



Tribunals Service

Information Tribunal

Appeal Numbers: EA/2006/0074/0075/0076

Freedom of Information Act 2000 (FOIA)

Heard at Procession House, London

Decision Promulgated

Date 20th June 2007

9 August 2007

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BEFORE

INFORMATION TRIBUNAL CHAIRMAN

John Angel

And

LAY MEMBERS

Jacqueline Clarke and Andrew Whetnall

Between

THE CORPORATE OFFICER OF THE HOUSE OF COMMONS

Appellant

And

INFORMATION COMMISSIONER

Respondent

Representation:

For the Appellant: Ms. Eleanor Grey
For the Respondent: Mr. Tim Pitt-Payne

Decision

The Tribunal dismisses the appeal and upholds the Information Commissioner's Decision Notices. The Tribunal orders that the disputed information in the format disclosed to the Tribunal in confidence be now disclosed to the complainants in accordance with their requests as identified in the Decision Notices within 20 days of the date of this decision.

Reasons for Decision

The requests for information

1. There are three consolidated appeals before the Tribunal. All three are brought by the Corporate Officer of the House of Commons (the House), and arise out of decisions by the Information Commissioner (the Commissioner) requiring the disclosure of information relating to Anne Moffat (Ms Moffat) MP's travel expenses.
2. In case number EA/2006/0074 the request related to Ms Moffat's travel expenses for 2003/04. The request was for details of the following travel expenses:

[B]roken down along the lines of ...X number of rail tickets London-Edinburgh, Edinburgh-London at Y£s. Total cost, total mileage and cost of car/petrol allowance claimed. Total number of taxi journeys, total cost of taxi journeys. Total cost of travel claimed for spouse. All other travel expense [sic] claimed.

The House refused the request and the Commissioner required the requested information to be disclosed in his Decision Notice FS50067986.

3. In case number EA/2006/0075 the original request asked for a detailed breakdown of Ms Moffat's travel expenses for 2003/04. This was refused by the House. Paragraph 4.6 of the Commissioner's Decision Notice FS50083372 sets out what the complainant indicated that she was seeking by way of detailed breakdown, as follows.

The complainant indicated that she was not interested in seeking the cost of each journey, only average costs and that she was primarily interested in those journeys that are part of the travel between London and East Lothian. She indicated that she was especially keen on knowing the number of trips between London and East Lothian involving plane, rail and sleeper. In relation to claims on behalf of a spouse she was interested in both the total cost claimed for travel and particularly the cost if any involving a spouse travelling between London and East Lothian.

4. The Commissioner accepted that some of the information sought was not recorded and therefore not held by the House, and that the complainant had confirmed that she was content to receive a detailed breakdown as recorded and held by the House - see paragraph 4.11 of the Decision Notice. The Commissioner ordered the House to disclose the information requested.
5. In case number EA/2006/0076 the information requested related to the 2002/03 year. The House refused the request. In the course of the Commissioner's investigation the complainant agreed to define it in similar terms to the formulation used in EA/2006/0074 - see paragraph 4.4 of the Decision Notice FS50085375. The Commissioner ordered the House to disclose the information as defined.
6. The House has usefully provided us with a breakdown of these requests in a comparative tabular form which is contained in the annex to this decision. This breakdown shows the detail of each element of the requests, where they are duplicated and which parts of the requests have already been disclosed as a result of the Baker case (see paragraph 7 below) or are not held by the House.

The Baker decision

7. These cases were stayed pending the decision in *The Corporate Officer of the House of Commons v the Information Commissioner* EA/2006/0015/0016, which we will refer to as “the Baker case”, and we will refer to the present cases collectively as “the Moffat case”.
8. In the Baker case the Tribunal ordered the disclosure of the breakdown of MPs’ travel expenses by mode of travel. This has now been implemented by the House and the information is or will soon become available on the House’s publication scheme.
9. The House did not seek in this appeal to challenge the decision in the Baker case, or to reopen any of the points that were decided in that case. So to the extent that the requests in the Moffat case are of the same scope as the requests in the Baker case, they are no longer controversial. To the extent that they go beyond the requests considered in the Baker case, the House contends that the requested information ought not to be disclosed.
10. The requests go beyond the Baker requests, namely the total cost incurred by each mode of travel, in that they require six further categories of disclosures, namely:
 - (1) spouse’s expenses;
 - (2) number of trips by some modes of travel;
 - (3) average cost of some individual trips by some modes of travel;
 - (4) mileage for car travel;
 - (5) number and cost of taxi journeys; and
 - (6) EU travel.

