup> It also complied with another Information Tribunal decision relating to the release of travel expenses of an individual Member.<sup>11</sup>

On 30 November 2007 the *Mail on Sunday* newspaper filed requests for information from the House of Commons under the *Freedom of Information Act 2000* in respect of certain expenditure, including the cost of taxis, by Mr Speaker and his wife from 2004-05 to the date of the request. The newspaper was given its answer on 13 December 2007 and the information was posted on the Commons website.<sup>12</sup> Subsequently, a complaint was made to the Parliamentary Commissioner for Standards, which was investigated and dismissed, the Commissioner having found no evidence to support the complaint.<sup>13</sup>

On 28 January 2008, the Committee on Standards and Privileges published a report on *The Conduct of Mr Derek Conway*, in which it reviewed the use that Mr Conway had made of the Staffing Allowance, following a review by the Standards Commissioner. It concluded that Mr Conway had misused the Staffing Allowance.<sup>14</sup> The report received intensive media and public attention and the Members' Estimate Committee subsequently began a 'root and branch review' of the Members' allowance system, which is due to report in the summer 2008. Further information on the response from the Commons and political parties is given in Library Research Paper 08/31 *Parliamentary pay, allowances and pensions*.

On 7 and 8 February 2008 the Information Tribunal considered three appeals in relation to the Additional Costs Allowance in respect of a number of MPs. It ruled that details of items claimed under the Additional Costs Allowance should be released. It considered the original Decision Notice issued by the Information Commissioner insufficient in the public interest in order to meet the specific requests made. This had required a breakdown by reference to 12 categories of expense set out in the 2005 and 2006 Green Books issued by the Department of Finance and Administration. The Tribunal noted as follows:

82...The appropriate disposal of these appeals, in conformity with DPA Schedule 2 condition 6, involves that full detailed disclosure both of the information on the ACA forms and of the information on the supporting documentation should form the starting point, from which certain limited exceptions must be carved out in order to guard against disproportionate intrusion. We acknowledge that this will result in a significant degree of intrusion into private life, and that not every required redaction will be straightforward. But the ACA system is so deeply flawed, the shortfall in accountability so substantial, and the necessity of full disclosure so convincingly established, that only the most pressing privacy needs should in our view be permitted to prevail.<sup>15</sup>

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<sup>9</sup> [http://www.informationtribunal.gov.uk/Documents/decisions/corpo officer\\_house\\_of\\_commons\\_v\\_infocomm.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/corpo officer_house_of_commons_v_infocomm.pdf)

<sup>10</sup> Details are given on the Commons website at

[http://www.parliament.uk/site\\_information/allowances.cfm](http://www.parliament.uk/site_information/allowances.cfm)

<sup>11</sup> Tribunals Service Information Tribunal, EA2006/0074, 0075, 0076,

<http://www.informationtribunal.gov.uk/Documents/decisions/HOCfinaldecision08071.pdf>

<sup>12</sup> Committee on Standards and Privileges, *Conduct of Mr Speaker*, 14 May 2008, HC 559 2007-8, Appendix, para 2

<sup>13</sup> Ibid

<sup>14</sup> Committee on Standards and Privileges, *Conduct of Mr Derek Conway*, 28 January 2008, HC 280 2007-08

<sup>15</sup> Tribunals Service Information Tribunal, EA/2007/0060, 0061, 0062, 0063, 0122, 0123, 0131,

<http://www.informationtribunal.gov.uk/Documents/decisions/HOCfinaldecisionwebsite260208.pdf>

The Tribunal decision therefore required the full release of individual items in relation to ACA, subject to very limited exceptions in relation to security and third parties.

On 25 March 2008, Nick Harvey, on behalf of the House of Commons Commission, outlined the Members Estimate Committee's response to the Information Tribunal's decision:

The Members Estimate Committee is concerned that the Information Tribunal (in its decision of 26 February .... misdirected itself in law in deciding that home addresses of Members of Parliament should always be published subject only to limited exceptions. The House will therefore appeal. A second ground will be that the Information Tribunal paid insufficient attention to the reasonable expectations of Members about disclosure of personal information in the statutory publication scheme. The MEC remains committed to reviewing the allowance system and ensuring that there is probity and transparency.<sup>16</sup>

On 3 April Mr Harvey gave further details about the information which would be released following both the Tribunal decision and separate Information Commissioner Decision Notices:

**Mr. Carmichael:** To ask the hon. Member for North Devon, representing the House of Commons Commission, pursuant to the answer of 26 March 2008, *Official Report*, column 89W, on Freedom of Information to the hon. Member for Aberdeen North, what further steps the Members Estimate Committee plans to take regarding FOI requests for data held by the House. [199136]

**Nick Harvey:** The House has appealed to the High Court against the Information Tribunal decision that full details of the additional costs allowance for 14 Members should be disclosed, on the grounds that the tribunal had misdirected itself in law, in particular in ordering the disclosure of private addresses.

Further decisions by the Information Commissioner now need to be addressed. The Members Estimate Committee has taken the view that two such decisions, which require that the House should disclose less detailed information about the allowances of seven Members should not be appealed. This information will be released to the requesters shortly.

The same principle will also be applied to requests for information on the claims of 14 Members about which the House has appealed to the High Court. Data on these 14 MPs will only be disclosed now to that lesser level of information (by category of expense but not down to receipt level). The appeal relates to more detailed information about addresses and receipts.

The same level of information (i.e. by category—not down to receipt level) will be released about the expenses of all Members in the autumn, for the years 2004-05 to 2007-08. For the future, information compiled on a similar basis will be released quarterly, starting with the information relating to the first quarter of 2008-09 (April to June). This release of information will also begin in the autumn.

The MEC remains committed to reviewing the allowance system and ensuring that there is probity and transparency.<sup>17</sup>

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<sup>16</sup> HC Deb 25 March 2008 cc89W-90W

<sup>17</sup> HC Deb 3 April 2008 cc1142W-1143W

The information referred to was released on 3 April 2008. There was considerable media interest in the 'John Lewis' list which was published on 13 March 2008 following an FoI request from the Press Association.<sup>18</sup> The list was referred to by Andrew Walker, Director of Resources (formerly Finance), in his oral evidence to the Tribunal as a list of precedents for spending on household items for second homes under the ACA.

