

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 18 March 2013

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

#### Decision

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1. The complainant has requested correspondence between the House of Commons and HM Revenue and Customs (HMRC) over the past three years relating to the tax treatment of the House's residential accommodation.
2. The Commissioner's decision is that, by virtue of a section 36(7) certificate, the House of Commons has correctly applied section 36(2) FOIA in withholding the information requested.
3. The Commissioner does not require the public authority to take any further action.

#### Request and response

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4. On 21 August 2012, the complainant wrote to the House of Commons and requested information in the following terms:

*"Please could I be supplied with the texts of all correspondence between the Commons and HMRC over the past three years relating to the tax treatment of the House's residential accommodation."*

5. On 16 October 2012, he clarified the request by adding:

*"I am asking for details of the House's discussions with HMRC on issues of principle, not for individuals' tax records ... the provision*

*of residential accommodation is a substantial benefit, and its tax treatment is of legitimate interest to the public."*

6. On 16 October 2012 the House of Commons told the complainant that information within the scope of his request was held but was exempt under the following exemptions: prejudice to effective conduct of public affairs (section 36 FOIA), law enforcement (section 31 FOIA) and personal information (section 40 FOIA).
7. On 11 December 2012, following an internal review, the House of Commons gave its final response. It again refused to provide the requested information, relying solely on section 36(2)(b) and section 36(2)(c) FOIA as its basis for doing so.
8. In its 11 December 2012 response, the House of Commons told the complainant that the Speaker had reconsidered the matter at the internal review and his opinion remained unchanged that the information was exempt under section 36 FOIA. The House of Commons added that, if necessary, the Speaker would be approached to sign a certificate to that effect.

### **Scope of the case**

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9. On 8 January 2013 the complainant contacted the Commissioner to complain about the way his request for information had been handled.
10. The Commissioner considered the application of the section 36(2) FOIA exemption relied upon by the House of Commons.

### **Reasons for decision**

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11. Section 36(2) FOIA states that:

*"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-*

*(b) would, or would be likely to, inhibit-*

*(i) the free and frank provision of advice, or*

*(ii) the free and frank exchange of views for the purposes of deliberation, or*

*(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."*

Section 36(5) FOIA states that:

*"In subsections (2) and (3) 'qualified person' - ...*

*(d) in relation to information held by the House of Commons, means the Speaker of that House".*

Section 36(7) FOIA states that:

*"A certificate signed by the qualified person referred to in subsection (5) (d) ...above certifying that in his reasonable opinion-*

*(a) disclosure of information held by either House of Parliament, or*

*(b) compliance with section 1(1)(a) by either House,*

*would, or would be likely to, have any of the effects mentioned in subsection (2) shall be conclusive evidence of that fact."*

12. On 19 February 2013 the House of Commons told the Commissioner and the complainant that the Speaker had signed a certificate in relation to its reliance on the section 36 FOIA exemption to withhold the relevant information. He did so having previously, on 11 December 2012, reconfirmed his earlier view that the relevant information was exempt under section 36 FOIA.
13. The Commissioner has been given a copy of the certificate signed by the Speaker of the House of Commons, dated 13 February 2013, in relation to this request. In it the Speaker certifies that in his reasonable opinion disclosure of the information held by the House of Commons as requested would be likely to inhibit the free and frank exchange of views for the purposes of deliberation (section 36(2)(b)(ii) FOIA) and would otherwise prejudice the effective conduct of public affairs (section 36(2)(c) FOIA) and that, in accordance with section 36(7) FOIA, the certificate is conclusive evidence of that fact.
14. Given the nature and provenance of the certificate, the Commissioner is obliged by section 36(7) FOIA to accept the certificate as "conclusive evidence" that the opinion is reasonable in both process and substance and that the alleged inhibition would be likely to occur; therefore, the Commissioner accepts that section 36(2) FOIA is engaged and that the withheld information is exempt.

15. The exemption afforded by section 36 FOIA is, in respect of information held by the House of Commons, absolute by virtue of section 2(3)(e) FOIA. Therefore consideration of the public interest does not arise.

## Right of appeal

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16. 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,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@hmcts.gsi.gov.uk](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

17. 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.
18. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Graham Smith**  
**Deputy Commissioner**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**