Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 21 July 2010

Public Authority: House of Commons
Address: London
SW1A 0AA

Summary

The complainant requested information about individual Member's unpaid debts in relation to internal entertainment and catering. After considerable delay, the House provided the information about the debts that exceeded 90 days. It applied section 40(2) to the remaining information.

The Commissioner has considered this case carefully. His decision is that the House applied section 40(2) appropriately to the disputed information. However, he finds that the House breached section 10(1) twice and 17(1) once as it failed comply with the procedural requirements of the Act. He requires no remedial steps to be taken in this case.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 17 September 2009 the complainant requested the following information in accordance with section 1(1) of the Act:

'I would like to request the following information under the Freedom of Information Act:

1. Details of which specific MPs owe money to the the [sic] House of Commons for entertainment and catering.

2. How much each MP owes to the House of Commons for entertainment and catering.

3. Of those, which MPs have owed money for a) more than three months and b) more than six months.'

3. On 12 October 2009 the House acknowledged receipt of the request. It apologised for not being able to meet the twenty working day deadline and explained that the request was a priority matter and a response would be issued as soon as possible.

4. On 18 November 2009 the House apologised again for not being able to provide a response. It explained that it believed that it was obliged to consult with the individual Members of Parliament and needed more time to do so.

5. On 14 January 2010 the House wrote to the Commissioner to ask for his advice about how the Data Protection Act (the DPA) may operate in the circumstances of this case.

6. On 19 January 2010 the Commissioner wrote to the House to provide general advice about how the DPA may operate on the circumstances of this case. He explained the sort of factors that he believed required careful consideration in this case.

7. On 20 January 2010 the House thanked the Commissioner for his advice and explained that it would carefully consider the factors that he had identified.

Initial complaint

8. 3 February 2010: The complainant contacted the Commissioner to complain that the House had failed to issue a response to him.

9. 13 February 2010: The Commissioner wrote to the House to explain that he had received this complaint and asked for a response to be issued within the next ten working days.

10. 1 March 2010: The complainant contacted the Commissioner again to explain that he had still received no response and the ten working days had passed.

11. 2 March 2010: The Commissioner telephoned the House about this case. He was told that a response would be issued by 12 March 2010. The Commissioner confirmed by email what was said on the telephone and explained that any further failure to issue a response would be highly likely to lead to a Decision Notice. He also explained to the complainant how this case would proceed.

12. 18 March 2010: The House issued a partial response. It stated:

> *'As required by the codes of practice under section 45 of the FOI Act we consulted all third parties whose personal data was included in information relevant to your request which was held by the House of Commons. This gave rise to a need for further consideration to be given, and to advice being taken in relation to the balance of interests inherent in applying both the data protection principles and the exemptions set out in the FOI Act.*
>
> *The House considers that the information concerning the amount owed by each Member is the personal data of that Member and that any processing of that information must therefore be fair, lawful and in accordance with one of the conditions in Schedule 2 to the Data Protection Act 1998. In order to meet the conditions of paragraph 6 of Schedule 2 there must be a legitimate public interest in disclosure, the disclosure must be necessary to meet that interest and the disclosure must not cause unwarranted harm to the interests of the individual.*
>
> *In weighing these issues, the House has decided that disclosure of individual indebtedness would be likely to breach the 1998 Act where Members are operating within the letter and spirit of the system of personal accounts. However, it has been concluded that this balance changes at the end of the 90 day period following on from the recording of the debt.*
>
> *It has been decided, therefore, that the disclosure of information should be limited to sums owed for more than 90 days as at 1 September 2009. We have concluded that disclosure of information about money owing for less than the 90 day period, while held, would constitute a breach of the data protection principles and is therefore exempt information by virtue of the exemption set out in section 40(2) and section 40(3) of the FOI*

Act. This is an absolute exemption and the public interest test does not apply.

The details that will be provided to you are the names of MPs and amounts owed on their personal accounts as at 1 September 2009 for between 90 days and up to six months and the names and amounts owed for more than 6 months.

We are now writing to the Members whose personal data will be disclosed to you in order to ensure that the data we send to you, and which is their personal data, is accurate. This process is necessary in order to meet our obligations to the data subjects under the Data Protection Act 1998.We will disclose this data as soon as this process has been completed.'

