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The *Freedom of Information (Amendment) Bill*

Bill 62 of 2006-7

This Research Paper sets out the background to the *Freedom of Information (Amendment) Bill 2006-07*. This is a Private Member's Bill introduced by David Maclean, which received an unopposed second reading on 19 January 2007 and which has subsequently been amended during its Public Bill Committee stage. Report stage is due on Friday 20 April 2007, where the Bill is the first item of business.

The Bill has two purposes; firstly it removes both Houses of Parliament from the list of public bodies included within the scope of Schedule 1 of the *Freedom of Information Act 2000 (FoI Act 2000)*; secondly, it makes communications between Members of Parliament and public bodies exempt from the FoI Act 2000, although as the Bill is currently drafted, a public authority might still be able to release such correspondence if it considered that the public interest in disclosure was greater than the public interest in withholding the information.

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Summary of main points

The Labour Government's white paper of December 1997 did not include both Houses of Parliament within the ambit of the proposed Freedom of Information (FoI) legislation. However, at the suggestion of the Public Administration Select Committee, the Home Secretary, then Jack Straw, included Parliament within the Bill which was introduced in the 1999-2000 session. Because it focused on other matters, the Commons did not debate the principle of extending FoI to Parliament during the passage of the Bill, which became law in 2000. The Act also applied the provisions of the *Data Protection Act 1998* to Parliament. However, the individual right of FoI access was not brought into force until January 2005.

The interaction between FoI and data protection (DP) is complex. DP is used when someone wants to find out about information held about themselves, and FoI is used when someone wants to find out information about another person (or third party). However, section 40 of the FoI Act prevents the disclosure of personal data where this would breach the data protection principles set out in the DPA. The precise circumstances in which personal data may be released has been the subject of an Information Tribunal case on Members' allowances in January 2007.

As preparation for implementation the administration of both Houses released information on individual Members' allowances. However, since 2005 there have been a number of FoI requests to the House of Commons for a more detailed breakdown of allowances information. The House of Commons Commission is the statutory body responsible for the administration of the House, and it decided to appeal these requests to the Information Commissioner and the Information Tribunal. On 14 February 2007 the Commons released a more detailed breakdown of travel allowances following in compliance with a ruling from the Tribunal.

Individual Members of Parliament are not covered by the FoI Act, which applies only to public bodies. However Members' correspondence with a public body may be subject to disclosure, in response to a request to that body. There have been concerns that the confidentiality of such correspondence might therefore be compromised, although the correct interpretation of the DPA would prevent the identification of individual constituents.

The *Freedom of Information (Amendment) Bill 2006-07*, a Private Member's Bill, was introduced by David Maclean, a backbench member of the House of Commons Commission. It received an unopposed second reading on 19 January 2007 and passed its Public Bill Committee stage on 7 February 2007. Its report stage is due on Friday 20 April 2007.The Bill has two purposes; firstly it removes both Houses of Parliament from the list of public bodies included within the scope of Schedule 1 of the *Freedom of Information Act 2000*; secondly, it makes correspondence from Members of Parliament exempt from the FoI legislation, although as the Bill is currently drafted, a public authority might still be able to release such correspondence if it considered that the public interest in disclosure was greater than the public interest in withholding the information.

Reactions to the Bill have been mixed. There has been concern from the proponents of FoI that the Houses of Parliament should not be removed from coverage via a Private Member's Bill with minimal parliamentary debate. Debate in Committee concentrated on the perceived threats to confidentiality between Member and constituent.

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I Background

A. Inclusion of Parliament within FoI Bill

Although a white paper on Freedom of Information was published in December 1997, six months after the Labour Government took office,[1] legislation was not introduced to Parliament until May 1999 in the form of a draft bill.[2] However, the Commons had begun to engage with the white paper proposals in the form of a select committee report from the Public Administration Committee in May 1998.[3] This report was the first to raise the question of including Parliament within the scope of the Act, expressing surprise at its exclusion, given the wide coverage proposed. The tone of the white paper had been to express legal difficulties with the inclusion of Parliament, in case the requirement of Article IX of the Bill of Rights 1689 might be affected - this Article prevents the questioning of parliamentary proceedings in the courts, and is explained further below. The Committee took a different approach, considering that exemptions for decision-making would be likely to protect private Committee proceedings and that papers held by Members, Ministers and parties would not fall within FOI, as these would not relate to Parliament's public functions. It noted:

> Para 37…But there are many administrative functions carried out within Parliament which, it seems to us, do not need to be protected, any more than do those of the police. The justification for the exclusion of Parliament has not been made out. The exclusion may well convey the wrong impression to the general public, given the purpose of this legislation. We hope that the Joint Committee on Parliamentary Privilege will review this question, and we recommend that the Government re-examine the exclusion of Parliament in the light of its Report.[4]

The Government response of July 1998 raised no objection in principle to the inclusion of the administrative functions of Parliament within the scope of FOI, but looked to the Joint Committee on Parliamentary Privilege for guidance.[5] This Committee had been established by the Leader of the House, Ann Taylor, as part of her Commons modernisation programme, to review the principles and practice of parliamentary privilege. Parliamentary privilege is a complex legal concept, but, for present purposes, it comprises two main components, the protection given by Article IX of the Bill of Rights 1689 to free speech in Parliament and the concept of 'exclusive cognisance' or right to manage Parliament's own affairs without external interference, even from the courts.

This fundamental constitutional law protects the right of Parliament to operate on behalf of the public independently without interference from external sources, but its reach extends beyond formal Parliamentary business in the Chambers, Committees and in questions, motions and so on – 'proceedings in Parliament', a complex term which has

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1 Your Right to Know Cm 3818

2 *Freedom of Information: Consultation on draft legislation* Home Office May 1999 Cm 4355

3 *Your Right to Know: The Government's proposals for a Freedom of Information Act* HC 398 1997-98 Recommendation 16

4 HC 398 1997-98, para 37

5 Fourth Special Report HC 1020 1997-98

no simple, comprehensive definition, to the normal administrative functions of the Commons which apply to any institution, such as finance, security, personnel, office and other provision.