Factual Background

11. The factual background to the requests in the Moffat case is similar to that in the Baker case and is set out at paragraphs 11 to 26 of the Baker decision. We

were again ably assisted by Andrew John Walker (Mr. Walker), the House of Commons' Director of Finance and Administration. In his evidence before the Tribunal in the Moffat case he provided clarification on several matters which had arisen in the Baker case.

12. Firstly in the Baker case the Tribunal took into account the reduction in overall expenditure on MP's travel since the publication of the annual aggregate travel figure. Mr Walker explained before us for the first time that this reduction between 2004/05 and 2005/06 derived from the figures at p29 of the Resource Accounts, which showed that travel expense costs had fallen from £8,346,000 in 2004/05 to £5,994,000 in 2005/06. He explained that in his view the reduction in overall travel costs during 2005/2006 reflected the fact that a General Election took place in May 2005 (MPs cannot claim the cost of travel during the three or four week period between the dissolving of the House and the day of the election); in addition, the main mileage rate fell from 57.2p per mile in 2004/2005 to 40p per mile in 2005/2006. However he did not go so far as to say that there was no "FOIA effect".
13. Mr Walker also set out the travel rules for Members' spouses, civil partners and children under the age of 18 who are entitled to up to 15 return journeys each year between London and their constituency and the Member's main home.
14. In the Baker case Mr Walker gave evidence that every request for information of MPs' allowances outside that disclosed under the House's publication scheme was considered on its individual merits in accordance with FOIA, but that all had been refused. In the Moffat case he gave evidence that the requests had been similarly refused.
15. Mr Walker explained that the method for claiming the cost of taxi journeys was similar to that of car journeys. The mileage for the journey is reclaimed in the same way as the mileage allowance for cars. This means that the House does not hold details of the number of taxi journeys or their actual cost.

16. The cost of individual train journeys was requested. Mr Walker explained to us that for the years of the requests these were largely claimed through travel warrants and that in many cases it was impossible to identify the cost of individual journeys. The system was being replaced by credit cards which in the future should make it easier to identify such information.
17. Finally Mr Walker stated that it was the practise to treat all MPs similarly in relation to disclosure of allowance information including travel. As a result he speculated that if the House was required to comply with the requests in this case that would mean disclosing similar information about all MPs as had happened in practice following the Baker decision.
18. Ms Moffat also gave very clear and helpful evidence in both open and closed sessions. We recite here some of the evidence we have taken into account in open session and other evidence is set out in the confidential annex to this decision.
19. It was explained that Ms Moffat was one of the MPs in the highest 5% of travel spenders and received communication from the House to that effect. In evidence before us Ms Moffat accepted that for at least one year she had made the highest claim of any MP for travel expenses, albeit that there were good reasons for such a level of expenditure including the fact she was in a largely rural constituency involving significant car travel, that her constituency was a long way from Westminster and that she visited her constituency on a very regular basis often twice weekly.

The disputed information

20. In common with most cases before the Tribunal the information requested has been provided to the Tribunal in confidence (the disputed information). Where evidence has been given or submissions made in relation to the disputed information these have been made in closed session so as to maintain secrecy. The disputed information comprises the information held by the House in

relation to the requests as clarified by the Commissioner with the requesters and set out in the Decision Notices.