13. The Commissioner wrote to the House on the same day to ask when it was anticipated that the information identified for disclosure would be released (to complete its response).

14. 22 March 2010: The Commissioner telephoned the House. It explained to the Commissioner that the deadline for the Members was 6 April 2010 and the information identified for disclosure should be released then.

15. 8 April 2010: The Commissioner contacted the House. The House explained to him that it believed that it was no longer a public authority (as Parliament was to be dissolved for the General Election) and would provide the Commissioner with a written explanation about why.

16. 9 April 2010: The complainant asked for an update about this case.

17. 12 April 2010: The Commissioner provided it. He explained that he agreed that the House of Commons was only a public authority when it was not dissolved and thus it was unavoidable that there would be a delay until after the General Election. He also ensured that the public authority explained its position to the complainant itself. The complainant responded on the same day to complain about this. The Commissioner replied to address some of these concerns.

18. 19 May 2010: The Commissioner called the public authority to ask for the information to be disclosed now the General Election had occurred. He was told that the response would be issued the next day and he would receive a copy.

19. The House disclosed the information to the public that evening. It was a spreadsheet that contained information about Members who at the date of the request (17 September 2009) had owed money for 90 days or more. It contained the following fields:

    i. *Forename*
    ii. *Surname*
    iii. *Amount of money outstanding for more than 90 days and up to 6 months.*
    iv. *Current status of the debt (now all debts had been paid).*

20. 20 May 2010: The Commissioner received a copy of the information that had been disclosed to the complainant. He called the complainant to ensure that he had received it. The complainant explained that he had, but that he was unhappy that the information was released to the public before him. The Commissioner explained that the Act provided a public disclosure regime and that he should see his request as a catalyst.

21. The Commissioner wrote an email to the complainant. He explained the current situation and asked the complainant to explain how he wanted this case to proceed. The complainant responded on the same day to explain that he believed that further information should be disclosed by the House.

22. The Commissioner then told the complainant that the next stage was for him to make a request for an internal review.

23. The complainant requested an internal review from the House. He explained that he was appealing the decision not to release the debts up to 90 days. He explained that he did not believe that there would be a breach of the data protection principles, because there was a legitimate public interest in disclosure and that it would not cause unwarranted harm to the interests of the individual. He also stated that he was not clear that those who had failed to pay in less than 90 days were 'operating within the letter and spirit of the rules' and asked for it to explain in more detail why it has taken this view.

24. 8 June 2010: The House communicated the results of its internal review to the complainant. It confirmed that it upheld its position. It also provided further detail that the Commissioner believes is relevant:

    'The House at the relevant time operated a system of personal accounts for Members which enabled them to make purchases from catering outlets of the House on credit. On about the fifth day of each month each MP with such an account was sent a

statement listing the purchases made in the previous calendar month and the amount due for payment. The agreement entered into with Members required payment within 14 days of the date of the statement. If the sum due was not paid within 37 days of the due date, a reminder letter was sent on the 22nd of the following month. Further reminders would then be sent at monthly intervals. If the account remained overdue by the end of a 90 day period a letter was sent warning of further action, for example the withdrawal of future credit facilities.

What our original response did not make clear was that, at the end of the 90 day period, the Member could not any longer be said to be operating within the letter and the spirit of the system which prevailed at the time within the House to deal with credit for catering.

In our view, the point at which personal data about individuals' indebtedness to a public authority become personal data which can be released under the Freedom of Information Act without contravening the data protection principles is the point at which the debt is no longer a debt within the acceptable bounds ('the letter and the spirit') of the rules adopted by that public authority. For this reason, I uphold the decision not to release the information on individual debts of under 90 days because the information concerned is information to which section 40(2)(a)(b) and 40(3)(a)(i) of the Freedom of Information Act 2000 applies. As set out in the response to you dated 16 March 2010, we have concluded that this exemption applies because disclosure of this information would breach the fairness requirements of the first data protection principle and, in addition, because the House of Commons would not be able to justify the processing of personal data within the terms of the conditions set out in schedule 2 of the DPA 1998. This is an absolute exemption and the public interest test does not apply.'

25. It also explained the reasons for the delay in this case. It said that it apologised for the delay and had amended its handling procedures so that there would be no repetition. However, it stated that it viewed the case as particularly complex and felt that it was obliged to check the accuracy of the data with data subjects. It said that it should have provided a formal response explaining its position pending the further checks in twenty working days.