There was a hearing in the High Court on 7 May 2008 and the judgment was released on 16 May 2008. The Court found against the House of Commons and in favour of detailed disclosure. The judgment noted:

We have no doubt that the public interest is at stake. We are not here dealing with idle gossip, or public curiosity about what in truth are trivialities. The expenditure of public money through the payment of MPs' salaries and allowances is a matter of direct and reasonable interest to taxpayers. They are obliged to pay their taxes at whatever level and on whatever basis the legislature may decide, in part at least to fund the legislative process. Their interest is reinforced by the absence of a coherent system for the exercise of control over and the lack of a clear understanding of the arrangements which govern the payment of ACA. Although the relevant rules are made by the House itself, questions whether the payments have in fact been made within the rules, and even when made within them, whether the rules are appropriate in contemporary society, have a wide resonance throughout the body politic. In the end they bear on public confidence in the operation of our democratic system at its very pinnacle, the House of Commons itself. The nature of the legitimate public interest engaged by these applications is obvious.<sup>19</sup>

The Members Estimate Committee decided not to make a further appeal on 19 May 2008 and in answer to a parliamentary question it indicated that information down to receipt level would be made available for all Members in the autumn 2008:

**Mr. Doran:** To ask the hon. Member for North Devon, representing the House of Commons Commission, what further steps the Members Estimate Committee plans to take regarding freedom of information requests for data held by the House. [207226]

**Nick Harvey:** The House has decided not to seek leave to appeal to the Court of Appeal against the judgment of the divisional court of 16 May 2008.

It is planned that the publication scheme announced for the autumn will now include information down to receipt level.<sup>20</sup>

The scale of the release was set out in the following parliamentary answer:

**Dr. Julian Lewis:** To ask the hon. Member for North Devon, representing the House of Commons Commission whether the staff who will be given access to documentation submitted by hon. Members to the Parliamentary authorities to undertake work to redact personal information from information to be published in autumn 2008 will be permanent or temporary staff; what security checks will have been carried out on those staff; and if he will make a statement. [215446]

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<sup>18</sup> "Commons releases 'John Lewis list' of Members allowances 13 March 2008 *Press Association*

<sup>19</sup> Case No:CO2888/2008 *Corporate Officer of the House of Commons v Information Commissioner, Heather Brooke, Ben Leapman, Jonathan Michael Ungoed-Thomas*, available at <http://www.bailii.org/ew/cases/EWHC/Admin/2008/1084.html>

<sup>20</sup> HC Deb 20 May 2008 c174W

**Nick Harvey:** Quality assurance and editing will be undertaken by security-cleared permanent staff as will any further revisions after hon. Members have had an opportunity to check their information. However, the House does not itself have the capacity to carry out all the work required. It is therefore planned that the scanning of some 1.3 million documents and first stage redaction to remove details such as addresses, telephone numbers, banking details and account numbers will be undertaken under secure conditions by a contractor familiar with providing services to Government and Parliament whose staff have been security cleared. Arrangements for providing additional staff required by the contractor for this project will be agreed between the contractor and the House authorities. The Parliamentary Security Co-ordinator and the Serjeant at Arms have been consulted, and their approval of the arrangements will be sought before the work goes ahead. Staff of the House will be involved in monitoring the whole process.<sup>21</sup>

The cost of this work was estimated at £950,000.<sup>22</sup> However, at its meeting in June 2008, the Members Estimate Committee noted that “it might not be possible to release all the detailed allowances information on the proposed provisional date of Thursday 23 October”:

The Committee concluded that it might not be possible to release all the detailed allowances information on the proposed provisional date of Thursday 23 October. The Committee deferred a decision on when to release high level figures for 2007-08 until a firm publication date for detailed information was established. The Committee agreed that detailed information should be published on the internet, on the basis of a high-level table, linked to copies of redacted claims and receipts. The Committee agreed that the Stationery Office should be employed to scan documents and carry out initial editing work, subject to House staff doing the final editing. The Committee agreed that media handling of the autumn release should be undertaken along the same lines of previous years' releases but that extra resources should be deployed to take account of media interest in the release.

The Committee further agreed that Members should be sent letters informing them of the format and content of the files which would be released in the autumn publication, and of the provisional timetable for publication.<sup>23</sup>

#### **4 Members' addresses**

In Business Questions on 22 May 2008, the Leader of the House, Harriet Harman, commented as follows in relation to the release of the addresses:

On the question of freedom of information requests in relation to Members' allowances, following the High Court's decision last Friday I can confirm to the House that there will be no further appeal on the applications for information about the allowances claimed by 14 current and former Members. Tomorrow, information in respect of those 14 will be made public in the terms laid down by the High Court. Information in respect of all other current Members will be given out on a single date in the autumn.

On the question of the home addresses of the 14 Members concerned in this case, the information will be made public, subject to individual consideration of security issues. I should like to tell hon. Members that as far as publishing the

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<sup>21</sup> HC Deb 1 July 2008 c741W

<sup>22</sup> HC Deb 30 Jun 2008 c546W

<sup>23</sup> House of Commons Commission, *Formal Minutes*, Monday 23 June 2008, [http://www.parliament.uk/about\\_commons/house\\_of\\_commons\\_commission/\\_hccfm230608.cfm](http://www.parliament.uk/about_commons/house_of_commons_commission/_hccfm230608.cfm)



addresses of all Members is concerned, as Leader of the House, I am determined that hon. Members should be able to speak in this House on controversial issues without looking over their shoulders because their home addresses are in the public domain. We are considering further how we can be sure that the money for Members' London homes is properly spent, but we must also ensure that the protection needed for Members to speak out in the House remains.<sup>24</sup>

On 23 May 2008 the Commons released copies of original Additional Cost Allowance (ACA) claims forms and receipts for 14 Members and former Members, including Gordon Brown, Tony Blair and David Cameron. Information provided for Members via the intranet noted that this level of information would be made available for all MPs in the autumn, including expenditure on Communications Allowance, Incidental Expenses Provision, stationery and postage, as well as ACA and lists of IT equipment held. Monthly staffing payments would also be made available as well as full details of Member's travel, but not dates of travel. Full details would be announced at a later date but copies of what will be published will be provided to Members well in advance of publication date.

Harriet Harman responded in Business Questions on 19 June 2008 to concerns raised by Dr Julian Lewis:

**Ms Harman:** The hon. Gentleman's early-day motion has shown two things: that there is great concern across the House and that there is something by way of a consensus. The consensus is that there should be transparency and that we should ensure that the public know that public money is being spent properly, and that there are strict and clear rules. That will be the subject of the Members Estimate Committee's proposals about Members' allowances and reimbursement of expenditure. Although hon. Members want to ensure that the public have confidence in how money is spent, it is absolutely clear that we must have the freedom to debate in this Chamber without having to look over our shoulder. It must not be the case that, because our addresses have been published, we cannot speak freely about something controversial.