Relevant statutory provisions

21. The relevant statutory provisions in the Moffat case are similar to those in the Baker case but for the sake of clarity are repeated here. Section 1 FOIA creates a general right of access on request to information in recorded form held by public authorities. Public authorities are under a duty to confirm or deny whether they hold the information sought (section 1(1)(a) FOIA), and to disclose the information if it is held (section 1(1)(b) FOIA). Part II of FOIA confers a number of exemptions from both duties, including the section 40 exemption claimed by the House in the present appeals. In these cases, exemption is claimed only in respect of the duty to disclose, under section 1(1)(b). So far as is relevant to these appeals section 40 reads as follows:

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

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

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

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

(3) The first condition is-

(a) in a case where the information falls within any of paragraphs (a) to (e) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene:

(i) any of the data protection principles, or

(ii) *section 10 of the Act (right to prevent processing likely to cause damage or distress)...*

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

22. As Mr Pitt-Payne usefully summarised in the Baker case, if A makes a request under FOIA for personal data about B, and the disclosure of that personal data would breach any of the data protection principles, then the information is exempt from disclosure under the Act: this follows from section 40(2) read in conjunction with section 40(3)(a)(i) or (when applicable) section 40(3)(b). This is an absolute exemption: see FOIA section 2(3)(f)(ii). Hence the Tribunal is not required to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure: see section 2(2). However, as explained below the application of the data protection principles does involve striking a balance between competing interests, similar to (though not identical with) the balancing exercise that must be carried out in applying the public interest test.

23. By common agreement between the parties section 40(3)(a)(ii) does not apply because under section 10(1) of the Data Protection Act 1998 (DPA) no notice has been served by Ms Moffat on the House.

24. The mention of the data protection principles in section 40(3)(a)(i) requires reference to section 4 DPA as follows:

- (1) *References in this Act to the data protection principles are to the principles set out in Part I of Schedule 1.*
- (2) *Those principles are to be interpreted in accordance with Part II of Schedule 1.*
- (3) *Schedule 2 (which applies to all personal data)... set out conditions applying for the purposes of the first principle...*

- (4) *Subject to section 27(1), it shall be the duty of a data controller to comply with the data protection principles in relation to all personal data with respect to which he is the data controller.*

25. The data protection principles are set out in Part 1 of Schedule 1 DPA. There are eight principles in all, but only the first is relevant to this appeal. So far as material, it read as follows.

1. *Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless-*

(a) at least one of the conditions in Schedule 2 is met ...

26. Part II of Schedule 1 to the Act contains further material as to the interpretation of the data protection principles. Paragraph 2 of Part II relates to the circumstances in which data are treated as being processed fairly for the purposes of the first data protection principle. So far as relevant to this appeal, it reads:

- (1) *Subject to paragraph 3, for the purposes of the first principle personal data are not to be treated as processed fairly unless-*

(a) in the case of data obtained from the data subject, the data controller ensures so far as practicable that the data subject has, is provided with, or has made readily available to him, the information specified in sub-paragraph (3).

- (3) *The information referred to in sub-paragraph (1) is as follows, namely-*

(a) the identity of the data controller,

(b) if he has nominated a representative for the purposes of this Act, the identity of that representative,

- (c) *the purpose or purposes for which the data are intended to be processed, and*
- (d) *any further information which is necessary, having regard to the specific circumstances in which the data are or are to be processed, to enable processing in respect of the data subject to be fair.*

27. By common agreement between the parties the requirements of fairness, under paragraph 2 of Part II of Schedule 1, have been met in this case and are not at issue.

28. In order to satisfy the first data protection principle, it is necessary for processing to satisfy one of the conditions in Schedule 2 to the DPA. The condition that is potentially relevant in the cases concerning Ms Moffat is set out in paragraph 6(1) of Schedule 2:

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

29. The only issue raised by the House in this case is that disclosure of the requested information would be in breach of the first data protection principle, because none of the conditions in Schedule 2 would be satisfied. It is common ground between the parties that the only relevant condition is in paragraph 6 of Schedule 2.