The Investigation

Scope of the substantive case

26. On 9 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the following points:

- That the House has still failed to provide an adequate explanation about why the section 40(2) exemption applies in this case. In particular it is difficult to see why the disclosure of the other information would cause unwarranted harm to the data subjects and that the public interest favours disclosure because it is public money that is being lent to the MPs.

- That he disputes the House's analysis that 90 days was the correct threshold. He explained that, in his view, the MPs were acting outside the 'letter and spirit of the rules' before 90 days had passed. He said that in his view the date of the first reminder letter should have been the correct threshold (when the money became due).

27. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, the Commissioner can only consider whether the information disclosed was suitable to be disclosed to the public.

Chronology

28. 10 June 2010: The Commissioner wrote to the complainant to explain that he would investigate this case in depth.

29. 14 June 2010: The Commissioner telephoned the House and asked for the documentation that was provided to MPs about the system which informed their expectations in this case. He consolidated what he asked for in an email of the same day.

30. 22 June 2010: The Commissioner telephoned the House to check how it was progressing its enquiries. He was told that the information that he sought had been located and would be provided to him as soon as possible.

31. 1 July 2010: The Commissioner received the information that he had asked for.

32. 8 July 2010: The complainant sent another email to the Commissioner. He explained that he had made a further information request and had found out that no Member's accounts were suspended and that he believed that this showed that the rules were not enforced. He explained that the public interest ought therefore to be greater in the remaining information.

Findings of fact

33. The Commissioner believes it is useful to run through the catering expenses system that was in operation at the time of the request. It worked as follows:

- MPs were allowed credit to use internal entertainment and catering facilities;
- A bill was provided on, or around the fifth day of the month. This was an itemised list of all the purchases made over the previous month and the amount that was due for payment;
- The following system came then into effect:

Cumulative time	Timing [event]	Responsible	Action
0	Invoice issued	Department	Invoice issued to customer
30	Payment becomes due		
30-60	0-30 days after payment is due.	Department	Handles queries. Run aged debt report. Check whether payment was received. Chase debts where appropriate.
45	15 days after payment is due.	Central AR	1ST reminder letter issued.
60	30 days after payment is due.	Issuing section	Responsibility for debt chasing passes to central debt management unit (Central AR function). Documents supporting passed.

75	45 days after payment is due.	Central AR	2ND reminder letter issued.
90 **[the threshold that was chosen in this case]**	60 days after payment is due.	Central AR	Run aged debt report. Check whether it is received. Call customer to chase payment.
95	65 days after payment is due.	Central AR	Appropriate enforcement action (where debt is over 60 days overdue).

34. There is now a new system to ensure the swift payment of bills by MPs using the catering and retail facilities of the House. This was introduced by the House of Commons Commission and began in June 2010. It still allows the MPs to have credit, but the outstanding amount is settled by automatic deduction from a debit or credit card once a month. A similar system is also used to bill third party organisations which hold events sponsored or authorised by MPs in the House.

Analysis

Exemption

Section 40(2)

35. The House has explained that in its view it is not obliged to provide any information held about debts that are less than 90 days old. This is because the release of this information would be unfair to the data subjects and no condition from Schedule 2 can be satisfied, so the disclosure would contravene the first data protection principle. It follows that section 40(2) applies to all of the disputed information.

36. The complainant disagrees with this analysis and argues either that all the information should be disclosed or that the information should be disclosed when it became overdue as stated in the agreement signed by the Members of the House.

37. In analysing the application of section 40(2), the Commissioner considered:

a) whether the information in question was personal data; and

b) whether disclosure of the personal data under the Act would contravene the first data protection principle.

Is the information personal data?

38. Personal data is defined in section 1 of DPA as data '*which relate to a living individual who can be identified—*

(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'

39. When considering whether the information is personal data, the Commissioner had regard to his own published guidance: "Determining what is personal data" which can be accessed at: http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf

40. The Commissioner notes that the withheld information in this case amounts to the name of a Member, whether or not they owe money for catering facilities and, where relevant, the amount owed.

41. The Commissioner accepts that each entry of this data is directly linked to the Member in question. It is therefore personal data.