As a public body, the House administration is supervised by the House of Commons Commission, a statutory body of Members, chaired by the Speaker. The Commission was established by the *House of Commons (Administration) Act 1978,* which provides that the Commission should have six members: the Speaker as Chairman; the Leader of the House; a Member of the House nominated by the Leader of the Opposition (normally The Official Opposition's Shadow Leader of the House); and three other Members appointed by the House, none of whom may be a Minister. One Member of the Commission acts as its spokesman in the House (for example in answering Parliamentary Questions).[6]

Responsibility for FoI policy moved from the Cabinet Office to the Home Office in July 1998, under the Home Secretary, Jack Straw, now Leader of the House of Commons. The Joint Committee reported in April 1999 but made no specific recommendation in relation to FOI. However a strong recommendation was that: 'The right of each House to administer its internal affairs within its precincts should be confined to activities directly and closely related to proceedings in Parliament. Parliament should no longer be a statute-free zone in respect of Acts of Parliament relating to matters such as health and safety and data protection.'[7]

The Home Office introduced a draft Bill in May 1999, in the form of a consultation paper, which was subject to pre-legislative scrutiny. This accepted the case for including Parliament, but the draft did not yet include both Houses, as the accompanying consultation document noted that discussions were continuing with the House authorities.[8] A further report from the Public Administration Select Committee on the draft FoI bill strongly supported the extension of the Bill to Parliament.[9]

The FoI Bill was therefore introduced into Parliament with the two Houses of Parliament already within its scope (rather than the House of Commons Commission and the Clerk of the Parliaments as the Lords 'equivalent). On second reading, Jack Straw noted that the Bill had extended its coverage from the original white paper proposals of 1998:

> We have extended the coverage of the Bill beyond that proposed in the White Paper, to include the operational activities of the police and Parliament itself.[10]

During the passage of the Bill the exemptions in sections 34 and 36 relating to the Houses of Parliament were made absolute, removing the public interest test. Further details are given in Library Research Paper 00/89 *The Freedom of Information Bill-Lords Amendments.* There was no debate in the Commons during the passage of the Bill on the principle of including both Houses of Parliament within FoI. The attention of Members

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6 http://www.parliament.uk/about_commons/house_of_commons_commission_.cfm
7 Executive Summary HL 43-I/HC 214-I 1998-99
8 *Freedom of Information: Consultation on draft legislation* Cm 4355 May 1999 Home Office, para 53
9 HC 570 1998-99 para 24
10 HC Deb 7 December 1999 c726

was devoted to the need for a public interest test and a ministerial veto, amongst other points.

The *Freedom of Information Act 2000* came into effect in January 2005. Further details are available in Standard Note 2950 *Freedom of Information requests.* Briefly, the legislation applies to public bodies, including both Houses of Parliament, which are separately listed in Schedule 1 to the Act. When in receipt of a FoI request from an individual, each House is required to respond under the terms of the Act. Information may only be refused where an exemption is applicable. Most exemptions are also subject to a public interest test. The Standard Note gives further details of the operation of exemptions and the role of the independent Information Commissioner.

B. Application of FoI to both Houses

Implementation of the FoI legislation also brought both Houses within the ambit of the *Data Protection Act 1998.*[11] Previously, both Houses were excluded from data protection (DP) legislation, although not from EU directives on DP. There is a complex interaction between FoI and DP. A person wishing to obtain information about themselves uses DP; a person wishing to obtain information about another person uses FoI. However, the data protection principles apply when a public body considers an FoI request for personal information about another person. This is explained more fully below.

One effect of the *Freedom of Information Act 2000* was to extend the range of data covered by the *Data Protection Act 1998* (DPA). Specifically, it inserted section 1(1)(e) into the DPA, effectively extending the definition of data to include any recorded information held by a public authority. Thus, a subject access request under section 7 of the DPA could succeed even if the data is not computerised or is in relevant filing system or is an "accessible" record as defined, quite narrowly, by section 68 of the DPA. Similarly, other provisions relating to the personal data of individuals, including the rights of data subjects, currently apply to any recorded information. Some of this could, presumably, be highly unstructured.[12]

As part of the preparations for FoI implementation, each House announced details of Members' allowances and peers expenses on 21 October 2004 which are available on the parliamentary website.[13] In the Commons, this followed decisions of the House of Commons Commission, the statutory body responsible for the administration of the House.[14] . There is no statutory equivalent to the Commission in the House of Lords, although the House of Lords administration has many similar functions.

The allowances information has been updated annually. The details of the processes leading to the decision by the Commission to release a total sum for each allowance,

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11 See paras 2 and 3 of Schedule 6 to the FoI Act.

12 For further details about this complex decision see *The Durant Case and its impact of the interpretation of the Data Protection Act 1998* Information Commissioner, available at http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/the_durant_case_and_its_impact_on_the_interpretation_of_the_data_protection_act.pdf

13 http://194.128.65.30/allowances.htm

14 http://www.parliament.uk/about_commons/house_of_commons_commission_.cfm

rather than a detailed breakdown, is given in the Information Tribunal decision of 16 January 2007 (see below).

There are two special provisions in the FoI Act allowing the Speaker of the Commons or Clerk of the Parliaments to certify that information is exempt. Such a certificate is conclusive and means that the Information Commissioner has no role to play. These are:

- section 34, where an exemption is required to avoid an infringement of the privileges of either House of Parliament
- section 36(6), where in the 'reasonable opinion' of the Speaker of the Commons or Clerk of the Parliaments disclosure would inhibit the free and frank provision of advice, or prejudice the effective conduct of public affairs. Such a certificate may also be used to ensure that the House does not have to confirm or deny whether it holds the information sought

However, the Speaker or Clerk may not issue a certificate on a class basis - each request for information must be considered on its merits

A certificate has been issued by the Speaker of the Commons, under section 36(6) in 2006 in relation to a request for the names and salaries of Members' staff, on the grounds that the release of this information would be likely to prejudice the effective conduct of public affairs. A further five certificates have been issued under section 34 in response to requests for privileged information relating to proceedings in the House and its committees.

To date, each House has received a relatively small number of requests specifically logged as applications under the Act (rather than information about the workings of Parliament). It is estimated that since January 2005 the House has logged 360 applications. The subject of the applications have included procurement, security and access to select committee papers.

C. Release of information about Members' allowances

The most high-profile requests have related to the provision of more detailed breakdowns of Members' allowances. Over 100 of these types of enquiry had been made by the end of 2006.[15] The requests have been refused principally on the grounds of the DP exemption in section 40 of the FoI Act.