30. In the Baker case the Tribunal found, at paragraph 90 of that decision, that the application of paragraph 6 of Schedule II DPA:

involves a balance between competing interests broadly comparable, but not identical, to the balance that applies under the public interest test for qualified exemptions under FOIA. Paragraph 6 requires a consideration of the balance between: (i) the legitimate interests of those to whom the data would be disclosed which in this context is a member of the public (section 40 (3)(a)); and (ii) prejudice to the rights, freedoms and legitimate interests of the data subjects. However because the processing must be 'necessary' for the legitimate interests of members of the public to apply we find that only where (i) outweighs (ii) should the personal data be disclosed.

31. The Tribunal's general powers in relation to appeals are set out in section 58 of the Act. They are in wide terms. Section 58 provides as follows.

(1) If on an appeal under section 57 the Tribunal considers-

(a) that the notice against which the appeal is brought is not in accordance with the law, or

(b) to the extent that the notice involved an exercise of discretion by the Commissioner, that he ought to have exercised his discretion differently,

the Tribunal shall allow the appeal or substitute such other notice as could have been served by the Commissioner; and in any other case the Tribunal shall dismiss the appeal.

(2) On such an appeal, the Tribunal may review any finding of fact on which the notice in question was based.

32. The question whether the exemption in section 40 applies is a question of law or (alternatively) of mixed fact and law. It is accepted that the Tribunal may consider the merits of the Commissioner's decision that this exemption does not apply, and may substitute its own view if it considers that the

Commissioner's decision was erroneous. The Tribunal is not required to adopt the more limited approach that would be followed by the Administrative Court in carrying out a judicial review of a decision by a public authority. All of this is by now well established in the case law of the Tribunal.

Relationship between Members of Parliament and the House of Commons

33. Before considering what matters the Tribunal has to determine in this case we have found it useful to consider the question; whether the House is a separate entity from the Members for the purposes of FOIA or is it to be regarded as the collective group of Members?
34. The parties by written representations following the hearing have provided us with submissions which have been very helpful in enabling us to consider this question. We find that the House is not itself a body corporate or any other kind of legal person. In particular, when dissolved by Her Majesty (for example before a General Election) it ceases to exist. It acts only by way of motions or resolutions in accordance with its Standing Orders.
35. The Parliamentary Corporate Bodies Act 1992 (PCBA) creates by section 2 a corporation sole by the name of The Corporate Officer of the House of Commons. This office is held by the Clerk of the House of Commons for the time being and his functions are to hold property and enter into contracts for any purpose of the House. The 1992 Act does not convert the House of Commons itself into a corporate entity. Section 6 of the 1992 Act provides for a particular instance (gifts and bequests) where a reference to the House of Commons is to be treated as a reference to the Corporate Officer. But the Act does not provide more generally that legislative references to the House of Commons should be taken to be references to the Corporate Officer.

36. There is also the body known as the Commission of the House of Commons created by the House of Commons (Administration) Act 1978. The Commission is a body corporate (see para 1 of Schedule 1 to that Act). The main functions of the Commission are to be the employer of the staff who work for the House and to prepare, and lay before the House, estimates for the use of resources in the House service.
37. Section 63A of the Data Protection Act (inserted by FOIA) provides that the data controller of data processed by the House is the Corporate Officer of the House of Commons. By contrast, the public authority listed in Schedule 1 FOIA as the public body bound by the Act is simply “The House of Commons”. FOIA does not refer to the Corporate Officer.
38. The question as to what precisely is intended by the reference to “The House of Commons” in Schedule 1 to FOIA is one which has arisen, according to the House, in relation to a number of requests made relating to information belonging to particular groups broadly operating under the auspices of or in connection with the House. In many cases the information is clearly held by the House, whether this is by the departments within the House’s administration service, by Select Committees, by the Parliamentary Archive or by the private office of Mr Speaker. In some cases the position is less clear cut. According to Ms Grey the House considers each such request on a case by case basis using the ordinary principles of statutory construction. For example, the House assumes that Parliament did not intend that the public’s right to information from the House is suspended during periods when the House is dissolved even though, as mentioned above, the House of Commons does not exist during such periods.
39. Similarly, Ms Grey says the House works on the basis that if it had been intended that MPs should be public bodies, that would have been made clear in Schedule 1.
40. Ms Grey develops this point: the choices are between construing the reference to “The House of Commons” in Schedule 1 to FOIA as a reference to the

institution (such that legal responsibility for compliance with a request under s.1 would fall on that institution), or to the collection of individual Members (such that legal responsibility for compliance with a request would fall on each Member in relation to whom a request is made). There are a number of reasons, she argues, to adopt the first construction, amongst which are:

- (1) Under s.3 (1) of FOIA, the term “public authority” is defined (subject to certain immaterial exceptions) as “any body which, any other person who, or the holder of an office which (i) is listed in Schedule 1”. Schedule 1 lists “The House of Commons”, not “The Members of the House of Commons”. The House of Commons is neither a “person”, nor can it properly be described as an “office”. Within the taxonomy of s.3, therefore, Schedule 1 can only be referring to a “body” – namely, the institution, not the individuals.
- (2) If FOIA had intended to include each MP as a separate public authority, it seems likely that more consideration would have been given to the various capacities in which MPs hold information. Not all such information would be expected to fall within the Act. For example, it would be surprising if information held solely for party political purposes was intended to be covered by the Act, when political parties are not “public authorities”.
- (3) This interpretation is not affected by the fact that the House of Commons has no separate legal identity. Many of the other bodies listed in Schedule 1 to FOIA have no separate legal identity. For example, Government departments are not legal persons: individual Secretaries of State may be corporations sole, but their Departments have no separate legal identity.

41. For the purposes of FOIA, therefore Ms Grey states, the House regards the Members as separate entities from “the House of Commons”. Where information is provided by Members to the House’s administration, for example in relation to an expenses claim, the information is “held” by the

House only to the extent that it is held by the House's administration, not to the extent that it may be retained in the Member's personal files.

42. The Tribunal accepts this legal position of the House in relation to FOIA and that the relevant public authority is in fact the House itself, not the Corporate Officer, although the title of the Appellant in this case is "The Corporate Officer of the House of Commons" as it was in the Baker case. The reason for the title of the Appellant is because under section 2 PCBA the Corporate Officer of the House is provided with power to sue or be sued and therefore has the capacity to conduct litigation. We also accept that each individual MP is not a public authority under the Act. If the Act had intended that individual MPs were to be public authorities, it would have said so in clear terms. We accept that the Act intends that the House of Commons – the body made up of MPs collectively – is to be a public authority.
43. The Tribunal also accepts that information that is held merely by an individual MP does not come within the scope of the Act. For instance, an individual MP's casework files do not come within FOIA. Information about an individual MPs' expenses, if held merely by that MP as an individual, does not come within the scope of the Act either, since it is not information held by a public authority.
44. However we find that where information is held by the House collectively, and not simply by an individual MP, then it falls within the scope of the Act. It is accepted by the parties in the present case that the disputed information is held by the House collectively. There has been no suggestion at all that the disputed information is information that is merely held by individual MPs, or that the disputed information is not held by the House. Rather the appeal has been put on the basis that the information sought is exempt from disclosure under the Act.
45. The question for the Tribunal is what bearing, if any, does all of this have on the assessment that is required by Schedule 2 paragraph 6 of DPA? For the purposes of that provision the question is this: what are the legitimate

interests pursued by a member of the public to whom the disputed information would be disclosed?

46. The Tribunal finds that there is a legitimate interest *both* in understanding and scrutinising the way in which public funds are spent by the House as a collective body, *and* in understanding the way in which public funds are used by individual MPs. These two aspects of legitimate public interest are closely related and cannot sensibly be considered in isolation from one another. The amount that is spent by the House collectively, and the way in which that money is spent, depends on the expenses claims made by individual MPs and the travel choices made by individual MPs.
47. Further, although MPs as individuals are not public authorities in their own right, they are holders of a public elected office and (in relation to their travel expenses) they are in receipt of public money. It follows that there is a legitimate public interest in understanding the way in which public money is used in respect of the travel expenses of individual MPs. This does not in any way involve treating MPs as if they were public authorities. Plainly, they are not.