Would disclosure contravene the first data protection principle?

42. The first data protection principle has two main components. These are as follows:

- requirement to process all personal data fairly and lawfully; and
- requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data

43. Both requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first data principle.

44. It is also important to note that any disclosure under this Act is disclosure to the public at large and not just to the complainant. If the public authority is prepared to disclose the requested information to

the complainant under the Act it should be prepared to disclose the same information to any other person who asks for it.
The Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* (EA/2006/0011 and EA/2006/0013) (following *Hogan and Oxford City Council v The Information Commissioner (*EA/2005/0026 and EA/2005/0030)) confirmed that, "*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions*" (paragraph 52): http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf.

Would disclosure be fair and lawful?

45. When deciding whether the disclosure of the information is fair, the important factors that require consideration are:

- What are the reasonable expectations of the individual in relation to the handling of their personal data?

  Including:
  - What was the person told about what would happen to their personal data?; and
  - How the fact that the individuals are directly elected by the public to represent their interests influences the individual's expectations.

- The type of information that has been requested;

- Whether disclosure would cause any unnecessary or unjustified damage or distress to the individual; and

- Legitimate interests of the public in knowing the withheld information and understanding the operation of the catering expenses system. In particular the legitimate interests of the public in obtaining transparency in this area.

46. In order to carefully consider the reasonable expectations of the data subjects the Commissioner has considered the 'House of Commons: Administration Debt Management Policy' which was in operation when the debts were incurred (and is dated May 2006). This Policy was stored on the intranet of the House and available for access both for Members and their staff. The relevant parts are:

1. Part 1.3.1 explains that the policy of the House is to collect all debts;

2. Part 1.3.3 explains that the due date of the debt depends on the terms and conditions attached to it;

3. Part 1.6 sets out debtor categories one of which is Members;

4. Part 1.7 confirms that a debt type is sales, a category that includes banqueting information;

5. Part 3 details how the House will manage its outstanding debtors. The table in paragraph 33 above is found in part 3.5 of the manual; and

6. Part 4 details how the House will enforce its debts. 4.5 clarifies that enforcement action will be taken after 95 days against Members and explains how it will happen.

47. The Commissioner has also asked to be provided with the relevant letters that functioned as the reminders discussed in paragraph 33 above and has viewed the terms that were stated when an account was opened. After carefully considering this information, he has been satisfied that the system operated in accordance with the Policy as it then was.

48. The Commissioner has carefully considered the reasonable expectations of the data subjects in this case. He has been satisfied that the reasonable expectations of the Members at this time were that the debt would continue to be an internal matter until 90 days had passed. He is satisfied that the Policy and the way that it was enforced created a consistent and coherent expectation that this was so and that in the circumstances this expectation was reasonable.

49. When considering the reasonableness of the expectations the Commissioner has been conscious of the individuals' public roles as Members of Parliament and that the public can expect real accountability to enable democracy to thrive. He has also considered that Members have a senior role and that they have direct responsibility for overseeing how public money is spent. However, the Commissioner believes that it was entirely appropriate for the Members to form their expectations in line with the Policy as it then was.

50. The Commissioner believes that it is useful to draw an analogy between debts in the House and normal debts owed to third parties. The first thing that it is important to consider is the credit terms that were granted. In this case while the Members' terms were arguably generous, the Commissioner notes that they were the terms granted.

The normal procedure would be that a third party would then demand payment in accordance with the terms. It would issue a reminder, before instructing a solicitor to commence action where appropriate and ultimately considering court action. Information about the debt would be unlikely to reach the public domain before court action was concluded. At this point the judgement would be entered on the Register of County Court judgments and the public (and other creditors) would become aware of the difficulties and could take this into account in chasing debts of their own. In addition, accounting requirements do not require companies to identify their debtors individually instead only an aggregate debt is required to be reported. In this case the debts have been paid in accordance with the policy of the House to ensure that they are collected. Therefore the analogy with other debts would confirm the expectation that the information would not be disclosed to the public even though the Commissioner notes that in this case the credit facility was financed through public funds.

51. When considering the type of information that was being requested, the Commissioner notes that it is information about the indebtedness of specified individuals. It concerns information about the financial situation of individuals and the Commissioner believes that in the UK financial information is regarded as being an example of personal data that is expected to remain private. This follows a number of previous decisions made by the Commissioner including FS50246906 (an individual's bank account number), FS50142539 (exact salaries) and FS50068391 (charge card information – similar to the factual basis of this case).