In response to the hon. Gentleman's point and his early-day motion, I not only propose that the House should have the opportunity to debate the matter on 3 July, but I shall place a resolution before the House so that hon. Members will have the opportunity to vote for the views expressed in the early-day motion.<sup>25</sup>

On 30 June, the Information Commissioner issued a statement on Members' addresses:

The Information Commissioner has taken full account of Information Tribunal's decision promulgated on 26 February 2008, and the subsequent dismissal of the appeal against that decision by the High Court on 16 May 2008. That case applies directly only to the 14 Members named in the original FoI request. Moreover, both the Tribunal and the High Court accepted that an MP's address could be withheld where there is a specific security reason for keeping the address of his or her main or second home confidential.

Neither that case, nor the Freedom of Information Act, creates any obligation on the House Authorities to disclose the addresses of other Members. Indeed, as a data controller, the House of Commons would risk non-compliance with the Data Protection Act were it do so - in particular if there had been no prior

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<sup>24</sup> HC Deb 22 May 2008 c399

<sup>25</sup> HC Deb 19 Jun 2008 c1091

consultation with MPs to enable them to express their views and any concerns about such a disclosure.

The Commissioner went on to advise against the general release of Members' addresses.

The Information Commissioner understands that it is the intention of the House Authorities to disclose information about historic expense claims for all MPs at the level of detail specified by the Information Tribunal. However, within this context, he strongly urges caution in relation to disclosure of MPs' home addresses. He suggests that it would be prudent for the House Authorities first to give each MP the opportunity to indicate whether they have a current or prospective security-related concern about disclosure of any address relating to them which is held by the House of Commons. The Commissioner considers that the House Authorities would then be entitled to withhold each address where such a concern is registered.

Given the status of Members of Parliament, their responsibilities and the risks they consequently face, the Commissioner does not consider it would be necessary for the House Authorities to enquire into, or consider, the nature and extent of such a concern. In such cases, which may very well not be exceptional in practice, the Commissioner suggests that the House Authorities should redact each such address before disclosure of any document in which it appears.<sup>26</sup>

One of the motions tabled by the Leader of the House for the debates on Members' pay and allowances on 3 July 2008 set out the view of the Commons in relation to the release of addresses:

That this House asserts that the freedom of Members to speak on any matter without the fear or threat of interference or molestation is essential to the effective conduct of parliamentary proceedings; notes that this freedom has long been recognised to be an integral element of the protection afforded to Members enabling them to participate effectively in parliamentary business, and thus that Members must be able to speak on any matter in parliamentary proceedings without threat of interference or molestation; considers that this would be threatened by publication of Members' home addresses, patterns of travel or other information linked to addresses held by the House authorities revealing details that could threaten their security, and so would prejudice 10 the effective conduct of public affairs; and urges Mr Speaker to take account of these considerations in the discharge of his responsibilities.— *[Ms Harman.]*<sup>27</sup>

This motion was passed without a vote. During the debate, Ms Harman set out the reasons for the motion:

To do our job properly, we have to be able to speak freely in this House—without fear or favour. We must be able to say what we believe to be true about controversial issues, without feeling that to do so would put ourselves or our families at risk. If our addresses are published on the House of Commons website, it will inevitably result in some Members being inhibited about what they say in the House. If Members want to publish their own addresses, that is a matter for them, but I advise against it, for the same reason that I believe that

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<sup>26</sup> "Disclosure of MPs home addresses" 30 June 2008 *Information Commissioner's Office*  
[http://www.ico.gov.uk/upload/documents/pressreleases/2008/ico\\_statements\\_disclosure\\_of\\_mps\\_home\\_addresses\\_300608.pdf](http://www.ico.gov.uk/upload/documents/pressreleases/2008/ico_statements_disclosure_of_mps_home_addresses_300608.pdf)

<sup>27</sup> HC Deb 3 July 2008 c1124

it should not be required for the House authorities to put our addresses in the public domain.

Having discussed the matter with the Lord Chancellor and the Law Officers, I can tell the House that the Government intend to introduce a statutory instrument under section 7(3) of the Freedom of Information Act, which will exclude Members' addresses or any material that could lead to the identification of Members' address. We will bring it before Members on the Floor of the House before the House rises for the summer recess.

**Stephen Pound (Ealing, North) (Lab):** For those of us who are slow learners, can my right hon. and learned Friend clarify a point for me? Some of us do not claim for a second home and our only home address is always printed at the start of every election campaign, despite the risk of ne'er-do-wells. Will our home addresses no longer be published or does this apply only to those who claim for a second home?

**Ms Harman:** I am referring to a statutory instrument that would introduce an exclusion from the freedom of information legislation for the information that the House authorities hold on Members. The House authorities hold information about addresses beyond claims of additional costs allowances, because they hold information on destination of travel for Members. All that information about Members' addresses would need to be considered for exclusion.<sup>28</sup>

Section 7(3) of the *Freedom of Information Act 2000* allows the Secretary of State to make an order amending the list of public bodies subject to the legislation by limiting the application of FoI to information of a specified description. At Business Questions on 10 July 2008, Harriet Harman responded to a question from Julian Lewis by announcing that the debate on the SI was imminent:

**Ms Harman:**...We will bring forward a statutory instrument under the Freedom of Information Act 2000 that will provide that the House authorities are not required to disclose Members' addresses or any information that could lead to the identification of their addresses. That statutory instrument will be restricted to the House authorities. The hon. Gentleman also raised an important point about the publication of addresses in respect of nomination, standing for election and electoral registration, which is a separate issue, but one that we need to look at, too.<sup>29</sup>

The draft *Freedom of Information (Parliament and National Assembly for Wales) Order 2008* was debated in the Commons on 17 July and passed without a division.<sup>30</sup> Harriet Harman noted that it had four components:

First, it excludes from disclosure under the Act the residential addresses of any Member, by which I mean any address registered to an hon. Member, not just addresses in respect of which there has been an additional costs allowance claim. Secondly, it excludes from disclosure under the Act information about the regular or forthcoming travel arrangements of any Member in order to prevent the profiling of travel undertaken by any hon. Member.

**Sir Robert Smith (West Aberdeenshire and Kincardine) (LD):** The explanatory notes say:

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<sup>28</sup> HC Deb 3 July 2008 c1103

<sup>29</sup> HC Deb 10 July 2008 c1572

<sup>30</sup> HC Deb 17 July 2008 c455

“except as to the total amount of expenditure incurred on travel during any month”.