Matters for the Tribunal to determine

48. The issues for the Tribunal to determine in the Moffat case have been narrowed to the following matters:
- (1) what competing legitimate interests to take into account in order to
 - (2) determine the balance between these competing interests in terms of the test set out in paragraph 30 above of this decision.
49. Before proceeding to identify the competing interests the Tribunal would reiterate two other findings in the Baker case relating to the general fairness of processing under the first Data Protection Principle, which in the Tribunal's view are also relevant to the Moffat's case. These relate to:

- (1) the extent of the consideration which must be given to the interests of Ms Moffat who is an MP, and
- (2) the distinction between personal data related to Ms Moffat's public and private life.

50. Under paragraph 79 of the Baker decision the Tribunal found

- (1) the interests of MPs as data subjects are not necessarily the first and paramount consideration where the personal data being processed relate to their public lives; and
- (2) it is possible to draw a distinction between personal data related to an MPs public and private life.

51. However there is a difference between the Baker and Moffat cases in that the former relates to requests in relation to MPs generally whereas the latter relates to requests in relation to a particular individual MP. Mr Pitt-Payne argues that the main focus under paragraph 6 of Schedule 2 DPA should be to consider the rights and freedoms or legitimate interests of the individual data subject as set out in paragraph 6, namely Ms Moffat and not all MPs. Ms Grey argues we should not remove from our minds the overall context of the Moffat case and the likely impact of our decision on the position of MPs generally because of the stance of the House not to distinguish between individual MPs. We will return to this issue later.

The legitimate interests of members of the public

52. Both parties accepted that the legitimate interests recognised in the Baker case also apply to the Moffat case. These are found at paragraph 91 of the Baker decision and are set down again here but are numbered here for ease of reference:

- (1) understanding the way in which MPs' travel expenses are used;
- (2) ensuring that MPs use of public monies is properly accountable for in the way in which it is spent by providing public scrutiny of the

use of public funds by elected office holders - greater transparency would ensure the proper use of public funds and help guard against their misuse;

- (3) encouraging MPs to take better value for money choices in the mode of transport used and hopefully producing savings to the public purse - the public have a right to know whether value for money is being obtained in MPs' travel arrangements;
- (4) being more aware of the environmental or 'green' choices made by MPs as demonstrated by their mode of travel;
- (5) being aware of MPs' choices of mode of travel in the light of their involvement in debating and legislating on transport and environmental matters.

53. In relation to the first interest, understanding the way in which MPs' travel expenses are used, Mr Pitt-Payne argues that the breakdown sought in the Moffat case does contribute to understanding the way in which MPs' travel expenses are used because it gives information about the number of times that particular modes of transport are used and about the average cost of the occasions on which particular modes of transport are used. He contends that it can really inform two sorts of discussion and debate. It can inform a consideration as to whether a particular individual is using their Parliamentary travel expenses in an economical way. It can also inform discussion and debate about whether the House in general is spending its travel expenses money in an efficient or economical way. He gives the following example. It could be envisaged that a discussion along the following lines could take place: if MPs are paying X pounds a go for making a particular journey that indicates that there is a strong case for the House to try and use its collective purchasing power to get a better deal for MPs generally.

54. In relation to the second point, that of ensuring that MPs' use of public money is properly accountable, Mr Pitt-Payne contends that the point about guarding against misuse applies in this case just as in the Baker case, although there is no suggestion that in the Moffat case there has been misuse. He makes the point that simply because this information is disclosed, would not

automatically mean that in every future case the same information will be disclosed about all MPs. But nevertheless, if this information is disclosed, that is potentially a deterrent against any misuse of travel expenses. So, in relation to this interest it is unnecessary to say in this particular case there has been misuse and there should be disclosure. The point is rather that disclosure at a particular level is a deterrent, is a safeguard against misuse. It is one of the fairly fundamental points about freedom of information generally, that it is the prospect of disclosure that provides an additional incentive to honesty and propriety, and an additional disincentive against misuse of public money.

