

The Campaign for Freedom of Information

Suite 102, 16 Baldwins Gardens, London EC1N 7RJ

Tel: 020 7831 7477

Fax: 020 7831 7461

Email: admin@cfoi.demon.co.uk

Web: www.cfoi.org.uk



FREEDOM OF INFORMATION (AMENDMENT) BILL

Report Stage, April 20 2007

BRIEFING

Summary

This private member's bill, introduced by David Maclean MP, would (a) remove Parliament from the scope of the Freedom of Information Act, and (b) create a new exemption under the Act for all communications between MPs and public authorities.

The debate at Committee stage described the case for the bill almost exclusively in terms of the need to protect MPs' constituency correspondence from disclosure under the Act. However:

- Correspondence about constituents' personal affairs is already exempt under the Act's existing exemptions.
- No specific examples of the improper disclosure of such correspondence have been cited during the bill's parliamentary passage.
- The Information Commissioner's office has told us that it has received no complaints either from constituents or from Members that such correspondence has been inappropriately released under the Act.

We believe it is misleading to describe the Bill as a measure designed to protect constituents' personal information. Its main effects will be (a) to prevent requests for details of MPs' expenditure from being disclosed and (b) to protect MPs' correspondence with public authorities on matters of general policy from disclosure. We do not believe either of these changes is justified.

Removing Parliament from the Bill's scope

The bill would remove both Houses of Parliament from the scope of the FOI Act. The main effect would be to prevent the disclosure of detailed information about MPs' expenses claims. We understand that it is intended to continue to disclose the annual aggregate figures for expenses voluntarily.

The disclosure of the aggregate annual figures has already led to a reduction in the overall level of Members' travel expenses.¹ Disclosure of more detailed information about Members of the Scottish Parliament's expenses (under the Scottish Freedom of Information Act) has led to the repayment of wrongly claimed travel expenses.²

We think it would be wrong for Parliament to exempt itself from a disclosure regime which it has applied to the whole of the public sector. The detailed expenses of ministers, judges, chief constables, councillors, civil servants, local authority chief executives and other public figures and officials are all disclosable under the Act. A number of these are included in an Appendix to this briefing. The particular case for exempting MPs' expenses alone has not been made.

We appreciate that press coverage of expenses claims may sometimes fail to recognise legitimate reasons for what otherwise appears to be a high level of expenditure and lead to unfair criticism of particular Members. However, the scope for misunderstanding should reduce over time as the press and public become more familiar with the material and the reasons for apparent discrepancies. We think it would be counterproductive to try and deal with the problem by preventing access to the figures

Moreover, *all* public figures and officials - not just MPs - are at risk of being discomfited in this way. Nowhere in the debates on the bill so far has the case been made for protecting MPs' expenses *alone*, while allowing those of all other public figures and senior officials to remain accessible. We would hope that MPs would avoid legislating to provide special treatment for themselves.

We also think it wrong that Parliament should remove itself from the scope of the Freedom of Information Act - should this happen - by means of a private member's bill, introduced without any formal assessment of the case for and implications of this reform.

Exempting MPs' communications with public authorities

The bill proposes a new exemption to cover all communications between an MP and a public authority.

This has been justified on the grounds that it would protect MPs' correspondence on behalf of their constituents from disclosure under the Act. If this is its purpose it is unnecessary, as such correspondence is already subject to at least two (and in some cases more) separate exemptions.

¹ Evidence of Mr John Walker, House of Commons Director of Finance and Administration to the Information Tribunal, Appeal No EA/2006/0015 and 0016

² 'McLetchie claimed for trip to Tory conference'. Herald, 14.10.05, www.govanlc.com/herald141005.htm

The exemption for personal data

The exemption for personal data in section 40(2) of the FOI Act protects information about any identifiable individual whose disclosure would breach the Data Protection Act. In practice this protects any information relating to an individual's medical condition, housing or social services needs, entitlement to pension or benefits, education, immigration status, criminal record, relations with the police or probation service and similar matters. The mere fact that the MP had written to a public authority on the constituent's behalf would (even in the absence of other information about the constituent) in itself be personal data about the constituent whose disclosure would breach the Data Protection Act.