Where a public body refuses a request, the applicant can complain to the Information Commissioner, who will review the decision of the public body The Information Commissioner has already ruled against the House of Commons on a number of allowance cases, but the House of Commons Corporate Officer (the Clerk of the House) appealed to the Information Tribunal, which has the power to review decision notices

[15] Andrew Walker, Director of Finance and Administration in the House of Commons told the Information Tribunal that the House had received approximately 167 requests for information on Members' allowances since the FoI Act had come into effect. *Information Tribunal Appeal no EA/2006/0015 and 0016*, para 20

issued by the Commissioner. The Information Tribunal issued a decision on two applications for information on allowances on 16 January 2007. One of the appellants was Norman Baker MP, the other was the *Sunday Times*. The Tribunal found in favour of disclosure:

> 93. Having considered all these interests we find that the legitimate interests of members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of MPs. We consider our decision will only result in a very limited invasion of an MP's privacy considered in the context of their public role and the spending of public money. In coming to this decision we have noted that the Scottish Parliament has for some years disclosed the detailed travel claims of MSPs supporting mileage, air travel, car hire and taxis. Also we note that in the Scottish Information Commissioner's Decision 033/2005 in *Paul Hutcheon, The Sunday Herald and the Scottish Parliamentary Corporate Body* (SPCB) the Scottish Commissioner went further and ordered the release of the destination points of taxi journeys of an MSP.

It is only possible to appeal from the Information Tribunal to the courts on a point of law. The full text of the Information Commission decision may be found on the website.[16]

The Scottish Information Commissioner has also examined the issue, under separate but very similar legislation. Although his decisions have no legal effect for UK FoI legislation, clearly there is a persuasive influence, as noted in the Information Tribunal decision of January 2007:

> ***David McLetchie MSP's travelling claims since 1999 – taxi journey destinations***
> Applicant: Paul Hutcheon, The Sunday Herald
> Authority: The Scottish Parliamentary Corporate Body Case No: 200501974
> Decision Date: 6 October 2005
> Kevin Dunion
> Scottish Information Commissioner
> **Facts**
> Paul Hutcheon, a journalist with The Sunday Herald, asked the Scottish Parliamentary Corporate Body (the SPCB) for a copy of David McLetchie MSP's travel claims supporting mileage, air travel, car hire and taxis since 1999. Copies of the travel claims were provided to Mr Hutcheon, but information, including the taxi destinations, was redacted. Mr Hutcheon asked the SPCB to review its decision to redact the destination in the taxi invoices. The SPCB subsequently carried out a review, but upheld its original decision, advising Mr Hutcheon that releasing the information would contravene the Data Protection Act 1998. Mr Hutcheon subsequently applied to the Commissioner for a decision on whether the SPCB was correct not to provide the taxi destinations to him.
> **Outcome**
> The Commissioner found that the SPCB had breached Part 1 of FOISA in failing to release the destination points of taxi journeys undertaken by Mr McLetchie. Although the information was personal data, the release of the data would not breach any of the data protection principles. Accordingly, the information was not

16 http://www.informationtribunal.gov.uk/Files/ourDecisions/corpofficer_house_of_commons_v_infocomm.pdf

> exempt under section 38(1)(b) of the Freedom of Information (Scotland) Act 2002 (FOISA).
> In addition, the Commissioner was not satisfied that the release of the information would endanger the safety of Mr McLetchie and, accordingly, held that the information was not exempt under section 39(1) of FOISA.
> The Commissioner ordered the release of the information which had been withheld from Mr Hutcheon, but stressed that each case has to be treated on its own merits and that he will not order release of this information in future cases should the release of the information put a person at risk.[17]

The Scottish Parliament now makes available through internet access full details of Members' allowances. Members of the public may view MSPs' claims and accompanying receipts in respect of allowances claimed while carrying out parliamentary duties.

The search facility was described in August last year by Scottish Information Commissioner Kevin Dunion as "the most comprehensive and transparent expenses system of any Parliament in the world".[18]

The Commons has now complied with the Information Tribunal decision. It released details of Members' travel allowances from 2001-2 on 16 February 2007.[19]

D. Application of FoI to Members

Public authorities, not individuals, are subject to FoI which means that information held by Members in their individual capacity is not subject to FoI, even if stored, either physically or electronically, at either House.[20] However, the House of Commons administration as a public body, headed by the House of Commons Commission, is subject to the Act, and the information it holds is subject to disclosure (though, unlike the equivalent Scottish legislation,[21] the Commission - and any House of Lords equivalent body or officer - is not listed separately from the House as a body subject to the Act). This also applies to Members' communications with House officials on administrative business.

Although Members are not public bodies under the Act, their correspondence with public bodies may be subject to disclosure under certain circumstances. Members' correspondence on constituency matters is not covered by parliamentary privilege, since the protection of Article IX of the Bill of Rights 1689 extends only to formal parliamentary

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

18 "Final quarter of MSPs expenses to be published on-line" 19 February 2007 *Scottish Parliament* http://www.scottish.parliament.uk/msp/MSPAllowances/searchGuidance.htm

19 Details are given on the Commons website at http://www.parliament.uk/site_information/allowances.cfm

20 See for example the guidance on exemptions from the Department of Constitutional Affairs *Section 34 Parliamentary Privilege*, which points out that FoI does not apply to individual MPs, as opposed to the two Houses, as public bodies (para 1.4) http://www.dca.gov.uk/foi/guidance/exguide/sec34/chap01.htm

21 The 2002 Act's list of Scottish public authorities subject to the Act includes both the Scottish Parliament and the Scottish Parliamentary Corporate Body (the 'equivalent of the House of Commons Commission: sch 1 paras 2 and 3

proceedings. The question of extending privilege to Members constituency correspondence has been considered by the House on a number of occasions. The debates on the question have been summarised by the Joint Committee on Parliamentary Privilege, which reported in 1998-99:

> 104. This issue arose in 1958 in a case concerning a member, Mr George Strauss. He wrote an allegedly defamatory letter to a minister on a matter he might later have wished to raise in the House, namely, criticism of the purchasing policies of the London Electricity Board. The House resolved by a narrow majority that the letter was not a proceeding in Parliament as it did not relate to anything then before the House.[163]
>
> 105. Both the 1967 House of Commons committee on parliamentary privilege and its 1977 committee of privileges, as well as the 1970 joint committee on publication of proceedings in Parliament, considered the House's decision was right in law. But all agreed that the argument in favour of correspondence with ministers having the benefit of absolute privilege in defamation actions was so compelling that the law should be changed. The 1977 committee considered it was anomalous for a member's communications with the parliamentary commissioner for administration to enjoy absolute privilege under the Parliamentary Commissioner Act 1967 while his communications with a minister did not.[164] The 1970 joint committee's proposed statutory definition of `proceedings' included:
>
> `all things said, done or written between members or between members and officers of either House of Parliament or between members and ministers of the Crown *for the purpose of enabling any member* or any such officer *to carry out his functions as such* . . ..' (our italics).[165] [22]

However, no action followed any of these committee recommendations, and the Joint Committee concluded that the qualified privilege at law enjoyed by Members was sufficient for practical purposes, bearing in mind the huge growth in constituency correspondence since 1958. Qualified privilege gives a Member a good defence to defamation proceedings as long as he acts without malice. For further details on this point, see Library Standard Note 2024 *Qualified Privilege in relation to Parliament and absolute privilege.*

Under FoI legislation, information held by public bodies may be releasable, even if the public body was not the originator of the material. Therefore a local authority may hold on file a letter from a Member which it may decide to release in response to an FoI request. A number of examples of this practice were given during the Public Bill Committee stage of the Bill (see below).