52. The Commissioner notes that the information requested concerns facilities that may be used by an MP both in their public and private roles. He has been informed that some of the data subjects have also expressed their concern that the information requested should be protected as financial information and notes that it is hard to imagine another context where information about an individual's indebtedness would be disclosed to the public (apart from the Register noted above and bankruptcy). The Commissioner therefore finds that the information is of a type that would reasonably be considered to be private (particularly when the Member was still within the terms of the Policy).

53. The Commissioner has considered whether the disclosure of the information would be likely to cause unnecessary and unjustified damage and/or distress to the individual. He notes that the individuals were all at the time of the request in a public role and that they might expect that information would be disclosed in the event that they stepped outside the terms of the Policy. However, he believes that the

provision of the earlier information, which relates to debts that were within the terms of the Policy, would be likely to cause unnecessary and unjustified distress to the individuals.

54. He believes that this is so because the figures even with a careful explanation could be liable to be misunderstood by the public and possibly misrepresented by the media. While the Commissioner is not normally concerned about the possible misinterpretation of data when it is disclosed, he believes it is correct to take this into account when considering the possible effect of disclosure of personal data. He must carefully consider the data subjects' expectations and believes that the disclosure of the information when the MP remained within the terms of the Policy could well cause distress and potential damage to the relevant Member. He has noted that the disclosure of those acting outside the Policy does not appear to have caused too much damage to those Members' reputations, but believes that the balance is nevertheless different for those acting within the Policy. In coming to this decision, he has considered the climate at the date of the request.

55. The Commissioner believes that the distress and damage would come in two areas. The first would be damage to the relationship between the individual Members and the House authorities. The disclosure of information on indebtedness contrary to the Policy that was operated would be unexpected and would be likely to erode the confidence of Members that their personal data would be appropriately protected. The second would be that the disclosure of the information even with an accompanying explanation could lead to individual Members' careers being harmed despite the fact that they have acted within the terms of its Policy. This is because the information could be used to try and discredit the individual where it would not be necessary or justified to do so.

56. The House has noted that there are clear legitimate public interest factors favouring disclosure of the withheld information. It identified the following:

    1. The credit facilities that were offered were provided from public funds;

    2. It follows that there is a public interest in sound management of those credit facilities;

    3. The credit facilities are run to a large extent on trust due to the absence of financial penalties for late payments. Interest was not charged; and

4. The provision of the information requested would put additional pressure on the individual Members (to pay) and the House (to ensure that it collects). This pressure may be considerable in the climate at the date of the request.

57. The House explained that it had acted in a manner where it appreciated these interests existed and therefore has ensured that it has disclosed as much information as possible, without being unfair to the MPs. The information it has already disclosed includes:

1. The aggregate amount of money that was owed to its refreshment department and the number of MPs who were responsible on 5 August 2009. These figures were £138,049 and 329 MPs respectively; and

2. The details of those individuals who were acting outside the Policy on 19 May 2010, as has been noted above.

58. It explained that it could also counter some of the legitimate concerns by the fact that no public money was truly at risk from any Member's bad debts. This was because the House always retained the option to exercise its right to set-off the debts against future payments such as allowances, salary or the resettlement grant (should a Member have left the House). This meant that the debts would be paid.

59. It also commented that it did actively monitor the amount of indebtedness and the age of the debt and that therefore it was not correct to criticise the system in the same manner as had occurred in the Additional Cost Allowances (ACA) cases that the Commissioner has previously considered. The Commissioner has noted that there was a clear Policy in operation in this case, although he also notes the complainant's argument that no enforcement action had been pursued.

60. The Commissioner does appreciate that the old system was generous to MPs. The way it operated effectively provided interest free credit to Members and there was no risk of civil enforcement. It ran largely on trust and there were no financial penalties for late payment. It follows that the Commissioner is content that there is a legitimate interest in the information being made available to the public and that the Members were privileged to have this facility and should have been certain to act within the wording of the Policy. He therefore believes it was right and proper that the information about the MPs acting outside the Policy was disclosed. The Commissioner has also noted that there was a stronger public interest in relation to information about expenses of Members. The disclosure of the information in respect of the ACA led to considerable public engagement and criticism. It provided data that

supported a case for the system to be changed. The Commissioner notes that this case has similarly contributed to the system concerning credit for catering facilities being changed. However, he notes that the ACA involved further sums of public money being provided to Members, which makes it distinct from this case that only involves the provision of credit facilities. He believes that this point is an important distinction which correspondingly reduces the public interest in this case.