55. In relation to the third point, encouraging MPs to make better value for money choices, he contends that information that tells you more about how much is being spent on particular journeys, such as the average amount that a particular MP is spending on a particular journey, has a bearing on encouraging MPs to take better value for money choices.
56. In relation to the fourth and fifth points which he describes as the "environmental" or "green choices" points, the relevance of these is that environmental or green issues are increasingly a part of political debate and discussion. That was recognised by the Tribunal in the Baker case. All main political parties are seeking to emphasise their commitment to environmental or green issues, including in relation to matters of travel and transport. There is a legitimate public interest in knowing the extent to which MPs are practising what they preach. That interest is informed by disclosure of the sort of information that was disclosed in the Baker case. It would also be informed by disclosure of the information that is at issue in this case, because it takes the level of scrutiny one step further. In terms of environmental or green choices, one is looking at to what extent people are travelling by air when they could reasonably travel by other means; to what extent are people travelling by road when they could reasonably travel by, say, rail. Taken together with information about the details of the total number of journeys between particular points that were made by, say, air or rail, then that increases the level of information in relation to those environmental or green issues. So, Mr Pitt-Payne submits the fourth and fifth interests are engaged

here just as they were in the Baker case and that aspect of the public interest in disclosure is taken one stage further.

57. Ms Grey accepts that the green issues are relevant in this case but that they are adequately satisfied by the disclosures already made in the Baker case and that any further disclosure would not add significantly to the public debate on these interests.
58. Mr Pitt-Payne submits that there are two other factors relating to the legitimate interests in disclosure, which go beyond what is in paragraph 53. The sixth interest is the relevance, if any, of the fact that it appears that Ms Moffat is at the very high end of spending as compared with MPs generally. For one of the two years with which this Tribunal is concerned, it appears that she had the highest expenses claim of any MP. This is a request for information about a particular individual and there is a specific interest, in his submission, in looking at a detailed breakdown of an MP whose travel expenses in total are high as compared with the total travel expenses of MPs generally.
59. The seventh interest, according to Mr Pitt-Payne, relates to that part of the request in relation to the spouse's travel. What is being sought here, he contends, is not any sort of breakdown, but a global figure for the amount claimed in relation to spouse's travel during the two years in question. His submission is that there is a legitimate interest in disclosure of that information as part of the general interest in understanding the way in which MPs' travel expenses are used. It comes within the first point at paragraph 52 above.
60. Ms Grey reminded us that Members' spouses, civil partners and children under the age of 18 are entitled to up to 15 return journeys each year between London and their constituency and the Member's main home. The overall figures in respect of travel claims for spouse and children are reportable. Therefore, she argues, there should be no disclosure, because:

- The claims relate solely to the private life of the couple concerned. They are payable in order to help MPs retain some sort of family life, despite the travel requirements of the job and the difficult pattern of working hours at Westminster;
- The public can properly debate whether or not MPs should be entitled to receive these allowances on the basis of the published details of the scheme for Members Allowances. It is possible to take a view on whether or not this is a justified use of public money. It is not necessary to detail the costs individually incurred by each MP and his or her family, in order to have a sensible public debate.

61. Ms Grey makes the following further submissions in relation to the interests in paragraph 52 above:

- The existing disclosure (including that secured as a result of the Baker case) adequately satisfies all the interests set out in the paragraph. Both the totals claimed by all MPs, and the mode of transport, are now apparent. It is not necessary to have a further breakdown to satisfy the public interest in how MPs spend public money. The level of detail claimed here is unnecessary.
- The need for public scrutiny of MPs' claims has to be set against the fact that expenditure is already scrutinised and audited by the House, and has to be incurred on only those expenses which are covered by a published scheme.
- In fact, she argues, there is no clear public interest in MPs' reducing their travel expenditure. The allowance is to enable them to do their job properly. MPs must use their own judgment on how much travel is needed for that purpose. Some may decide that mid-week constituency engagements (requiring a return from London) are not worth attending; others may choose to come back to their constituency. They are accountable at the ballot box for these choices. As a result, adding to the pressure to justify and reduce expenditure may well not be in the public

interest. The terms of the expenses and allowances scheme are a sufficient protection against the misuse of funds.