The only foreseeable circumstances in which such information about a private citizen might legitimately be disclosed is with the consent of the individual concerned or if all the information concerned was already in the public domain, for example, because the individual had publicised the details as part of a campaign to remedy a perceived injustice.

The exemption for breach of confidence

Correspondence between an MP and a public authority about an individual constituent would normally also be exempt under section 41 of the Act, which applies to information whose disclosure would be an actionable breach of confidence.

This exemption applies where the information involved (a) is not publicly accessible (b) is supplied in confidence, either explicitly or implicitly and (c) is likely to cause some detriment to the confider if disclosed.³

An MP's correspondence with a public authority about a constituent's personal affairs would normally be protected by this exemption. Even if the correspondence was not itself marked 'confidential' the nature of the relationship between the MP and the constituent and between the MP and the authority would normally establish an implicit expectation of confidentiality that would be recognised by the courts.

Other exemptions

During the bill's committee stage, it was suggested that information about potential criminal offences passed by an MP to the police might also be at risk of disclosure.⁴ In fact

³ In the case of confidential personal data, the courts have held that the mere fact that an individual's personal information is disclosed to someone to whom he would prefer it not be revealed is sufficient detriment to meet this test.

⁴ For example, Mr George Howarth said: 'if a constituent comes to me and says, for example, "The family at No. 60 are drug dealing," I make it a practice - and I am sure that I am not unique in this to say, "I will pass that information on to the local police inspector, and I will not give your name or address, or mention the fact that we have had this conversation." That is important but, equally, drug dealers and individuals involved in low-level organised crime have the capacity to put two and two together. If they had access to privileged correspondence sent to a senior police officer, they could work out by a process of elimination who was in the frame, and individuals involved in low-level organised crime have the capacity to put two and two together.'" *Freedom of Information (Amendment) Bill Committee, 7 February 2007, col. 11*

such information would be protected from disclosure by no less than three additional exemptions in the Act:

- information whose disclosure is likely to prejudice the prevention or detection of crime or the apprehension or prosecution of offenders is exempt under sections 31(1)(a) and (b)
- information held for the purpose of an investigation which could lead, or could have led, to criminal proceedings is exempt under section 30(1)
- information relating to the obtaining of information from confidential sources is exempt under section 30(2)(b).

In any event, bodies such as police forces, NHS trusts or social services departments - and indeed all public authorities - take extreme care not to disclose personal data about the individuals they deal with. If there were shortcomings in the Act which meant such information was not properly protected they would long ago have ensured that these were dealt with.

“Inadvertent” disclosures

The bill’s sponsor, Mr Maclean, has recognised that an MP’s correspondence about a constituent’s personal affairs is already protected by the Act:

Clearly if one writes to a public authority and gives the personal details of a constituent, such as their CSA claim, information relating to their children and so on, that information should be protected. It should quite clearly be protected under the current Act. However, inadvertently, someone may release it. This measure would remove that small problem.⁵

However, an official who ‘inadvertently’ overlooks the Act’s existing exemptions would be just as likely to overlook the additional exemption proposed by this Bill. We do not see what contribution an additional exemption will make to the protection of personal data. Any official with even the most modest understanding of the FOI regime would immediately recognise that an MP’s correspondence about a constituent’s personal affairs could not legitimately be disclosed.