61. The Commissioner is therefore of the view that the disclosure of the debts of those individuals acting within the Policy would be unfair to them. He believes that the House would be acting outside their reasonable expectations in disclosing the information, that the information itself is of a type that the Members would reasonably expect to be kept private and that the disclosure of the information would be an unnecessary and unwarranted action that would be likely to cause damage and/or distress to them. He believes that there are legitimate public interest reasons for disclosure, but has determined that these are insufficient to make the disclosure of the information fair.

62. For clarity, the Commissioner has also specifically considered the arguments of the complainant that the cut off point should be thirty days rather than ninety (as this would be the point when the debt would be overdue). The Commissioner acknowledges that there would be a legitimate public interest in knowing when Members exceed the usual credit terms for repayment. However, he has decided that this legitimate public interest is insufficient to override the factors noted in paragraph 61 above and that the disclosure of information at an earlier cut off point would also be unfair to the data subjects.

63. As the Commissioner has found the disclosure of the information unfair, it follows that the first data protection principle would be contravened should the information be disclosed.

64. As this is so, the Commissioner is not required to go on to consider whether the disclosure of the information would have been unlawful, or whether a Schedule 2 condition would have been satisfied. This is because as noted in paragraph 43 above, only one factor need not be satisfied, for the first data protection principle to be contravened and for the exemption to be applied appropriately. However, he has decided due to the level of interest in this case and for completeness, to also consider whether a condition of Schedule 2 of the Data Protection Act would have been satisfied had he found that the disclosure of the information would have been fair to the data subjects.

Would a condition in Schedule 2 of the DPA be satisfied in this case?

65. The House has voiced considerable arguments about why no conditions of Schedule 2 of the DPA would be satisfied in this case.

66. The complainant has explained that in his view condition 6 would allow the information that he has requested to be disclosed.

67. There are two conditions of Schedule 2 that are generally relevant when considering disclosure under the Act. They are conditions 1 and 6.

68. Condition 1 requires the data subject to have given his consent to the processing of the data. The Commissioner notes that any consent must be sufficient to amount to permission to disclose the information to the public under the Act. The Commissioner finds that no consent of any sort has been provided by the Members in this case. It follows that condition 1 has not been satisfied in this case.

69. Condition 6 states that:

> *"the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."*

70. In deciding whether condition 6 would be met in this case the Commissioner has considered the decision of the Information Tribunal in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060]. In that case the Tribunal established the following three part test that must be satisfied before the sixth condition will be met:

- there must be legitimate interests of the public in disclosure of the information;

- the disclosure must be necessary for a legitimate interest of the public; and

- even where disclosure is necessary it nevertheless must not cause unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.

The legitimate interests of the public

71. The Commissioner has already explained that the House has identified four legitimate interests of the public (noted in paragraph 56 above).

72. The complainant's arguments are also covered by those legitimate interests. These arguments can also be extended to include the further legitimate interests in enabling public debate and reflection on the charging system and in providing for accountability by those individuals who exceeded the usual credit terms for repayment.

73. In addition the Commissioner believes that there is a legitimate public interest in transparency wherever it is possible.

74. The Commissioner agrees with both parties that this part of the test is satisfied.

Necessity for a legitimate interest of the public

75. 'Necessity' functions as a threshold condition. The Commissioner's view is that when considering necessity disclosure must be necessary to meet some of the legitimate interests above. There must not be a less intrusive means of meeting that end. He has therefore taken into account existing mechanisms and whether they satisfy these interests.

76. The House has argued that the information presently released – the global figures of how much money was outstanding and the information about those acting outside the Policy – goes towards satisfying the legitimate public interests in this case. It argued that it was not therefore necessary to process the data further.

77. In addition, as noted above, the House explained that there was no necessity in this case as there was no chance of the public being left with bad debts, as the money could have been taken (or set off) from future payments that would have been due to the relevant Members.