Will that be broken down by mode of travel—mileage, train or aircraft—as it is at the moment?

**Ms Harman:** As the hon. Gentleman suggests, the information will be given monthly. It will not be excluded from the scope of the Act, and it will be given in the categories that he describes. The House will still be obliged to publish individual MPs’ travel expenses on a monthly basis, but it will not be broken down any further than that, as further detail might risk the identification of travel patterns week by week, thereby prejudicing security.

Thirdly, the order excludes from disclosure under the Act information that would enable the identification of any person who has delivered goods or provided services to a Member at any residence belonging to the Member; again, that is because it could lead to the identification of the address. Fourthly, it excludes from disclosure under the Act information relating to expenditure by a Member on security arrangements. We do not want a list that sets out who spends on security such as burglar alarms and thus, by a process of elimination, which Members do not have any security.

**Mr. Michael Ancram (Devizes) (Con):** Presumably this applies only where a Member of Parliament has not in one way or another made his or her address public. During elections, we tend to put our addresses on the ballot papers. I assume that when that happens, even though we are not Members of Parliament at the time, the information is regarded as being in the public domain and these provisions would not apply to it.

**Ms Harman:** The statutory instrument restricts the scope of the Act, which places an obligation on the House authorities to disclose information. It does not apply to anything that an hon. Member might want to do in the future or might have done in the past. It simply provides the rules that the House authorities will have to comply with in respect of what they do. They will not have to say to themselves, “Has this particular Member put his or her address in the public domain? Yes, they have, so I’ll put his or her address up on the website.” They will know that it is a category of information that comes within the scope of the restrictions and that they therefore do not disclose it.<sup>31</sup>

The draft Order was passed without amendment. The text is available on the Commons Leader website, together with the *Explanatory Notes*.<sup>32</sup> It appears to be the first time that the powers under section 7(3) of the 2000 have been used. The Order included the National Assembly for Wales, but there was no discussion of the implications for the Assembly in the Commons debates.

## **5 The draft *Freedom of Information (Parliament) Order 2009***

As a result of the High Court judgement in 2008 noted above, the full details of the allowances of the 14 MPs who were the subject of court action have already been made available. The High Court judgement was concerned only with a specific Fol request for the details of these MPs and so did not require the Commons to release similar details for all Members. However, if the same type of information had been requested for other Members, release of the same level of detail would have been necessary. As the House of Commons, not Members, is the holder of the information, it is for the House to decide in what form the information is released. The Members Estimate Committee decided that the information relating to all Members would be released at the same time, given that section 22 of the Fol

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<sup>31</sup> HC Deb 17 July 2008 c 448

<sup>32</sup> <http://www.commonleader.gov.uk/files/pdf/FOI%20SI.pdf>

Act allows a public authority to exempt from release information due to be published in the future.

The House of Commons administration had been preparing for the release of this detailed information, but the date of publication was postponed, due to amount of information being collated, as indicated in the response from the Leader of the House, Harriet Harman, to an oral question in November 2008:

**Jo Swinson (East Dunbartonshire) (LD):** May we have a statement from the Leader of the House on progress towards publishing MPs' expenses? It was supposed to happen this autumn but, so far, there has been no sign of it. Will she confirm when MPs' expenses will be published, and explain the delay?

**Ms Harman:** The House authorities are in the process of formulating the data for the last five years for Members' expenses, to put them into the public domain in a proper manner. As the hon. Lady can imagine, it is a major undertaking, and the authorities are working on it, with additional staff, as fast as they can. At the same time, they are paying out current expenses, which we do not want to be delayed. That work is very much under way.<sup>33</sup>

In response to an oral question on 12 December 2008 on the publication of expenses on MPs' allowances, Harriet Harman said:

However, the amount spent on gathering information for the public must be proportionate, and there has to be a sense of balance. The public have the right to know and we must ensure that they have the information they need, but that has to be done at a reasonable and proportionate cost.<sup>34</sup>

At Business Questions on 15 January 2009 Harriet Harman announced that motions would be brought forward on 22 January on Members' allowances. These would include a draft Order to exempt release of information on Members' allowances from the *Freedom of Information Act 2005*.<sup>35</sup>

The effect of the draft Order was to exempt the release of information on allowances claimed by MPs and peers from the FoI Act. It would have been subject to affirmative resolution of both Houses. This Order would not have extended to Members of the National Assembly for Wales, unlike the 2008 Order summarised above. The exemption would have been achieved by amending Schedule 1 of the Act to remove from the scope of FoI information about allowances. The *Explanatory Note* to the draft Order stated:

This Order further limits and amends the Schedule 1 entries of the House of Commons and the House of Lords. In particular, the effect of this Order is that information held by the House of Commons or the House of Lords relating to expenditure in respect of which-

- a claim has been made to either House of Parliament by a member of either House, or
- a payment has been made to or on behalf of a member of either House of Parliament by either Houses of Parliament UK

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<sup>33</sup> HC Deb 13 November 2008 c959

<sup>34</sup> HC Deb 12 December 2008 c684

<sup>35</sup> HC Deb 15 January 2009 c351

is not held by either House for the purposes of section 3 of the Act.<sup>36</sup>

However, the total amount spent on allowances (except expenditure on security arrangements) would have remained within the scope of FoI. The draft Order would also have amended the effect of the 2008 Order, set out above. The result would be that the total cost for allowances for travel need only be disclosed on an annual, rather than monthly basis. The draft Order is expected to apply from the day after it is passed.

The draft Order was due to be debated in both Houses on Thursday 22 January. The Lords Merits of Statutory Instrument Committee released a press notice to draw attention to concerns about the speed with which the draft Order was being brought forward on the 21 January.<sup>37</sup> An *Explanatory Memorandum* to the Order was available in the Vote Office and on the Leader's website.<sup>38</sup> Library Standard Note 4813 *Members Allowances: Decisions of 16 July 2008; and revised Green Book* sets out the details of the changes in the oversight of Members' allowances, also to be debated on 22 January.

If the Order had been passed, then the types of information disclosed by the Commons would have been dependent on the terms of a parliamentary resolution passed in the relevant House. The Leader of the House initially tabled a motion for debate on 22 January which sets out the categories under which allowances information would be disclosed, as an amendment to the Publication Scheme of the House under the FoI Act. This motion was debated on 22 January and is reproduced as an Appendix to this note. The motion applies the new categories from the start of the current Parliament, that is from 2005, so some realignment of the existing information produced proactively by the House can be expected for comparative purposes.