An unauthorised disclosure of such information would also be likely to involve a breach of the Data Protection Act and the common law of confidence. This could lead to:

- (a) enforcement action by the Information Commissioner under section 40 of the Data Protection Act
- (b) action for compensation under section 13 of the Data Protection Act, if the individual concerned has been damaged by the disclosure
- (c) action for damages at common law if the individual has suffered damage as a result of a breach of confidence

⁵ Freedom of Information (Amendment) Bill Committee, 7 February 2007, col. 7

Other concerns

Mr Maclean has also suggested that the measure is needed to allow MPs to privately express concerns about the veracity of a constituent to a public authority:

We must have the freedom to express to chief constables, the tax authorities and so on, our personal view about the veracity of a constituent. That may not be protected information in all circumstances. If that information is released accidentally by a police clerk releasing the file, it puts us in an enormously difficult position. We must have the right, as Members of Parliament, to express a personal opinion about a constituent or someone else when we write on behalf of a constituent and we must have a guarantee that that is protected. That is my motivation. It is what is driving me and I hope to convince the Committee that it is a problem that has to be remedied.⁶

In fact, this raises an issue to do with the Data Protection Act, rather than the FOI Act. Personal data of this kind would not be disclosable under the FOI Act. However, it might in theory be available to the individual concerned under the Data Protection Act, which gives individuals a right of access to personal data about themselves. This right is subject to the DPA's own exemptions.⁷ However, an opinion expressed about the individual is not, as such, protected, whether made by an MP or by a member of the authority's staff or by anyone else. The present bill does not affect disclosures under the DPA and thus does not address the above concerns.⁸

The impact of the proposed new exemption

The main impact of the proposed exemption would be to exempt MPs' correspondence with public authorities on matters *other than* constituents' personal affairs.

The following types of communications by an MP would, amongst others, be protected in future:

- a response to a public consultation exercise
- representations to a planning authority about a local planning matter or to an NHS trust about deficiencies in, say, the ambulance service
- MP's correspondence with a minister seeking action to protect jobs, hospitals or schools in the constituency.

Where these matters are inherently sensitive, they may fall within the scope of an existing exemption in the normal way. The Bill would mean that they would be protected, regardless of their sensitivity.

We wonder why MPs' correspondence should enjoy special protection which will not be available for correspondence from any other source. There is no special protection for

⁶ Freedom of Information (Amendment) Bill Committee, 7 February 2007, col. 8

⁷ For example, for disclosures likely to prejudice law enforcement or, in the case of health or social work records, to seriously harm the physical or mental health or condition of the individual or of some other person.

⁸ Moreover, the DPA itself could not be amended to exempt MPs' correspondence as it implements an EU directive which makes no provision for such an exemption

communications to a public authority from a local councillor, government minister, chief constable, NHS chief executive, hospital consultant or head teacher. Their correspondence would, however, be protected where this was justified under the Act's existing exemptions.

If MPs' correspondence alone is withheld, regardless of the circumstances, while everyone else's is disclosed, we think this is likely to diminish rather than enhance the esteem in which MPs are held. It will undoubtedly suggest that improper lobbying (eg for unwelcome decisions to be deferred till after an election) is taking place. We hope that MPs will avoid seeking such special protection for their own role.

Campaign for Freedom of Information
18 April 2007

APPENDIX

The following pages contain examples of disclosures of expenses under the FOI Act of various senior public figures:

- 1. Sir Ian Blair, Commissioner of the Metropolitan Police**
- 2. The Lord Chief Justice**
- 3. Senior BBC Executives**
- 4. Deputy Chief Constable of Thames Valley Police**
- 5. The Mayor and Elected Members of the Greater London Authority (disclosed in accordance with the Greater London Authority Act rather than the FOI Act)**
- 6. The Vice Chancellor, Deputy Vice Chancellor and Pro Vice Chancellors of Salford University**

Metropolitan Police

NAME **SIR IAN BLAIR - Commissioner**
 PERIOD **APRIL - JULY 2005**

APRIL 2005

Date	Detail (To include city or town if outside London)	Primary Method of Travel	Travel Costs	Accomm Costs	Meal Costs	Misc Costs	Hospitality	Total Cost
15-Apr-05	Floral tribute - courtesy					26.50		26.50
		Totals	0.00	0.00	0.00	26.50	0.00	26.50