78. It also explained that there was no necessity in this case because the debts were monitored in line with a proper Policy and this distinguishes it from the ACA cases (such as *House of Commons v Information Commissioner & Leapman, Brooke, Thomas*) where there was much less scrutiny.

79. The Commissioner appreciates that the arrangements as outlined in paragraph 76 to 78 go some way to satisfying the first and second public interest factors outlined in paragraph 56. However, he does not believe that the arrangements mitigate the necessity of processing (or

disclosure) if the public are to understand how the relatively generous scheme operated and they fail to provide full transparency.

80. The Commissioner therefore accepts that there is a necessity in disclosing the requested data for all five public interest factors outlined above and that the second part of the test is therefore satisfied.

81. The Commissioner has considered whether those interests could be fully satisfied through any less intrusive disclosure. He does not believe that there was a reasonable alternative in this case.

Unwarranted Interference

82. The Commissioner must then go on to consider the collective weight of the legitimate interests and whether meeting them would cause an unwarranted interference with or unwarranted prejudice to the rights, freedoms and legitimate interests of the data subject. The Commissioner believes that the test in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060] should be read in this way to accord with the verdict that was reached in that case and with the overriding purpose of the condition.

83. The Commissioner has found that there at least five legitimate interests identified above and that they carry weight on the facts of this case.

84. The House has argued that any legitimate interests would not counteract the fact that further processing is unwarranted by reason of the ensuing prejudice to the data subjects. It explained that the release of this information could lead to heightened media and unjustified public attention for those who were acting within its rules. It explained that the impact of the disclosure would affect their private and professional lives and could lead to their targeting. The Commissioner has also found that the individuals' reasonable expectations were that the information would not be disclosed (in paragraphs 48 to 51), that it would be likely to lead to unjustified damage or distress (in paragraphs 52 to 55) and that the public interest factors did not override these concerns (in paragraphs 56 to 62).

85. The Commissioner has balanced the arguments mentioned in paragraphs 83 and 84 above. He has come to the conclusion that the weight of the public interest factors is not sufficient to warrant the interference for those data subjects acting within the parameters of the

Policy. He therefore finds that condition 6 would not be satisfied in this instance.

86. It follows that the Commissioner has also determined that no conditions of Schedule 2 could have been satisfied. For this reason alone, the processing would not have accorded with the first data protection principle and therefore the exemption would have been applied correctly.

87. The Commissioner is not required to go on to consider any of the other data protection principles.

88. Section 40(2) operates as an absolute exemption and has no public interest component. Therefore no public interest test needs to be undertaken.

89. It follows that the Commissioner has determined that the House has appropriately applied section 40(2) to the remaining information on the facts of this case.

Procedural Requirements

Section 10(1)

90. In this case there was a considerable delay in issuing an appropriate refusal notice.

91. Section 10(1) (full wording in the legal annex) states:

> *"… a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt."*

92. The original information request in this case was made on 17 September 2009. The House failed to issue a complete valid response until 19 May 2010.

93. It failed to confirm that it held relevant information until it implied that it had relevant information on 18 November 2009. It therefore failed to comply with section 1(1)(a) in twenty working days and therefore breached section 10(1).

94. It failed to comply with section 1(1)(b) [the disclosure of the information of those MPs who had debts beyond 90 days] until 19 May 2010. This is also a breach of section 10(1). The Commissioner believes that the delay of over seven months (even factoring in the

period of Parliamentary dissolution) was completely unacceptable in this case. He will discuss this further in the 'Other Matters' section of this Notice.

Section 17(1)

95. Section 17(1) requires that where a public authority is relying on an exemption that it states that this is so within twenty working days.

96. The public authority failed to state that it was applying an exemption until 18 March 2010. This is a breach of section 17(1). The Commissioner wishes to state that this delay of over six months was also completely unacceptable in this case.

The Decision

97. The Commissioner's decision is that the House dealt with the following elements of the request in accordance with the requirements of the Act:

- *It applied section 40(2) correctly to the disputed information.*

98. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:

- *It breached section 10(1) in failing to confirm that it held relevant recorded information in twenty working days.*
- *It breached section 10(1) in failing to provide information that was not exempt in twenty working days.*
- *It breached section 17(1) in failing to specify an exemption that it would later rely on in twenty working days.*

Steps Required

99. The Commissioner requires no steps to be taken. This is because the procedural breaches cannot be rectified by any remedial steps.