E. Data protection and Members

The *Data Protection Act 1998* (hereafter DPA) gave effect in UK law to EC Directive 95/46/EC (the *Data Protection Directive*). It replaces the *Data Protection Act 1984*. Under the Act, anyone who holds personal information about living individuals on computer is required to register certain specified details of their processing activities. Registered data users must comply with eight data protection principles contained in the Act. The

[22] HL Paper 214/HC 43 1998-99

Information Commissioner ensures that the principles are observed. The Act gives various rights to individuals about whom information is recorded on computer (data subjects). Individuals may find out information about themselves, challenge it, have it corrected or erased if appropriate and claim compensation in certain circumstances. Further information about data protection is available from Library Standard Notes 830 *Data Protection: Access to Personal Information* and 2962 *Data Protection Law: problems of interpretation.*

1. The *Durant* case

In 2003 the Court of Appeal delivered an important judgement with implications for the interpretation of the *Data Protection Act*.[23] The Court considered in particular two issues: 1) what makes data "personal" within the meaning of "personal data" and 2) what is meant by a "relevant filing system". As the result of the Durant judgement there has been a narrowing of the definition of "personal data". The judgement identifies two notions to determine whether information affects an individual's privacy, firstly whether the information is biographical and secondly whether the individual is the focus of the information. So simply because an individual's name appears on a document does not mean it is "personal data" and they are entitled to protection under the *Data Protection Act 1998*. It is more likely that when an individual's name is accompanied by other information relating to the individual, then this would be "personal data". The *Durant* case also has implications for the definition of a 'relevant filing system' for the purposes of data protection law, which is explained in Standard Note 830. Mr Durant has been refused leave to appeal to the House of Lords, but is expected to apply to the European Court of Human Rights.[24] In the light of this judgement, the Information Commissioner has in February 2006 updated his guidance on the definition of personal data.[25]

Members as individuals have to comply with the requirements of DP legislation and advice pages are available on the Finance and Administration Department intranet. There are specific legislative provision in an order of 2002 to allow Members and other elected representatives to process sensitive personal data about a constituent in the course of undertaking in the course of a Member's "functions as a representative". The order also allows but does not require data holders to disclose sensitive personal data about others to assist the Member in its representative function.[26] Further explanation is given in Library Standard Note 1936 *Data Protection and Constituency Casework.*

F. Requests for information about third parties under FoI

Section 40 of the FoI Act provides an exemption for personal data. The potential operation of the exemption was the source of much debate during the passage of the Bill in the 1999-2000 session. Now that the legislation has been in operation and following

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[23] *Michael John Durant v Financial Services Authority* [2003] EWCA Civ 1746, Court of Appeal (Civil Division) decision of Lord Justices Auld, Mummery and Buxton dated 8th December 2003. A full text of the judgment is available from the Court Service website at www.courtservice.gov.uk

[24] "House of Lords ends Durant's data protection saga" *Outlaw News* 30 November 2005

[25] http://www.ico.gov.uk/cms/DocumentUploads/Durant_27_feb_06.pdf

[26] *Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002*1, which came into force on 17 December 2002.

Durant and decisions by the Information Commissioners in the UK and in Scotland the operation of the exemption is becoming clearer.

The key is that the *Data Protection Act* imposes a test to balance the interests of both parties in disclosing or withholding third party information. However, every case needs to be examined on its merits. The Information Tribunal first considered fully the interaction between FoI and DP in its judgement on the release of information about Members' allowances in January 2007.[27]

The Tribunal found that where the exemption on personal data applied, then the data protection principles in the DPA should be applied without regard to FoI. But para 2(6) of Schedule 2 to the DPA applied a balancing test similar to the public interest test under FoI. Only where the legitimate interests of those to whom the data was disclosed outweighed the prejudice to rights, freedom and legitimate interests of the data subjects, should the data be disclosed. In the case of Members' allowances, the Tribunal found that the legitimate public interest in the expenditure of public money outweighed the privacy of Members, particularly as the allowances related to Members' public functions, not private lives.

The Lord Chancellor has issued a Code of Practice under s45 of the FoI Act, which advises public bodies as follows:

> **IV Consultation with Third Parties**
> There are many circumstances in which:
> requests for information may relate to persons other than the applicant and the authority; or
> disclosure of information is likely to affect the interests of persons other than the applicant or the authority.
> It is highly recommended that public authorities take appropriate steps to ensure that such third parties, and those who supply public authorities with information, are aware of the public authority's duty to comply with the Freedom of Information Act, and that therefore information will have to be disclosed upon request unless an exemption applies.
> In some cases is will be necessary to consult, directly and individually, with such persons in order to determine whether or not an exemption applies to the information requested, or in order to reach a view on whether the obligations in section 1 of the Act arise in relation to that information. But in a range of other circumstances it will be good practice to do so; for example where a public authority proposes to disclose information relating to third parties, or information which is likely to affect their interests, reasonable steps should, where appropriate, be taken to give them advance notice, or failing that, to draw it to their attention afterwards.
> In some cases, it may also be appropriate to consult such third parties about such matters as whether any further explanatory material or advice should be given to the applicant together with the information in question. Such advice may, for example, refer to any restrictions (including copyright restrictions) which may exist as to the subsequent use which may be made of such information.

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[27] *The Corporate Officer of the House of Commons and Norman Baker MP* at http://www.informationtribunal.gov.uk/Files/ourDecisions/corpofficer_house_of_commons_v_infocomm.pdf

> No decision to release information which has been supplied by one government department to another should be taken without first notifying, and where appropriate consulting, the department from which the information originated.