Publication schemes are required under the FoI Act, so that public authorities are required to list the types of information that they will release proactively. The content of publication schemes are approved by the Information Commissioner. The administration of the Lords published the most recent figures for allowances expenses in December 2008.<sup>39</sup> There are some major differences in the system of allowances in the Lords, given that peers receive no pay and do not have constituency responsibilities.

The total paid to each member of the Lords is recorded under the following headings:

- Overnight subsistence
- Day subsistence
- Office costs
- Travelling expenses
- Free postage costs
- Ministers' secretarial expenses
- IT equipment

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<sup>36</sup> [http://www.commonleader.gov.uk/files/pdf/doc\\_2009\\_01\\_15\\_17\\_21\\_45\\_517.pdf](http://www.commonleader.gov.uk/files/pdf/doc_2009_01_15_17_21_45_517.pdf)

<sup>37</sup> [http://www.parliament.uk/parliamentary\\_committees/lords\\_press\\_notices/pn210109merits.cfm](http://www.parliament.uk/parliamentary_committees/lords_press_notices/pn210109merits.cfm)

<sup>38</sup> *Explanatory Memorandum to the Freedom of Information (Parliament) Order 2009*

<http://www.commonleader.gov.uk/textonly/page2698.asp>

<sup>39</sup> [http://www.parliament.uk/about\\_lords/holallowances/hol\\_explanatory08.cfm](http://www.parliament.uk/about_lords/holallowances/hol_explanatory08.cfm)

## PDA equipment

The information published does not include a total amount claimed but it does give details of the location of the member's main residence and the number of days attended in the financial year.

There was considerable critical comment about the draft Order. Maurice Frankel, the director of the Campaign for Freedom of Information said:

...: "the individual expenses claims of senior officials across the public sector are publicly available under the FOI Act. There is no justification for allowing Members of Parliament to meet a lower level of scrutiny than senior officials across the public sector. Chief Constables, local authority Chief Executives, senior BBC executives and others have to release their individual expenses claims, and that should be the case for MPs too."

The Campaign pointed out that the FOI Act was amended in July 2008, to exclude MPs' addresses from the scope of FOI requests and to prevent the disclosure of any regular spending on travel or future travel arrangements. These changes were justified as necessary to protect MPs' security. The new proposals cannot be justified on security grounds.<sup>40</sup>

The *Times* summarised the proposals as follows:

The Commons had been on the brink of publishing receipts for every claim made by an MP since 2005, on the orders of the High Court last year after losing a two-year battle on freedom of information. The Commons authorities spent hundreds of thousands of pounds scanning about one million receipts. If the new law proposed by Jack Straw, the Justice Secretary, passes, this work will be abandoned and pending freedom of information claims will be nullified.

Instead, expenses data will be published under 26 more general headings, rather than the current 13. These will now be broken down into "fixtures, fittings and furnishings" and "other household costs", which would not allow detailed scrutiny. The Government has been accused of burying bad news - the announcement came on the day that ministers announced Heathrow's third runway and compensation for Equitable Life policyholders.

Ms Harman, the Leader of the Commons, failed to mention in her announcement to the House that the scanning of receipts would be abandoned. Instead she presented it as a victory for freedom of information. "The public will have more information than they ever have before," she said.<sup>41</sup>

The *Press Association* reported on 16 January:

The Government's bid to suppress potentially embarrassing details of MPs' expenses has infuriated the Commons authorities, a senior source indicated today.

Senior figures are understood to be "deeply frustrated" that ministers have decided to try to prevent full disclosure at this late stage.

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<sup>40</sup> "Access to MPs' expenses move cancelled" 15 January 2009 *CFOI*" at <http://www.cfoi.org.uk/foi150109pr.html>  
See also its briefing for the 22 January debate, prepared before the Government announced the withdrawal of the Order, at [http://www.cfoi.org.uk/pdf/foi\(parliament\)order.pdf](http://www.cfoi.org.uk/pdf/foi(parliament)order.pdf)

<sup>41</sup> "MPs defy the judges to keep 'John Lewis' expenses list secret 16 January 2009 *Times*

They believe they have been left "high and dry" after spending seven months and nearly £1 million scanning and redacting around a million receipts - which are now unlikely to see the light of day.<sup>42</sup>

The Press Association report suggested that the official Opposition were likely to abstain in the votes on 22 January.

Sir Christopher Kelly, chairman of the Committee on Standards in Public Life, asked for an urgent meeting with Mrs Harman, and was quoted as follows:

He said: "MPs above all should be subject to the Freedom of Information law since they are the ones who made it.

"I do not think that anyone has really made the case for this change.

"It is, to say the least, very disappointing that they have chosen not to apply the same approach to themselves that they apply to others."

He added: "Of course it will be irritating for them if someone wants to query whether they needed to spend that much money on a sofa for their flat in London.

"But if they are not prepared to defend that they should not have the allowances."

He said that voters will be dismayed by the proposals. "The initial reaction demonstrates that it is unlikely to increase confidence in Parliament."<sup>43</sup>

The *Guardian* reported that an internet campaign had begun to monitor how MPs vote on 22<sup>nd</sup> January:

The creators of the non-partisan websites [TheyWorkForYou.com](http://TheyWorkForYou.com) and [WriteToThem.com](http://WriteToThem.com) have started a [Facebook campaign](#) against the proposals to exempt MPs from the [Freedom of Information Act](#).

Supporters are urged to email their MP demanding they vote against the plans on Thursday. This [Guardian report](#) is being used to illustrate why people should take note. So far more than 1,100 have joined the campaign group.<sup>44</sup>

The revised Green Book, which was also to be debated on 22 January, notes the questions which a Member should ask themselves when applying the fundamental principles which should guide Members when making claims against parliamentary allowances. The questions include the following:

- How comfortable do I feel with the knowledge that my claim will be available to the public under Freedom of Information?<sup>45</sup>

On 21 January the Prime Minister was asked at Question Time about the implications of the vote:

**Mr. Carswell:** Why is the Prime Minister whipping his party to vote to keep MPs' expenses secret? When it comes to freedom of information, why should there be one law for the people and another for the politicians?