Other matters

100. While not part of the Decision Notice, the Commissioner also wishes to highlight the following matters.

101. This request has been subject to an unacceptable delay. The request was submitted on 17 September 2009 and the information was not disclosed until 19 May 2010. Even after the Commissioner factors in the period of parliamentary dissolution (a little more than a month), it is still an unacceptable delay.

102. In addition the Commissioner is of the view that the House's response of 16 March 2010 failed to interpret the requirements of the section 45 Code of Practice correctly. While the Code does recommend that authorities undertake consultation with third parties, there is no provision for this to continue beyond the timescales for compliance set within the Act itself.

103. He also notes that paragraph 30 of that Code is also quite specific about the form consultation might take in cases where (as in this case) a number of third parties are involved:

> *"Where information to be disclosed relates to a number of third parties, or the interests of a number of third parties may be affected by a disclosure, and those parties have a representative organisation which can express views on behalf of those parties, the authority may consider whether it would be sufficient to notify or consult with that representative organisation. If there is no representative organisation, the authority may consider that it would be sufficient to notify or consult with a representative sample of the third parties in question."*

104. The Commissioner found it unclear why the House needed additional time beyond 16 March 2010 (the date of its partial refusal notice) to disclose the requested information. The response explained:

> *"We are now writing to the Members whose personal data will be disclosed to you in order to ensure that the data we send to you, and which is their personal data, is accurate. This process is necessary in order to meet our obligations to the data subjects under the Data Protection Act 1998. We will disclose this data as soon as this process has been completed."*

105. However in its earlier response dated 18 November 2009 the House explained:

> *"I am very sorry that we were not able to respond to your request within the timescales we attempt to achieve. We are obliged to consult with the data subjects of your request, in this case the individual Members of Parliament. This delay has occurred as more time is required to complete the consultation process."*

106. The Commissioner is not satisfied that the consultation process should have taken over four months to complete. Indeed he does not believe that it is acceptable that it should have taken over twenty working days to have issued the response along with the information that was not exempt. He wishes to use this opportunity to record his view of how the relevant Code of Practice operates in cases of this type.

Right of Appeal

107. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@tribunals.gsi.gov.uk.
Website: www.informationtribunal.gov.uk

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 21st day of July 2010

Signed ……

David Smith
Deputy Commissioner

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

Legal Annex

Freedom of Information Act 2000

General right of access to information held by public authorities

Section 1(1) provides that -
"Any person making a request for information to a public authority is entitled

(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and

(b) if that is the case, to have that information communicated to him."

Time for compliance with request

Section 10 provides that**-**
(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.
...

Refusal of request

Section 17 provides that -
(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

(a) states that fact,

(b) specifies the exemption in question, and

(c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) A notice under subsection (1), (3) or (5) must—

(a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and

(b) contain particulars of the right conferred by section 50.

Personal information

Section 40 provides that -

(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

(i) any of the data protection principles, or

(ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.] Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- "the data protection principles" means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- "data subject" has the same meaning as in section 1(1) of that Act;
- "personal data" has the same meaning as in section 1(1) of that Act.

...

Data Protection Act 1998

Basic interpretative provisions

Section 1(1) provides that -

"In this Act, unless the context otherwise requires—

- "data" means information which—

  (a)
  is being processed by means of equipment operating automatically in response to instructions given for that purpose,

  (b)
  is recorded with the intention that it should be processed by means of such equipment,

  (c)
  is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

  (d)
  does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

- "data controller" means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;

- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “personal data” means data which relate to a living individual who can be identified—

  (a)
  from those data, or

  (b)
  from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

  and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;
- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

  (a)
  organisation, adaptation or alteration of the information or data,

  (b)
  retrieval, consultation or use of the information or data,

  (c)
  disclosure of the information or data by transmission, dissemination or otherwise making available, or

  (d)
  alignment, combination, blocking, erasure or destruction of the information or data;
- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.

(2) In this Act, unless the context otherwise requires—

(a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and

(b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.

(3) In determining for the purposes of this Act whether any information is recorded with the intention—

(a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or

(b) that it should form part of a relevant filing system,

it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.

(4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller."