

The Campaign for Freedom of Information

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6 February 2007

Freedom of Information (Amendment) Bill

I am writing to you as a member of the committee considering David Maclean's private member's to remove the Houses of Parliament from the scope of the Freedom of Information Act and to exempt MPs' correspondence held by public authorities from access under the Act.

I understand that the bill is partly a reaction to the fact that, in response to FOI requests, some authorities have released correspondence sent to them by MPs, possibly including correspondence written on behalf of constituents.

If correspondence containing personal data about identifiable constituents have been released then, on the face of it, this information is already exempt under section 40(2) of the FOI Act. Section 40(2) exempts information whose disclosure would be a breach of the data protection principles contained in the Data Protection Act. If the released information relates to representations or enquiries which an MP has made in connection with the provision of health care, social services, education, probation, policing, housing, pensions or benefits etc in relation to an identifiable constituent, then not only has exempt information probably been wrongly released but a contravention of the Data Protection Act has probably occurred.

If this is the case, I wonder what purpose would be served by creating a further exemption for the same correspondence? If an authority has wrongly disclosed exempt information, it seems unlikely that much would be gained by making the information the subject of a further exemption. If the problem was caused either by

ignorance of the Act's provisions, or by carelessness, it is likely to continue until those shortcomings are corrected. Moreover, any authorities which have been wrongly disclosing personal data about members of the public are likely to carry on doing so - whether the information is contained in MPs' correspondence or elsewhere - until they become aware of their responsibilities. The answer is not to create a new exemption but to ensure that authorities are fully aware of their present duties under the existing Act.

If the problem is not the release of personal data about constituents but the fact that MPs' correspondence on matters of public policy is being released, then different issues are involved. In general, authorities are required to disclose correspondence from third parties, unless some particular exemption (eg for personal data, commercial interests, breach of confidentiality or prejudice to effective conduct of public affairs etc) applies. While it may be disconcerting to find one's correspondence disclosed in this way, particularly without prior notice, I wonder if the MP's position is any different from that of anyone else? The correspondence of anyone who write to a public authority is liable to disclosed in this way, including that of ministers, chief executives of other authorities, councillors, head teachers, hospital consultants, chief constables, campaigners and ordinary citizens. Is there a special case for exempting MPs' correspondence, while requiring the disclosure of everyone else's? If so is it one that the public generally would accept? I believe the public would expect their elected representatives to be subject to no less a degree of openness than that which applies throughout the public sector.

Public authorities are encouraged to act in accordance with the code of practice issued under section 45 of the FOI Act. This advises them of the circumstances in which they should consult people who have supplied information to them before disclosing it. If this guidance has not been followed, I would suggest that the solution is to strongly urge authorities to do so in future - not just for MPs' correspondence, but for everyone's - rather than seek to exempt MPs' correspondence from the Act.

Finally, the bill would remove the Houses of Parliament themselves from Schedule 1 of the Act, so that Parliament is no longer subject to the legislation at all. The main practical effect would be to remove the MPs expenses from the right of access. However, MPs are far from unique in having their expenses disclosed. I [enclose copies](#) of information released under the FOI Act revealing the expenses claimed by BBC executives, including the Director General; the Chief Constable of Cleveland, and by the Lord Chief Justice. Many other examples could be provided.

Parliament is already subject to a special exemption in section 34 of the Act for information whose disclosure would infringe Parliamentary privilege. Unlike ordinary exemptions, which can be overturned by the Information Commissioner, the Parliamentary authorities can issue a certificate conclusively establishing that this exemption applies. A similar conclusive certificate can be used to establish that information held by Parliament is exempt under section 36 of the Act on the grounds that disclosure would be likely to inhibit the free and frank provision of advice, the free and frank exchange of views for the purposes of deliberation or would be otherwise likely to prejudice the effective conduct of public affairs.

Parliament has introduced the Freedom of Information Act, setting out a disclosure regime which applies to public authorities across the whole of the UK public sector. I believe the public will expect that the system which Parliament has established for all other public bodies should apply to Parliament itself, despite the fact that these may sometimes operate in ways that are unexpected and perhaps uncomfortable. That is true for all public authorities and all public servants and I hope Members of Parliament would be extremely reluctant to seek special treatment for themselves.

On the other hand, it would be entirely reasonable for MPs to draw on their own experiences under the Act to seek to ensure that the Act's exemptions are properly applied and that guidance under the Act is properly followed - not merely in relation to themselves, but across the board.

Yours sincerely

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Director