Guidance is available from the Information Commissioner's Office on this complex area.[28] There is provision in section 10 of the *Data Protection Act 1998* for a person who suffers substantial damage and distress which is unwarranted to give notice to a data controller (person holding data) to stop processing personal data. This section has been used occasionally, but does not yet appear to have been successful in a case involving the release of third party personal data under FoI. An exemption protecting information provided in confidence (s41) may also be relevant, but the scope of this protection is narrower than might at first appear. For further detail see Part V of the Code of Practice under s45 of the FoI Act.[29]

Public authorities have disclosed correspondence from Members in relation to FoI requests, even though constituents who have written to Members may not be aware that this correspondence may be releasable. Although the Code of Practice issued to public bodies under s45 of the FoI Act 2000 is set out above, there is anecdotal evidence that not all public bodies consult MPs before releasing their correspondence. Two categories of correspondence can be distinguished – firstly those where a constituent or group of constituents are identified, and secondly correspondence on matters of general public issues. Members have been concerned to discover that such correspondence has been released without their knowledge or consent. According to press reports, the Information Commissioner has been preparing guidance for public authorities which is likely to state that they must consult the relevant Member before releasing correspondence.[30]

II The *Freedom of Information (Amendment) Bill*

A. The Bill's provisions

1. Removal of both Houses from the list of public bodies covered by FoI

The Bill would remove both Houses from Schedule 1, which lists the bodies to which the FoI legislation is applicable. The Bill does not attempt to remove either House of Parliament from inclusion within the *Data Protection Act 1998*, although the exclusion of Parliament from the list of public bodies subject to FoI may raise some issues with regard to the application of section 1(1)(e) of the *Data Protection Act 1998* (unstructured manual data) to both Houses. The effect may well be that the Houses would no longer be obliged to release unstructured manual data, although both may wish to continue to comply with the spirit of the Act.

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28 *Freedom of Information Act Guidance Notes no 1* http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_1_-_personal_information.pdf

29 See http://www.foi.gov.uk/reference/imprep/codepafunc.htm#partV

30 Bill may allow MPs to escape FoI Inquiries" 25 January 2007 *Guardian*

It would appear likely that both Houses would continue to be included within the scope of the *Environmental Information Regulations*.[31] Although these Regulations only apply to public authorities as defined by FOIA, there are grounds for stating that they would still apply to the House as a body which carries out public administration (Regulation 2(2)(c)). The Regulations have been implemented in order to fulfil the UK's obligations under European law.

According to Mr Maclean, the Speaker has agreed that the type of information currently published by the Commons relating to allowances would still be released by the House on a voluntary basis. [32] He read out to the Public Bill Committee the relevant correspondence:

> I am pleased to tell the Committee that last week I received a letter from Mr. Speaker, because I had asked him whether he had a view on the Bill. On 30 January he wrote:
> "Dear David,
> Thank you for your letter of 26 January about your Private Member's Bill.
> As you will understand, neither I as Chairman, nor Members as Members of the Estimates Committee, have a view about the merits of the Bill.
> What the Committee does have an interest in, is making sure that the public is duly informed about information relating to Parliament. In that respect, as you know, the House has issued a publication scheme which, I can confirm, the Committee has no intention of withdrawing whatever changes may occur in its formal obligations."
> Mr. Speaker has confirmed that even if the Bill becomes an Act, and even if technically or legally we will not have to publish information, the view of the House of Commons Members Estimate Committee and Mr. Speaker is that we should continue every October to publish the same information on travel, allowances, accommodation and secretarial costs that we have published in the past few years. That is right. I commend that view to the Committee and hope that it will be satisfied that it is the right thing to do.[33]

There has been no equivalent statement from the House of Lords administration, nor would one be expected at this stage. The Speaker's letter presumably makes a commitment to publish the type of information released before the Information Tribunal judgment of January 2007, but not necessarily to the detailed breakdown of travel allowances published by the House since then. The publications schemes of both Houses would no longer be approved by the Information Commissioner.

At committee stage Mr Maclean sponsored amendments to remove the certification powers of the Speaker in relation to the effective conduct of public affairs, as the House would no longer be a public body subject to the Act. This can be seen as tidying up the Act, if the Houses have already been removed from Schedule 1. However, public authorities which hold information relating to House administration or for example the

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[31] For background on these Regulations see the webpages of the Information Commissioner at http://www.ico.gov.uk/Home/what_we_cover/environmental_information_regulation.aspx

[32] "Bill may allow MPs to escape FoI Inquiries" 25 January 2007 *Guardian* Bill may allow MPs to escape FoI Inquiries" *Guardian* http://politics.guardian.co.uk/foi/story/0,,1998096,00.html#article_continue

[33] PBC Deb 7 February 2007 c7

work of the Speaker's Committee on the Electoral Commission, may be required to release that information following an FoI request. The Speaker would have no role in refusing access, other than to be consulted as a third party.

The Government are currently consulting on the levels of fees payable under FoI. Their proposals would enable the time taken to read, consult and come to decisions on release to be taken into account in the calculation of the fee. Critics of the proposals have claimed that the proposed arrangements would take politically sensitive FoI requests over the fees threshold of £600 for central Government. Under the regulations, requests which cost more than £600 may be refused.[34] In order to reach decisions on the question of the release of information about allowances, the House of Commons administration has necessarily involved the time of senior staff and counsel and so there may be speculation as to the need for legislation to remove both Houses from FoI at all, if the draft fees regulations are approved.

There are suggestions in the public statements, both in Parliament and in the media, of the Bill's supporters that it was a mistake for Parliament to have been included in the FoI bill initially. They cite the many parliaments around the world which are wholly or largely exempt from their relevant FoI legislation,[35] because of the unique, constitutional and representative nature of a parliament. However, the Bill does not remove either the National Assembly for Wales or the Northern Ireland Assembly from the 2000 Act (nor the communications of its members from it), both of whom are presumably 'parliaments' for the purpose of this argument.

2. Members' correspondence

The Bill originally proposed a new s37A to be added to the FoI Act 2000. This would have exempted any form of correspondence from Members to public bodies. Mr Maclean subsequently moved amendments to rename the new clause section 34A, to link it with the special exemption for parliamentary privilege. The amendments also changed the term' correspondence' to 'communication' and stated as follows:

> "**34A Communications with members of House of Commons**
> (1) Information is exempt information if it is held only by virtue of being contained in any communication between a member of the House of Commons, acting in his capacity as such, and a public authority.

The drafting of this clause raises some questions. First, the Bill as it stands, does not attempt to amend the substance of s2(3) of the FoI Act. This subsection lists a number of exemptions which are classified as absolute- that is, they are not subject to a public interest test. Therefore, although there is an exemption which can be used by public bodies to refuse the disclosure of correspondence by Members, the public body may still decide that the correspondence should be released, if it considers that there is a greater public interest in disclosure than in withholding the information. So the Bill as currently drafted does not offer Members a guarantee that their correspondence will not be disclosed. New guidance from the Information Commissioner may well be necessary.