MAY 2005

Date	Detail (To include city or town if outside London)	Primary Method of Travel	Travel Costs	Accomm Costs	Meal Costs	Misc Costs	Hospitality	Total Cost
7-May-05	Travel	Taxi	11.00					11.00
9-May-05	Business meal - London restaurant				44.16			44.16
16-May-05	Business meal - London restaurant				65.00			65.00
24-May-05	Floral tribute - courtesy					20.00		20.00
25-May-05	Business meal - London restaurant				81.25			81.25
		Totals	11.00	0.00	190.41	20.00	0.00	221.41

JUNE 2005

Date	Detail (To include city or town if outside London)	Primary Method of Travel	Travel Costs	Accomm Costs	Meal Costs	Misc Costs	Hospitality	Total Cost
6-Jun-05	Business meal - London restaurant				18.00			18.00
15-Jun-05	Travel	Taxi	10.00					10.00
		Totals	10.00	0.00	18.00	0.00	0.00	28.00

JULY 2005

Date	Detail (To include city or town if outside London)	Primary Method of Travel	Travel Costs	Accomm Costs	Meal Costs	Misc Costs	Hospitality	Total Cost
10-Jul-05	Business meal				21.82			21.82
14-Jul-05	Travel	Taxi	14.00					14.00
19-Jul-05	Business meal - London restaurant				140.00			140.00
29-Jul-05	Overseas travel	Flight	2600.00					2600.00
29-Jul-05	Travel	Taxi	15.00					15.00
		Totals	2629.00	0.00	161.82	0.00	0.00	2790.82

The Lord Chief Justice's expenses associated with overseas visits and conferences are paid for by the Department for Constitutional Affairs since June 2000.

Item	Cost £
June 2000 – 30 March 2001 Financial Year	
Lord Woolf – Hosting supper for participants on Indo/British Judicial Reform	£677.43
Lord Woolf – Attendance at Opening of the Legal Year in Belfast	£224.00
Lord Woolf – Participating in UK/American Judicial Exchange	£7,114.00
April 2001 – March 2002 Financial Year	
Lord Woolf – Meeting with Chief Justice in Ireland	£400.80
Lord Woolf – Attendance at Conseil D'état Colloque in Helsinki	£749.30
April 2002 – March 2003 Financial Year	
Lord Woolf – Dublin, Attendance at Conference of Presidents of the Supreme Courts and Attorneys General of EU States	£1,198.07
Lord Woolf – India, Attendance at Indo/British Judicial Forum	£1,615.13
Lord Woolf - Luxembourg, Attendance at European Court of Justice Anniversary Conference	£572.10
Lord Woolf - Luxembourg, European Court of Justice 20th Anniversary Celebrations, reimbursement of cost of UK gift	£37.95
Lord Woolf - Paris, Attendance at Official Celebration of French Judges and French Government Official launch	£79.00
April 2003 – March 2004 Financial Year	
Lord Woolf - Attendance at 13th Commonwealth Law conference & 33rd Australian Legal Convention in Sydney and Melbourne	£2,678.80
Lord Woolf - Attendance at Commonwealth Magistrates Judges Association Conference In Malawi	£5,245.70
Lord Woolf - Attendance at Opening of South African Constitutional Court	£4,129.31
April 2004 – January 2005	
Lord Chief Justice - Attendance at Presidents of Supreme Courts and Attorneys General – Helsinki, and International Judicial Conference - Cairo	£3,547.51
TOTAL	£28,269.10

BBC Response to an FOI request for the highest individual expenses claim made by particular named executives during a 12 month period.

Mark Thompson

1 January 2006 – 24 November 2006 – £11,460.89

1 November 2005 – 31 October 2006 – £12,080.75

The highest claim was £945. This claim was made in March 2006 and related to the Christmas dinner held for 21 staff working directly for the Director General and Deputy Director General, and in some surrounding support areas. It is standard BBC practice that the most senior member of staff present at an event should take responsibility for paying the bill.