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<sup>42</sup> "Fury" at bid to suppress details of MPs allowances" 16 January 2009 *Press Association*

<sup>43</sup> "MPs expenses: Standards watchdog condemns latest secrecy move" 19 January 2009 *Daily Telegraph*

<sup>44</sup> MPs face internet backlash as they fight to keep expenses secret" 20 January 2009 *Guardian*

<sup>45</sup> *Revised Green Book and audit of Members' allowances* Members Estimate Committee 2008-09 HC 142 <http://www.parliament.uk/documents/upload/Revisedgreenbook0809.pdf> p6



**The Prime Minister:** I should tell the hon. Gentleman the real facts: our proposals are for more transparency than the Conservative party's proposals were and for more transparency than is the case in most Parliaments in the world. That is why we will publish a revised Green Book with clear rules, and there will be enhanced audit by the National Audit Office. We will put the proposals to the House on a free vote. We thought we had agreement on the implications of the Freedom of Information Act as part of this wider package. Recently, the support that we believed we had from the main Opposition party was withdrawn. I believe that all-party support is important on this particular matter, on which we will continue to consult.<sup>46</sup>

The BBC subsequently reported that the Government had decided to withdraw the Order.<sup>47</sup>

## 6 The publication of the redacted allowances receipts in June 2009

Following the withdrawal of the Order on 21 January 2009, Harriet Harman announced details of the business to be taken on the following day:

**The Leader of the House of Commons (Ms Harriet Harman):** Further to that point of order, Mr. Deputy Speaker. Perhaps I can assist the House by saying that we will seek to bring a number of the motions tabled last Thursday, in my name as Leader of the House, to the House tomorrow for debated decision—and that there is one that we will not. Let me state which ones we will take forward. We will take forward the motion that endorses the new Green Book, which we argue has tougher rules in it. Secondly, we will bring forward the motion that provides for audit and assurance, so that we can all be sure that the rules in the new Green Book are properly applied.

Thirdly, we will come forward with a proposal that every year, irrespective of whether there has been a Freedom of Information Act request, there should be publication in 26 categories of all the money that all hon. Members have spent in that year, and on what. Fourthly, there will be a motion to establish a Committee of the House on members' allowances, instead of the Advisory Panel on Members' Allowances. That, incidentally, will not have a Government majority on it. We will go ahead and bring those motions to the House tomorrow for debate and decision. But we will not be proceeding with the statutory instrument under the Freedom of Information Act 2000.<sup>48</sup>

In response to further points of order, Ms Harman indicated that she would be talking to the House authorities on the status of the receipts which were being prepared for release on the internet.<sup>49</sup>

The motion relating to an expanded publication scheme was debated and approved on 22 January without a vote.<sup>50</sup> During the debate on 22 January, Harriet Harman said:

**Ms Harman:** If, as I hope, we pass this motion on the publication scheme, every year the public will be able to see this information on every Member without there being any freedom of information request. As a matter of routine, information on what each Member has actually spent in any year will be brought forward and published, and broken down into 26 detailed categories.

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<sup>46</sup> HC Deb 21 January 2009 c744

<sup>47</sup> "Brown backs down in expenses row" 21 January 2009 *BBC News*  
[http://news.bbc.co.uk/1/hi/uk\\_politics/7842402.stm](http://news.bbc.co.uk/1/hi/uk_politics/7842402.stm)

<sup>48</sup> HC Deb 21 January 2009 c813

<sup>49</sup> HC Deb 21 January 2009 c814

<sup>50</sup> HC Deb 22 January 2009 c970

There is also a question to do with Freedom of Information Act requests—both those that have already been made and have not yet been complied with and also those that might be made in the future.

The House authorities, the data holders, will decide, according to the law as it stands, what their obligations are in responding to those requests for information.

**Mr. Winnick:** According to the law.

**Ms Harman:** Precisely so. The hon. Member for North Devon (Nick Harvey) is a long-standing member of the Members Estimate Committee, to which I pay tribute. He rightly points out that the MEC has said that if it is fair for information to be given out in respect of one Member because somebody has requested it, the same information should be given out in respect of every Member. It is my understanding that nobody need worry that any Member will be left out, because the 180 Freedom of Information Act requests in the pipeline cover every Member of the House. We will decide the publication scheme and the House authorities will implement it. It is important that the public are able to see the information according to these categories.

The other aspect is the request for receipts down to individual receipt level. I understand that 1.2 million such receipts have been the subject of Freedom of Information Act requests. The House authorities have been scanning the receipts since last summer the receipts have been in the process of being scanned so that they can be disclosed. The scanning—a massive task—has not yet been completed, but it will be soon. Of course, the receipts have to be redacted before they are published. Before anybody thinks that there is any sort of cover up in relation to the redaction—redaction means crossing out things with a black felt tip pen or with the electronic equivalent—may I point out that the receipts contain information that it would not be right to put into the public domain? For example, an hon. Member might buy a ream of paper from a stationer's and at the same time purchase a Valentine's card. Of course they would pay for that themselves, but the receipt showing "purchased: one lurid Valentine's card" should not be put into the public domain. The claim for a ream of paper on the allowances, however, should be put into the public domain. Information about things that Members have paid for themselves must be crossed out on these receipts.<sup>51</sup>

She gave more details about the process of scanning receipts as follows:

That is why the Members Estimate Committee has agreed to set up, and the House authorities have set up, provision to ensure that once the 1.2 million receipts have been scanned, each Member will be notified and will be given an electronic version of their receipts going back to April 2004—that is a lot of receipts. Hon. Members will have to check this with the House authorities, but I understand that if a request for a hard copy is made, Members will be able to see one—the Clerk of the House nods in assent. That will enable them to go through things and say what information should be crossed out and what should be left in. When the scanning exercise has been finished and this information has been given to Members, they will be given a month to go through all their receipts dating back to 2004 to check each one before it goes into the public domain. People may think that a month is a long time and they may think that feet are being dragged, but that is not the case, because a lot of receipts are involved and Members have their work to get on with in the meantime. They have the business of this House and the business in their constituencies to attend to, so they need time to check the receipts, and a month has been settled on as the right period.

**Sir Stuart Bell** (Middlesbrough) (Lab) *rose*—

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<sup>51</sup> HC Deb 22 January 2009 c923

**Ms Harman:** I shall give way to my hon. Friend, who is also a member of the House of Commons Commission and Chair of the Finance and Services Committee.

**Sir Stuart Bell:** The Leader of the House says that 1.2 million bits of paper will be put into the machinery and will be published under the Freedom of Information Act. Will she confirm that the cost to the taxpayer of dealing with those 1.2 million documents is £1.2 million?