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[34] See Library Standard Note no 4169 *Fees for FoI requests*
[35] See the Appendix to this Paper

The exemption creates a new class of documents which are to be withheld, without reference to the information set out in the documents. Most other FoI exemptions relate to the possible harm caused by release; for example there is no exemption for Cabinet papers as such, simply exemptions relating to policy advice, whether or not this is contained in a paper to Cabinet. So the creation of a new class which is to be exempt, but yet subject to a public interest test, cuts across the structure of FoI legislation, where each request is to be individually considered on its merits.

There is no definition of communication in the Bill, and so the term must be assumed to apply to all types of correspondence, not just constituency-related. but those relating, for example to general issues of public policy. Mr Maclean himself, in Committee, gave the example of communications with a local chief constable on cases concerning a constituent and those relating to what he described as "more about policy and more in the public domain."

The Bill would exempt both types of information, but Mr Maclean suggested that, in the case of the latter type, "Most Members of Parliament have press-released that information, because such comments are for public consumption. We have to be trusted to know when to put things in the public domain and when things should be confidential."[36] A wide range of communication may be considered caught by the new exemption, including correspondence which does not raise data protection issues.

These provisions of the Bill can be characterised, at least in their intended effect, as an attempt to extend *de facto* parliamentary privilege to Members' communications, as opposed to the qualified privilege currently enjoyed, as explained above.

Correspondence by Ministers will presumably not be covered, since the communication must relate to the work of a Member, 'acting in his capacity as such'. It is worth noting that there is no statutory definition of the role or duties of a Member. A Member with other representational duties, such as a London Assembly Member, or on the board of a charity, or holding a position within a political party, may need to consider the status of individual pieces of correspondence.

The Bill, as amended, ensures that after 30 years protected communications would be available, in common with public records procedure under the FoI Act. The Bill also now makes clear that the effect would not be retrospective, so that requests which predate enactment would be complied with by both Houses.

The initial version of the Bill appeared to include peers within the term Member of Parliament, so covering peers' correspondence. However, the Bill as amended now makes clear that only communications from Members of the Commons are included. The *Data Protection (Processing of Sensitive Personal Data) (Elected Representatives) Order 2002* refers to Member of the House of Commons, rather than Members of Parliament.

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[36] cols 8-9

The Bill does not deal with correspondence of Members of the National Assembly for Wales and the Northern Ireland Assembly. These bodies are listed separately in paras 4 and 5 of Schedule 1 to the 2000 Act. Nor does it deal with local authority councillors, in contrast to the special provisions made for elected representatives in the data protection amendment regulations. See Library Standard Note 1936 *Data Protection and Constituency Casework* for more details.

Finally, the Scottish Parliament has enacted separate FoI legislation, applicable to subject areas devolved to Scotland. The Bill does not attempt to amend the Scottish legislation to remove MSPs from FoI. Scottish MPs would be covered by the Bill, which also extends to Northern Ireland.

B. Progress of the Bill

The Bill had its second reading on 19 January 2007, without debate and without a vote. No objections were raised at the end of that day's business, so it proceeded to the next stage. As a Private Member's Bill, it was not subject to the new standing orders allowing oral evidence sessions.

The Bill was referred to a Public Bill Committee on 31 January 2007. One sitting was held on 7 February. The Member in charge of a bill allocated to this committee has some influence with the Committee of Selection in relation to which Members are nominated to it in respect of his or her own bill.[37] The Members of the Committee were as follows:

James Arbuthnot
Tim Boswell
Nicholas Brown
Tom Clarke
David Clelland
Jim Dowd
Mike Hall
Nick Harvey
George Howarth
Greg Knight
Martin Linton
Peter Luff
David Maclean
Bridget Prentice
David Simpson
John Spellar
Don Touhig
John Whittingdale

Bridget Prentice is the junior Minister at the Department of Constitutional Affairs, which is responsible for FoI policy. Nick Harvey is a member of the House of Commons Commission. The Bill reached the Public Bill Committee stage before the first Private

[37] *Handbook of House of Commons Procedure* 5th ed 2004 Paul Evans

Member's Bill to be given a second reading this session, the *Sustainable Communities Bill.* Mr Maclean commented on the extent to which Members of the committee had considerable parliamentary experience, which he said would add weight to the cause of the Bill when it was considered on report and in the Lords.[38] He also urged neutrality on both the Government and front benches of other parties, arguing that the matter should be subject to a free vote.

The committee stage of the Bill was completed in one sitting. Mr Maclean's amendments were all passed.[39] Most of the debate focused on the need to protect Members' correspondence from unauthorised disclosure.

> **Mr. Tim Boswell** (Daventry) (Con): To qualify slightly the intervention by my hon. Friend the Member for Mid-Worcestershire, does my right hon. Friend agree that the test is, as much as anything else, about simplicity? If the correspondence is absolutely privileged, that is a clear message that will be understood by anybody, however large their compliance department or degree of sophistication. If there is a doubt, it is likely that confusions will happen and occasionally confidences will be breached.
>
> **David Maclean:** I agree entirely. 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. When I write to the chief constable about a constituent—it may be wise or it may be foolish, and some colleagues may not wish to put it in writing—I will often say that I think my constituent has a genuine case. There will be times when I will say, "That is what my constituent told me. You may have a different view or side to the story."
>
> 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.[40]

The members of the committee instanced other constituency cases where they considered that there was a strong public interest in ensuring that Members' correspondence was confidential and appeared to be advancing the argument that it should attract a form of absolute privilege, releasable only on the authority of a Member. This has echoes of attempts to extend parliamentary privilege to Members' correspondence, discussed earlier in this Research Paper. However, the Bill as drafted does subject the exemption to a public interest test, which is undertaken by the public body which holds the correspondence.

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38 PBC Deb 7 February 2007 c6

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Nick Harvey, the other Member of the House of Commons Commission on the committee, raised the issue of public perception:

> I agreed to serve on the Committee to provide some of the insight that I have gained through my work on the House of Commons Commission and the Members Estimate Committee. I am not here as a party spokesman; I agree with the right hon. Gentleman that this is a House matter on which Members must make their own judgments. I would not expect party Whips to seek to get involved in it.
>
> The idea that Parliament might be excluded from freedom of information legislation could be expected to raise eyebrows. We are desperate to get into the public domain the vast majority of what goes on in Parliament—deliberations, the passing of law, the scrutiny of Government, the work of Select Committees. Much of our time on the House of Commons Commission is spent discussing investment in Parliament's website, having more press officers, webcasting and all manner of devices to try to make the public more aware of what we are doing. The last thing that any of us would wish is that Parliament should or would want to shroud itself in secrecy and mystery.
>
> However, in the past year or so we have grappled at opposite extremes with an issue that illustrates the difficulties with the legislation as it is now framed. At one extreme is the matter of correspondence. As hon. Members have said in the debate, MPs' correspondence has a clear status. Correspondence about individual constituents should have the confidence of the confessional and should be protected under the Data Protection Act 1998. If local authorities, health authorities or other public bodies have been failing to implement that Act in certain cases, they need more help to do so and more pressure should be placed upon them.

He described how he sometimes dealt with the difficulties of including confidential information in correspondence: "I confess that e-mail is one of my preferred methods; so is the yellow Post-it note stuck on to the letter, although I never know whether the Post-it note finds its way into the file at the receiving end. Suffice it to say that I am sometimes more candid on the Post-it note than I am in the typed letter."[41]

Mr Harvey also expressed unease about what he saw as increasingly intrusive FoI requests about allowances, instancing requests for further breakdown of the additional costs allowance. He suggested that this might cause a reaction: "I should tell those who press and press such issues that, sooner or later, the allowances will be rolled into our salary, handed out without any claim mechanism or dealt with under some other device, because it is intolerable that this intrusion into Members' private lives should have to be endured or should be permitted, and something will happen to prevent it from going too far." Mr Harvey argued that it was up to opponents of the Bill to devise appropriate solutions to the problems identified and did not oppose the passage of the bill.[42] However when interviewed on BBC Radio Scotland on 10 February he expressed some opposition and considered that the Bill was unlikely to be passed.[43]

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[41] col 16

[42] PBC Deb 7 February 2007 c17

[43] http://www.bbc.co.uk/radio/aod/scotland_aod.shtml?scotland/newsweek

The Minister, Bridget Prentice, expressed some sympathy over the question of correspondence, but said that the Government would allow individual Members to decide:

> We should not allow the 2000 Act to disrupt the vital relationship between an MP and his or her constituents, and the time has come to address the issue. Several hon. Members have registered objections to public authorities that are considering releasing their correspondence. My hon. Friend the Member for North Durham gave an example of a public authority that will remain exempt even under the Bill. I am aware, also, that there have been several fishing expeditions that have no serious purpose beyond the scoring of points against Members. That is not in keeping with the spirit of the Act—freedom of information should not be used against the interests of Members and of their constituents and against the valuable work that Members undertake in their constituents' names. All Members who have spoken today have spoken with passion about the way in which they want to deal with constituents' issues, problems and concerns. That shows that MPs throughout the House value the relationships that they have built up with constituents. It would be tragic if we accidentally undermined that in any way.
>
> Some information is already exempt. However, the Government take the same view as that expressed by the right hon. Member for Penrith and The Border in his opening remarks: the issue deserves discussion; it directly affects Parliament and is therefore a matter for Parliament to decide. I have listened carefully on behalf of the Government to the concerns that have been expressed today, but it is for the Committee and for Parliament to continue the debate and to decide how to proceed.[44]

Having completed its committee stage, the Bill now awaits report stage, due for Friday 20 April. It is the first business for that day.

C. Reactions to the Bill

Maurice Frankel, of the Campaign for Freedom of Information, has expressed strong objections:

> To suggest that parliament might now arrange for itself to be removed from this important legislation by an undebated private members' bill is extraordinary. Where is the explanation for this drastic step? Where are the arguments? Where is the public consultation? Where is the debate? For parliament to amend its own status without full scrutiny, and for government to collude in it, would be a disgrace.[45]

The Campaign circulated a letter to members of the Public Bill Committee which stated that release of personal information relating to constituents was already a breach of the DPA, and that the public would expect their elected representatives to be subject to the same rules as others in relation to Members' correspondence on more general public policy matters and on the disclosure of allowances met from the public purse. The

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[44] PBC Deb 7 February 2007 c18

[45] "Less is not more" 1 February 2007 *Guardian comment* http://commentisfree.guardian.co.uk/maurice_frankel/2007/02/less_is_not_more.html

expenses of BBC executives and the Lord Chief Justice had already been released under FoI.[46]

Article 19, English PEN and *Index on Censorship* have written directly to David Maclean to raise their objections to the bill. For further details see the Index on Censorship website. [47] The proposals have also been discussed in the *Guardian,* where both Mr Maclean and Mr Baker set out their views on the impact on the disclosure of Members' allowances:

> Mr Maclean said he had already discussed the bill with the Speaker, Michael Martin, who had assured him that parliament would still publish general details of MPs' expenses and allowances as now, even though they would not be obliged under his amendment. The bill would also prevent challenges to the information commissioner or to an information tribunal if a member of the public wanted an MP to provide more information.
> Norman Baker, Liberal Democrat MP for Lewes, who last month won a decision at the information tribunal forcing the disclosure of more details of MPs' travel expenses, said last night: "This proposal is outrageous. What particularly amazes me is that everyone knows government whips can easily object to a private member's bill and stop it going anywhere. In this case the government whips were silent, which I can only assume means they are secretly sympathetic to this proposal as it fits in with their plans to curb the Freedom of Information Act."[48]

The *Guardian* reported on 31 January 2007 that there had been discussion within Cabinet about the Government position on the Bill, with the Leader of the House, Jack Straw, pressing for the bill to make progress in order for the issue to be debated in Parliament.[49]

The Bill has also been discussed on various blogs, for example
http://www.bbc.co.uk/blogs/opensecrets/
http://foia.blogspot.com and
http://www.martinstabe.com/blog/category/freedom-of-information/

Some Members have also expressed opposition to the changes. For example, Tony Wright, the chair of PASC, which originally pressed the Government to include the administrative functions of Parliament within the Bill said during the course of a Westminster Hall debate on proposed changes to the fees regulations for FoI:[50]

> It is worth asking about the underlying rationale. Well, there must be two: first, the Act is costing more than we want to pay and we would like to reduce the cost; and secondly, it is proving so onerous and irksome that we would like to restrict

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46 *Campaign for Freedom of Information* 6 February 2007

47 "MP bids to exempt parliament from FoI law clauses" Index for Freedom of Expression News January 2007 at
http://www.indexonline.org/en/news/articles/2007/1/britain-mp-bids-to-exempt-parliament-from-fo.shtml
"Bill may allow MPs to escape FoI Inquiries" 25 January 2007 *Guardian* Bill may allow MPs to escape FoI Inquiries" *Guardian* http://politics.guardian.co.uk/foi/story/0,,1998096,00.html#article_continue

49 "Lord Chancellor gives warning on secrecy" 31 January 2007 *Guardian*

50 For details about the Fees Regulations see Library Standard Note 4169 *Fees for FoI requests*

> access to it. A way has been found to achieve both those objectives in one set of regulations.
> Why should that happen? It is extremely puzzling, especially when the regulations are set alongside the other bizarre development—an attempt, through a private Member's Bill, to remove the House of Commons and Members of Parliament from the orbit of the Act that they themselves passed. You couldn't make it up. Furthermore, I gather that there is all manner of usual-channels collaboration to ensure that that happens.[51]

