



MPs and Fol

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1 Freedom of information and MPs- a summary

The *Freedom of Information Act 2000* requires public bodies to supply information to requesters. In general, the Act does not apply to individual Members of Parliament, who are not public bodies. Individual Members of Parliament (MP's) are data controllers in their own right and so are subject to the *Data Protection Act 1998*. There is often confusion between the two in the minds of constituents. Fol applies when a person seeks information about another person; data protection legislation is used when a person seeks information about himself/herself. MPs correspondence with constituents may be held by a public body and is therefore subject to release by that body unless an exemption applies. Information Commissioner guidance warns public bodies to consult MPs before release.

2 The legislative background

While both the House of Commons and House of Lords are separately designated within the *Freedom of Information Act 2000* as public authorities, this does not extend to individual Members of Parliament or to the information held by their staff or within their offices. The information MPs and their staff hold is not held by the House of Commons; neither does the House of Commons have access to this information; neither is it held by others on behalf of the House of Commons.

As a result, Members are not statutorily obliged to respond to individual requests unless they

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form part of the House administration, for example being House of Commons Commission members. The House of Commons Information Rights Service provides advice to individual Members, should they require assistance in relation to data protection or FoI requests. Further information is available from the parliamentary intranet.

Information Commissioner guidance issued in 2006 was as follows:

Both the House of Commons and the House of Lords are deemed to be public authorities for the purposes of the Act; however the individual members of both Houses are not¹

The most recent relevant Commissioner decision is one from the Scottish Information Commissioner who regulates substantially similar legislation for Scotland. This is [Mr Shields and the Scottish Parliament Decision 008/2005](#). In this case, Mr Shields wrote to the Presiding Officer of the Scottish Parliament requesting an annual breakdown of figures relating to requests for help, assistance or intervention from individual constituents to their MSPs, the nature of these requests and the outcome. This request was refused by the Parliament on the grounds that the Scottish Parliament Corporate Body did not hold this information. The decision was upheld by the Scottish Information Commissioner.

3 MPs' constituency correspondence

Although Members are not public bodies under the Act, their correspondence with public bodies may be subject to disclosure under certain circumstances. Members' correspondence on constituency matters is not covered by parliamentary privilege, since the protection of Article 9 of the Bill of Rights 1689 extends only to formal parliamentary proceedings. Under FoI, 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.

The Information Commissioner issued its [Guidance on dealing with requests for MPs' correspondence dealing with constituents](#), in 2007 which is of use when this issue comes up in a constituency office. The summary of the advice is as follows:

2. When [a public authority is] dealing with these requests, it is vital to protect the personal details of, or other confidential information passed on by, constituents to their MPs. Many of the same considerations apply in the case of other elected representatives such as Councillors and members of devolved administrations.

3. This guidance primarily concerns information in MPs' correspondence which includes personal information about individual constituents. However, much of this guidance will also apply to other information obtained from MPs, including general correspondence on policy issues. In particular, the importance of consultation with the MP, as a third party to the request, should always be remembered.

4. If an MP has written to a public authority passing on information from or relating to a constituent, the presumption should be that the information is not disclosed. Information is likely to be exempt under one or more specific exemptions.

5. In all cases public authorities should consult the MP(s) concerned when information about their correspondence has been requested under the Act. The MP may in turn want to consult their constituent. The public authority should not contact the constituent directly unless the MP suggests this would be appropriate.

The House of Commons Information Rights and Information Security service have published further guidance in 2010. [*Freedom of Information and Members' correspondence with public authorities*](#). This is accessible online.

¹ [*Freedom of Information Act Awareness Guidance no 28*](#) January 2006