



## MPs' allowances and FoI requests

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This Standard Note sets out details of the major Freedom of Information (FoI) 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. Finally, 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*Freedom of Information (Parliament) Order 2009* which was due to be debated by both Houses on 22 January 2009, but was withdrawn by the Leader of the House on 21 January 2009..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 FoI details of allowances claimed by MPs and peers, although the total annual expenditure would still be available. The Commons will however continue to proactively publish a more detailed breakdown of expenditure on allowances than at present, through a resolution of the House, which would amend the Publication Scheme of the House. The Lords already publish a breakdown of expenses claimed by peers.

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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 (FoI) 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 FoI 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 FoI 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 FoI 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 FoI requests.<sup>2</sup> Correspondence from MPs held by a public authority may be disclosable, however.<sup>3</sup>

The interaction between FoI and data protection (DP) is complex. DP is used when someone wants to find out about information held about themselves, and FoI is used when someone wants to find out information about another person (or third party). However, section 40 of the FoI 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 FOI.<sup>8</sup>

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

Since 2005, there have been a number of FOI 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/corpofficer\\_house\\_of\\_commons\\_v\\_infocomm.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/corpofficer_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 Ungeoed-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:

**Dr. Julian Lewis (New Forest, East) (Con):** Some 235 right hon. and hon. Members have so far signed early-day motion 1620.

*[ That this House believes that the home address of any hon. or Rt. hon. Member should not be published if he or she objects to publication on grounds of privacy or personal security.]*

It is about the dangerous decision of judges that MPs' home addresses should be published. Will there be an opportunity to consider that matter on 3 July? I should like to tell the House about the three polite but firm notes of refusal that I had from the judges who made that decision, after I asked them whether they would give me their home addresses. Clearly, judges believe that they are more at risk from MPs than MPs are from everybody else.

**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:

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

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

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 to do so - in particular if there had been no prior 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

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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\\_address\\_300608.pdf](http://www.ico.gov.uk/upload/documents/pressreleases/2008/ico_statements_disclosure_of_mps_home_address_300608.pdf)

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 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 Fol 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>

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

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

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

The draft *Freedom of Information (Parliament and National Assembly for Wales) Order 2008* was debated in the Commons on 17 July. 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:

"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>30</sup>

The draft Order was passed without amendment. The text is available on the Commons Leader website, together with the *Explanatory Notes*.<sup>31</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.

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<sup>30</sup> HC Deb 17 July 2008 c 448

<sup>31</sup> <http://www.commonssleader.gov.uk/files/pdf/FOI%20SI.pdf>

## **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. However, the High Court judgement was concerned only with a specific FoI 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. The House of Commons administration had been preparing for the release of this detailed information, but the date of publication has been 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>32</sup>

The most recent summary of allowances expenditure for the Commons available on the website is for 2006-07.<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*:

**Lyn Brown (West Ham) (Lab):** I welcome my right hon. and learned Friend's announcement that next week we will debate the important topics of freedom of information and publication of Members' allowances. Can she assure me that we will be given the chance to debate and to vote to make our allowances even more transparent?

**Ms Harman:** I thank my hon. Friend for her question. She will have heard me announce that on the Order Paper next Thursday there will be a statutory instrument on freedom of information, followed by motions. The draft statutory instrument is in the Table Office and the motions are on the Order Paper. What I, as Leader of the House,

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<sup>32</sup> HC Deb 13 November 2008 c959

<sup>33</sup> <http://www.parliament.uk/documents/upload/HoCallowances0607.pdf>

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

aim to achieve by next Thursday's business is to ensure that in respect of allowances paid to Members of Parliament, which is public money, the public can be certain that there is a clear and reasonable set of rules against which money is paid out, that there is a proper audit system to make sure that those rules are obeyed, that the amount is paid under clear headings for each individual Member of Parliament every year and is made public, that it is proportionate and affordable, and that all this is done at a reasonable cost.

That is what we are proposing in a statutory instrument and a series of motions next week. Hon. Members will see that whereas in the past we have published about 13 information headings, the combination of the statutory instrument and the motion that I will put before the House will mean that the public instead have 26 categories of information. The public will have more information than they have ever had before and we will take that back to 2005, so that for all Members since they have been in the House each year their allowances against 26 headings will be made public. We want to make sure that the public have confidence that there are clear rules and that they know what is going on.

**Sir Michael Spicer (West Worcestershire) (Con):** Will the Leader of the House say what the precise voting structure will be on Thursday?

**Ms Harman:** I will put a business motion before the House before the substantive debate. The business motion will prescribe that the first debate will be on the statutory instrument under the Freedom of Information Act, which will be Government business. In the same debate there will also be a motion that sets forth a publication scheme. That motion will say that we will publish once a year back to 2005 for every individual Member under those 26 headings. At the end of that first substantive debate there will be two votes—one on the Government business under the Freedom of Information Act,<sup>35</sup> and the second one, which will be House business, on the publications scheme.

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

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

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

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

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 as 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 proposed changes in the oversight of Members' allowances.

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 will still be 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

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.

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<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.commonssleader.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)

There has been 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.

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.

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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*

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

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](#) and [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 is 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?

**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

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<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

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>

During points of order later 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>

## 6 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

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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

## 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.

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>50</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

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<sup>50</sup> The full transcript of the decision is available at <http://www.itspublicknowledge.info/appealsdecisions/decisions/Documents/Decision033-2005.pdf>

(which had been disclosed), would intrude excessively into MSPs' private lives and would not amount to fair processing.<sup>51</sup>

## 7     **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 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>52</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>53</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>51</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

<sup>52</sup> [http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2006/200502318\\_200503296.asp](http://www.itspublicknowledge.info/applicationsanddecisions/Decisions/2006/200502318_200503296.asp) [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>53</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.