**Ms Harman:** I think it is a bit more than that—I believe it is more like £2 million-odd. There is no doubt that it is an expensive exercise.<sup>52</sup>

She went on to say:

**Ms Harman:** I shall make the position absolutely clear for the hon. Gentleman. Nothing in the resolutions alters the legal obligations on the House authorities in respect of freedom of information requests under the old regime. Nothing in the resolutions affects that. The hon. Member for New Forest, East (Dr. Lewis) said that the court made its decision about the balance of public interest requiring full disclosure down to receipt level because of the lack of clear rules and the absence of audit, and asked whether there would be a requirement in future to produce receipts when the matter has been sorted out. What I said is that I think that, in its own right and irrespective of anything that the court might say or any FOI request that might be made, the regime that I am proposing to the House today—which has been the subject of discussion by the APMA and the Members Estimate Committee—is a good regime. But there remains the question of whether this regime will satisfy the obligations under the Freedom of Information Act. I contend that there is a good legal argument that it might do so, but we are not bound to do just the minimum that the law requires: we might think that, having revealed the receipts for past expenditure, it might not be appropriate to stop producing receipts even though the legal obligation has been superseded by the new motions that I have tabled.<sup>53</sup>

The Shadow Leader of the House, Alan Duncan, commented on possible future initiatives:

I shall conclude by responding to the questions that various Liberal Democrat Members have asked. As I said, the question remains about the level down to which information will have to be revealed. I do not want to pre-empt today either the judgment from the Information Commissioner or the decisions of the Committee on which I shall sit in future about how what we are putting in place today is likely to be implemented to everyone's satisfaction. The intervention from my hon. Friend the Member for New Forest, East made it clear that the High Court made its decision because no satisfactory regime was in place. That decision will be different if the proposals before us are supported at the end of the debate, and the Information Commissioner might say that going down to the receipt level is disproportionate and unnecessary. He may conclude that the new categories meet the highest imaginable standards compared with any other public body and that they will therefore suffice.<sup>54</sup>

Press comment on the debate suggested that in future full receipts on every Member might not be made available.<sup>55</sup> It now appears that transaction level material for financial years 2008-09 and 2009-10 will be released later in 2009.

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<sup>52</sup> HC Deb 22 January 2009 c926

<sup>53</sup> HC Deb 22 January 2009 c926

<sup>54</sup> HC Deb 22 January 2009 c933

<sup>55</sup> MPs expenses: receipts could still be kept secret" 23 January 2009 *Daily Telegraph*

From the beginning of April 2009 Members were given an opportunity to check the material being made ready for publication, once the material had been scanned electronically. The material was edited to remove information which could cause serious security issues and breach the privacy of the MP, their staff and other third parties. The Publication of Allowances Claims guidance notes issued to MPs said that the information published would be limited to a member's name, the allowance type, the date and value of claim, the goods or services published and the identity of suppliers providing goods or services. The *Freedom of Information (Parliament and National Assembly for Wales) Order 2008* has exempted the following material:

- (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].<sup>56</sup>

During May and June 2009 the *Daily Telegraph* carried an extensive series of articles on the details of ACA claims by Members in the period 2004-2008. These had been obtained through a leak of the material being prepared for publication by the Commons authorities. The source of the leak has not been established. On 11 May 2009 Speaker Martin made a statement:

To return to the legal aspect, the Clerk of the House immediately sought advice. He was advised that there was no real basis for seeking an injunction but that there was some basis for considering that a criminal offence or offences may have been committed. As right hon. and hon. Members will know from a communication that they received on Friday afternoon, he accordingly referred the matter to the Commissioner of the Metropolitan police. I can understand hon. Members' concerns about the revealing of details of bank accounts, style of signature and verbal passwords and their concern that an individual who may have sold the data is also capable of selling this information further. That is why the police have been informed. I am also writing to the publisher of the newspaper, drawing this fact to their attention and reminding them of the serious security implications if personal data that might expose Members and others to risks to their safety were to be published. The letter will be copied to all national newspapers.<sup>57</sup>

The Speaker also indicated that the publication of the details of Members' allowances would be brought forward from the original target date of July 2009.

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<sup>56</sup> In Decision Notice, FS50173086 17 February 2009 the Information Commissioner noted that the House was no longer a public authority for these purposes  
[http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs\\_50173086.pdf](http://www.ico.gov.uk/upload/documents/decisionnotices/2009/fs_50173086.pdf)

<sup>57</sup> HC Deb 11 May 2009 c547

The details were made available on the website from 6am on 18 June 2009 and can be accessed online at <http://news.parliament.uk/2009/06/mps-allowances-published-online/> Details are searchable by individual Member and contain details of claims from the financial period 2004/5 to 2007/08. Initial press coverage was dominated by the extensive redaction of the receipts.<sup>58</sup> A number of Members complained that they had wished to publish more information:

A spokeswoman for the House of Commons Commission confirmed that once all the guidelines for redactions were agreed between MPs and the fees office, they could not allow any deviations.

The spokeswoman said: "You could not have one MP being more open than another, they had all to be the same. If an MP wanted to disclose more information they could do it on their own website but they were warned they had to take responsibility under the data protection act for their own disclosures."<sup>59</sup>

## 7 The Scottish Parliament and FoI requests on allowances

The Scottish Information Commissioner also examined the question of members' allowances, 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**

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<sup>58</sup> "How the censors filleted the meat out of Commons expenses" 18 June 2009 *Times*

<sup>59</sup> "Expenses row: we wanted to reveal much more, say MPs" 19 June 2009 *Guardian*

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.

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.<sup>60</sup>

The Scottish Parliament now makes available through internet access full details of Members' allowances. Members of the public may view MSPs' claims and accompanying receipts in respect of allowances claimed while carrying out parliamentary duties. The Information Tribunal decision of 26th February 2008 also referred to the Sheridan case in 2006:

67. In Decision 086/2006 (Sheridan) the Scottish Commissioner considered requests for details of the claims made by MSPs who used the Edinburgh Accommodation Allowance to purchase private properties. The Scottish Parliamentary Corporate Body released the names of the MSPs in question, but refused to provide the dates on which the properties were bought, the amounts borrowed at the time of purchase, and whether any of the purchases were made jointly with another MSP. The Commissioner upheld the refusal. He considered that releasing this additional data, the purpose of which would be to allow calculation and attribution of profits from the rise in Edinburgh property prices, rather than to find out the amounts received by MSPs from public funds (which had been disclosed), would intrude excessively into MSPs' private lives and would not amount to fair processing.<sup>61</sup>