Reference was also made to the Bill during the speech of Norman Baker.[52]

D. Text of the bill

The current text of the Bill, as amended in committee, is as follows:

> 1 **Exemption of House of Commons and House of Lords**
> (1) The Freedom of Information Act 2000 (c. 36) is amended as follows.
> (2) In Part 1 of Schedule 1 (public authorities) omit paragraphs 2 and 3 (which relate to the House of Commons and the House of Lords).
> (3) After section 34 insert—
> "34A Communications with members of House of Commons
> (1) Information is exempt information if it is held only by virtue of being contained in any communication between a member of the House of Commons, acting in his capacity as such, and a public authority.
> (2) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority to which the request is made would be) exempt information by virtue of subsection (1)."
> (4) In section 63 (removal of exemptions: historical records generally), in subsection (1), after "33," insert "34A,".
> (5) Omit the following—
> (a) section 2(3)(e),
> (b) section 36(5)(d) and (e) and (7), and
> (c) in section 81(4), the words "on behalf of either House of Parliament or".
> **2 Short title, commencement and extent**
> (1) This Act may be cited as the Freedom of Information (Amendment) Act 2007.
> (2) This Act comes into force at the end of a period of two months beginning with the day on which it is passed.
> (3) This Act does not apply in relation to any request for information which is made to a public authority before the Act comes into force.
> (4) In subsection (2A) "request for information" and "public authority" have the same meaning as in the Freedom of Information Act 2000.
> (5) This Act extends to Northern Ireland.

The current version of the Bill is Bill 62 of 2006-7.

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[51] HC Deb 7 February 2007 c303WH
[52] ibid c313WH

Appendix Freedom of Information and other Parliaments

The decision to include the UK Parliament within the ambit of the *Freedom of Information Act 2000* was unusual in comparative terms. Most Westminster style Parliaments are not subject to FoI.[53] Partly, this is a consequence of the era in which FoI was introduced around the world. When such legislation began to be enacted in the Commonwealth the main focus of interest was on central Government, not the wider public sector. So neither the Australian, nor Canadian, nor the New Zealand legislation covers Parliament. Nor is the US Congress subject to FoI legislation, although currently there is some interest in extending the legislation to its administrative functions.[54]

However, in states where FoI legislation is a more recent phenomenon, parliaments have been included as part of the wider public sector. The emphasis has therefore changed from holding the executive to account to ensuring transparency in all public bodies. Examples in the Commonwealth include India, South Africa and Ireland.[55]

The Republic of Ireland passed the *Freedom of Information Act 1997*, which was subsequently amended in 2003. The Act is not retrospective, unlike the UK FoI Act, so information held before April 1998 is not subject to the Act. A more extensive fees regime was introduced, which had the overall effect of reducing the numbers of Foi requests. Article 15 of the Constitution of the Republic gives each House the right to protect its official documents and the private papers of its Members. Therefore, the official documents of the Houses and their committees and the private papers of Members are not records to which the FoI Act could apply. This is in effect the Irish equivalent to the Westminster system of parliamentary privilege. In the UK system privilege is protected in s34, which enables the Speaker to issue a certificate where he considers that privilege would otherwise be infringed. The effect in Ireland is however more extensive - their papers are excluded from the Act altogether, rather than the subject of exemption.

One of the first high profile FoI cases related to allowances for Members of the Dail. The text of the judgement of the Information Commissioner, which found against the Oireachtas Commission can be found at on its website.[56] The summary of the judgement is reproduced below:

> **Decision**
> The Commissioner decided to vary the decision of the Office of the Houses of the Oireachtas and to direct that the identities of the individual claimants in the records already released be disclosed to the requester. He found that there was an understanding with the members that details of their expenses would be treated as confidential and that details of expenses were personal information about the members. He decided that the public interest in ensuring accountability for the use of public funds greatly outweighed any right to privacy which the members might enjoy in relation to details of their expenses claims.

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53 See "Parliamentary applications for FOI" in *The Parliamentarian* 2006 Issue Two for a discussion of the position in Canada, New Zealand and Australia.

54 See http://www.buzzmachine.com/index.php/2006/01/12/demand-freedom-of-information-from-congress/

55 See http://www.info.gov.za/gazette/acts/2000/a2-00.pdf for the South African act, which in s11 specifically excludes individual Members of Parliament

56 http://archives.tcm.ie/waterfordnews/2007/01/05/story24312.asp

> He suggested that these records could neither be considered "private papers of the members "nor" official documents of the Houses". [57]

Allowances information is now routinely released and continues to attract press interest.[58]

The Oireachtas has produced a guide to the operation of FoI to the Irish Parliament.[59] There is a standard fee of 15 euros and 75 euros for an internal review of the initial decision. Finally, applicants may appeal to the Information Commissioner for a review. There is no equivalent to the certification procedure used by the Speaker in the UK FoI Act. Responses are required within 2-4 weeks, but with provision for a longer period if a third party needs to be consulted. There are specific exemptions protecting drafts of the strategic plans of the Houses of the Oireachtas. The Commission of the Oireachtas meets in private, but its minutes are available.

The Parliaments of India and of Trinidad and Tobago are within the scope of recent FoI legislation. [60] The Indian Parliament appears to be included under section 2(h) as a public authority established or constituted under the Constitution. The Speaker of the House of the People (Lok Sabha) is named as a competent authority in deciding on exemptions such as commercial confidence. Section 8(c) provides an exemption for parliamentary privilege, but this is the only exemption particularly adapted for the needs of Parliament. There is no certification procedure by the Speaker as applies in the UK FoI Act.

The website of Lok Sabha has a brief record of requests received since the Act came into effect.[61]This states that 20 requests were received by the end of November 2005, but does not offer further detail.

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57 Case 99168 - Mr Richard Oakley, The Sunday Tribune newspaper and the Office of the Houses of the Oireachtas 1999

58 "85,955 euros still not enough for Deasy!" 5 January 2005 *Waterford News and Star* http://archives.tcm.ie/waterfordnews/2007/01/05/story24312.asp

59 http://www.oireachtas.ie/documents/foi/guide/FOIguide3.doc

60 The [Indian] *Right to Information Act 2005* is available at http://www.mit.gov.in/rti-act.pdf Trinidad and Tobago were discussed in "Enacting and Implementing FoI" *Parliamentarian* 2006 Issue Three.

61 http://164.100.24.208/ls/righttoinformationact/status-report.htm