Alan Yentob

1 January 2006 – 24 November 2006 – £1,519.06

1 November 2005 – 31 October 2006 – £1,189.45

Highest claim: £120.38. The claim was made in October 2006 and was for hospitality provided after the BBC Proms.

Peter Fincham

1 January 2006 – 24 November 2006 – £1,020.73

1 November 2005 – 31 October 2006 – £1,322.48

Highest claim: £388.69. The claim was made in June 2006 and was for hospitality provided during a BBC One team building day.

Roly Keating

1 January 2006 – 24 November 2006 – £1,064.27

1 November 2005 – 31 October 2006 – £1,175.18

Highest claim: £464.12. The claim was made in October 2006 and was for a conference fee for Media Tech Conference in November 2006.

In relation to the expenses for BBC creative director Alan Yentob, BBC One controller Peter Fincham and BBC2 controller Roly Keating, please note the following. Schedule 1 of the Act says that the BBC is covered in respect of information held for purposes "*other than those of journalism, art or literature.*" We are not therefore obliged to supply information held for the purposes of creating the BBC's output or information that supports and is closely associated with these creative activities.

The above individuals incur costs that are related to supporting BBC content. They also carry responsibility for relationships with Talent on behalf of their channels, and in the case of Alan Yentob, overall responsibility within the corporation; some of the costs they incur relate to these responsibilities.

The Act does not apply to these costs, and this information is therefore not included in our response.

Deputy Chief Constable of Thames Valley Police,

Travel Expense for Deputy Chief Constable Alex Marshall

Purpose	Meetings in London
Date(s)	01/11/06
Destination(s)	
Air fare	
Other transportation	
Accommodation	
Meals and incidentals	
Other	£21.00 parking
Recovered cost	
TOTAL	£21.00

Purpose	Meetings in London
Date(s)	02/11/06
Destination(s)	
Air fare	
Other transportation	
Accommodation	
Meals and incidentals	
Other	£26.30 parking
Recovered cost	
TOTAL	£26.30

Purpose	Dinner meeting in Oxford
Date(s)	14/11/06
Destination(s)	
Air fare	
Other transportation	
Accommodation	
Meals and incidentals	£42.50
Other	
Recovered cost	
TOTAL	£42.50

Hospitality Expense for Deputy Chief Constable Alex Marshall

Appendix 1

The Mayor and Elected Members

2005-06 (1st April 2005 to 31st March 2006)							
	Travelcard	Taxi Account	Taxi Expenses	Domestic Travel	Foreign Travel	Other Expenses	Total
	£	£	£	£	£	£	£
Mayor							
K Livingstone	-	539.53	595.00	176.50	8,803.82	2,141.77	12,256.62
Deputy Mayor							
N Gavron	1,640.00	1,408.25	1,016.60	-	6,534.16	2,743.77	13,342.78
Chair of the Assembly							
S Hamwee (from 11.5.05)	-	352.40	115.20	138.00	-	90.53	696.13
B Coleman (to 10.5.05)	-	43.47	-	-	-	-	43.47
Deputy Chair of the Assembly							
S Hamwee (to 10.5.05)	-	-	-	-	-	-	0.00
B Coleman (from 11.5.05)	1,580.00	863.68	26.20	125.65	-	149.60	2,745.13
Current Assembly Members							
T Arbour	1,580.00	-	-	-	-	-	1,580.00
J Arnold	1,512.00	232.18	61.70	-	-	-	1,805.88
R Barnes	1,580.00	731.88	91.00	-	-	-	2,402.88
J Biggs	1,452.00	3.42	33.80	7.80	-	-	1,497.02
B Blackman	1,580.00	7.26	-	298.00	-	-	1,885.26
A Bray	740.00	204.01	12.40	-	-	985.98	1,942.39
D Doocey	1,580.00	89.98	30.00	298.00	-	80.00	2,077.98
L Duvall	1,580.00	732.03	37.50	-	-	-	2,349.53
R Evans	1,580.00	78.63	-	-	-	-	1,658.63
L Featherstone (AM to 1.6.05)	195.00	-	-	-	-	-	195.00
D Hockney	-	1,862.81	500.86	-	-	-	2,363.67
E Howlett	1,532.00	997.51	-	-	-	-	2,529.51
P Hulme Cross	273.00	19.36	-	-	-	-	292.36
D Johnson	1,580.00	42.58	70.80	-	-	-	1,693.38
J Jones	1,580.00	28.38	431.90	150.50	376.15	-	2,566.93
J McCartney	1,216.00	47.30	-	298.00	-	-	1,561.30
R Neill	1,580.00	214.45	23.20	303.25	-	298.60	2,419.50
A Pelling	1,580.00	19.58	-	-	-	-	1,599.58
G Pope (AM from 1.6.05)	1,452.00	12.98	21.00	-	-	-	1,485.98
M Qureshi	1,580.00	201.37	-	56.00	-	-	1,837.37
V Shawcross	1,216.00	209.09	87.00	-	-	-	1,512.09
G Tope	1,452.00	3.42	-	-	-	-	1,455.42
M Tuffrey	1,216.00	-	-	-	-	-	1,216.00
TOTAL	32,856.00	8,945.55	3,154.16	1,851.70	15,714.13	6,490.25	69,011.79