## **8 The Freedom of Information (Amendment) Bill 2006-07**

The *Freedom of Information (Amendment) Bill 2006-07*, a Private Member's Bill, was introduced by David Maclean, a backbench member of the House of Commons Commission. It received an unopposed second reading on 19 January 2007 and passed its Public Bill Committee stage on 7 February 2007. Its report stage was taken on Friday 20 April 2007. The Bill had two purposes; firstly it sought to remove both Houses of Parliament from the list of public bodies included within the scope of Schedule 1 of the *Freedom of Information Act 2000*; secondly, it made correspondence from Members of Parliament exempt from the FOI legislation, although the drafting of the Bill still allowed a public authority to release such correspondence if it considered that the public interest in disclosure was greater than the

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<sup>60</sup> The full transcript of the decision is available at

<http://www.itspublicknowledge.info/appealsdecisions/decisions/Documents/Decision033-2005.pdf>

<sup>61</sup> para 67 of Tribunals Service Information Tribunal, EA/2007/0060, 0061, 0062, 0063, 0122, 0123, 0131, <http://www.informationtribunal.gov.uk/Documents/decisions/HOCfinaldecisionwebsite260208.pdf> The full reference to the Sheridan decision on the Scottish Information Commissioner website is [http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2006/200502318\\_200503296.asp](http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2006/200502318_200503296.asp) <http://www.informationtribunal.gov.uk/Documents/decisions/HOCfinaldecisionwebsite260208.pdf> The *Sheridan* decision is at

[http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2006/200502318\\_200503296.asp](http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2006/200502318_200503296.asp)

public interest in withholding the information. Further information is available in Research Paper 07/18 *Freedom of Information (Amendment) Bill 2006-7*.

Although the Bill passed the Commons, no peer in the Lords came forward to sponsor it and so it lapsed at the end of the 2006-7 session. The Information Commissioner issued new guidance in August on the treatment of correspondence from MPs in relation to FoI requests.<sup>62</sup> There was considerable public and media comment on the Bill to the effect that the legislation was inappropriate. Maurice Frankel of the Campaign for Freedom of Information stated that “For parliament to amend its own status without full scrutiny, and for government to collude in it, would be a disgrace.”<sup>63</sup> On the other hand, a number of MPs argued that the UK Parliament was one of only a handful of Parliaments subject to FoI and that media interest in allowances was intrusive. In addition that there was a strong public interest in ensuring that Members’ correspondence was confidential.

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<sup>62</sup> [http://www.ico.gov.uk/upload/documents/library/freedom\\_of\\_information/detailed\\_specialist\\_guides/guidance\\_on\\_dealing\\_with\\_requests\\_for\\_mps\\_6\\_august\\_version1.pdf](http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/guidance_on_dealing_with_requests_for_mps_6_august_version1.pdf)

<sup>63</sup> “Less is not more” 1 February 2007 *Guardian comment*  
[http://commentisfree.guardian.co.uk/maurice\\_frankel/2007/02/less\\_is\\_not\\_more.html](http://commentisfree.guardian.co.uk/maurice_frankel/2007/02/less_is_not_more.html)

## **Appendix: The motion on the publication scheme for Members' allowances and the proposed changes to the FoI Act**

### **PAYMENTS TO HON MEMBERS (PUBLICATION SCHEME)**

Ms Harriet Harman

(1) That, subject to the provisions of paragraph (2) below, for the purpose of the publication scheme adopted and maintained by the House under section 19 of the Freedom of Information Act 2000, such information about payments made to, or on behalf of, Hon Members which is already published routinely in accordance with the scheme shall continue to be published;

(2) In addition, information relating to Members' expenditure from the beginning of the current Parliament shall be published in relation to each financial year, to the extent that such information is separately identifiable, under the following categories:

#### **(a) Administrative and Office Expenditure:**

- (i) accommodation costs for offices, surgeries, etc;
- (ii) office equipment and supplies;
- (iii) telephones and other telecommunications;
- (iv) professional fees and charges;
- (v) agency and other staff costs;
- (vi) travel costs;
- (vii) utilities;

#### **(b) Personal Additional Accommodation Expenditure:**

- (i) mortgage interest;
- (ii) rent;
- (iii) hotel costs;
- (iv) council tax;
- (v) fixtures, fittings and furnishings;
- (vi) subsistence;
- (vii) other household costs, including service charges, utilities, telecommunications, maintenance and repairs;

#### **(c) Communications Expenditure:**

- (i) websites;
- (ii) reports and surveys;
- (iii) delivery charges, postage and stationery;
- (iv) advertising;
- (v) equipment;



**(d) Staffing Expenditure;**

**(e) Travel Expenditure in relation to travel by Members:**

- (i) car, including third party vehicle rental and mileage;
- (ii) rail;
- (iii) air;
- (iv) other UK and European travel;

**(f) Resettlement Grant;**

**(g) Winding-up Expenditure;**

(3) The Committee on Members Allowances shall keep the categories listed in paragraph (2) above under review and may modify them from time to time as the committee may think necessary or desirable in the interests of clarity, consistency, accountability and effective administration, and conformity with current circumstances.

PAYMENTS TO HON MEMBERS (PUBLICATION SCHEME)

EXPLANATORY MEMORANDUM

The Freedom of Information Act 2000 requires public authorities to maintain a publication scheme specifying the classes of information which it publishes, the manner in which information of each class is published, and whether or not it is available to the public free of charge or on payment.

The House currently publishes a range of information relating to payments made to, or on behalf of, Members. Paragraph (1) of the Motion provides for this publication to continue in its current form, with the exception of information relating to Members' allowances.

Information relating to Members' allowances is currently published under nine categories. The Motion provides for a more detailed breakdown of this expenditure, under the 26 categories set out in paragraph (2), to be published for each financial year since the beginning of the current Parliament on 11 May 2005.

Paragraph (3) of the Motion provides for the Committee on Members' Allowances (established by a separate Motion) to keep the categories under review. This will allow minor changes to the publication scheme (for example, to reflect changes in allowable expenditure) to be implemented without the need for a further resolution of the House.

The current wording of Schedule 1, para 2, to the *Freedom of Information Act 2000*, is as follows:

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].

The draft *Freedom of Information (Parliament) Order 2009* would have inserted the following in place of para (d) and subsequent wording:

(d) Information relating to any expenditure in respect of which-

a claim has been made to either House of Parliament by a member of either House or

a payment has been made by either House of Parliament to or on behalf of a member of either House.

Paragraphs (b) and (d) do not except information relating to the total amount of expenditure incurred in respect of a member during any year, other than expenditure on security arrangements.

Equivalent provision would have been made for the Lords in amendments to para 3 of Schedule 1.