Summary of FOI disclosures by Salford University

Date received	Date Due	Date completed	Requestor type	Information asked for	Released	Notes
28/02/2005	30/03/2005	29/03/2005	Ex-staff	Reports of the Revans Closure Committee and Executive Group and Budget Sub Committee minutes from Aug 2003 - Sept 2004	Yes	Released
03/03/2005	04/04/2005	15/03/2005	Ex-student	Anonymous spread of marks for modules that the applicant attended between 96-99 and 02-03 and Module reports for particular module over 2 years	Partially	Some information not held in the way requested and would exceed the limit to compile. Some information no longer held
17/03/2005	18/04/2005	13/04/2005	Journalist	Violence/intimidation/aggressive behaviour against staff by students over the last 5 years	Yes	
01/04/2005	29/04/2005	22/04/2005	Journalist	Business expenses incurred in the last 5 years by the Vice Chancellor, Deputy Vice Chancellor, Pro Vice Chancellors	Yes	
01/04/2005	26/04/2005	26/04/2005	Trade Union	Disclosure of 'Rewarding and Developing Staff' expenditure	Yes	
05/04/2005	04/05/2005	21/04/2006	Ex-student	Anonymous spread of marks/module report /minutes of meeting of the Board of Examiners for particular module	Partially	Some information no longer held
07/04/2005	06/05/2005	29/04/2005	Member of Public	Enquiring if Parliamentary election candidate is researching PhD as was claimed on leaflet distributed to the public	Yes	
07/04/2005	06/05/2005	21/04/2005	Ex-student	School of Sciences' Handbook	No	Information no longer held
07/04/2005	06/05/2005	08/04/2005	Member of Public	Memos, staff meetings and correspondence that mentions a particular local charity	No	Exceeds limit
08/04/2005	09/05/2005	29/04/2005	Ex-staff	Equality and Diversity (E&D) Committee papers from Feb 2004 and Education Development Reports	Yes	Viewed records on site
22/04/2005	23/05/2005	28/04/2005	Ex-student	Academic Regulations for Taught Programmes, Programme Specification, Module Specification for particular module	Yes	All existing information released
28/04/2005	27/05/2005	29/04/2005	Ex-staff	E&D Sub Group Minutes, Minute of E&D Committee	Yes	
13/05/2005	13/06/2005	19/05/2006	Reporter	Queries relating to student offences, warnings, plagiarism etc	Yes	
29/04/2005	31/05/2005	29/04/2005	Ex-student	School of Sciences' Handbook	No	No longer held