- MPs' consent for disclosure was sought only for release of the aggregate figures, and not for more detailed break-downs (see the history of the publication scheme, as set out in the Baker case). They are entitled to be able to regulate their affairs without 'retrospective amendments' being made to the scope of disclosure.
- MPs are not employees of the House of Commons. They are holders of an elected public office, which is not a 'public authority' within the meaning of the Act. Although the information requested is "held" by the House, it does not give details of the activities of the House, which is the 'public authority'. Rather it gives details of the activities of those who are not public authorities. The proposed disclosure creates a situation which is tantamount to treating MPs as public authorities.

62. We have considered this last submission in the light of our findings in paragraphs 33 to 47 above.

The legitimate interests of Ms Moffat

63. Again both parties accept that the prejudices to the rights, freedoms and legitimate interests of Ms Moffat recognised in the Baker decision are relevant here. These are found at paragraph 92 of the Baker decision and are set down again here but are numbered for ease of reference:

- (1) publishing of detailed travel expenses could lead to questions in relation to an MP's private life;
- (2) the complexity of their lives, including travel arrangements is influenced by family/private considerations;
- (3) such requests are a diversion from other parliamentary business;
- (4) the House has already determined that the Publication Scheme meets the House's obligations under FOIA;

- (5) MPs' consent for disclosure has only been sought for aggregate figures for travel expense and not for more detailed disclosure;
- (6) the information sought is personal data relating to personal choice and therefore should not be disclosed;
- (7) further disclosure of a breakdown of expenses would give rise to opportunities for further invasion of the privacy of MPs from the media;
- (8) MPs are already subjected to close scrutiny, a consequence of which is that their role has become increasingly pressurised due to increased attention from the media which detracts from them effectively carrying out their role;
- (9) the existing rigorous scrutiny of expenses has already resulted in a reduction in expenditure, and this is reflected in the year on year comparative financial reports produced for the House;
- (10) a breakdown of travel by mode of transport can be provided to monitor use of environmental friendly transport and therefore, it is unnecessary to provide the information for individual MPs.

64. Ms Grey submits that all these interests are relevant in the Moffat case. She further submits in relation to the first interest that in order to justify the expenses claimed, it is likely that Ms Moffat will have to explain aspects of her private life.
65. In relation to the second interest she argues that the House has always maintained that it is not possible to separate out the personal from professional elements when considering MPs' travel claims; although incurred in a professional capacity they relate to his or her home and may benefit an MP's family.
66. Ms Grey raises a new interest about safety, security and an MPs' peace of mind which is particularly relevant in this case. Releasing further information about how an MP travels, for example, between Westminster and his or her constituency can help to build up knowledge of that MP's life. This threatens security, directly (as more is known, it may be easier to plan assaults) and also

indirectly (because knowing more about the personal or professional life of the object of attention may feed an obsession).

Information about spouse's travel

67. The Tribunal finds that information sought in relation to the Ms Moffat's spouse constitutes personal data in relation to that individual. The information requested is for a global figure in relation to spouse's travel costs and not for any form of break down by mode of travel or even more detailed breakdown. We need to decide whether the condition in Schedule 2 paragraph 6 is satisfied or there is a breach of the Data Protection Principles in disclosing the information sought.
68. Mr Pitt-Payne argues that the expenses claim is not made by the spouse: it is made by the MP, in respect of travel expenses incurred in relation to the spouse. As with the expenses claimed for the MP's own travel, the claim is met out of public funds, and can be made only because the MP holds elected public office. There is a legitimate interest in a member of the public receiving this information, as contributing to an understanding of the way in which public funds are spent on MPs' expenses.
69. As to the question of prejudice to the rights, freedoms or legitimate interests of the data subject (i.e. the spouse) Mr Pitt-Payne argues there is little real prejudice here. He submits that it cannot seriously be suggested that disclosure of the information would involve a disclosure of information about the private or family life of the MP and their spouse. There is no information about specific journeys made by the spouse, or times of week when the spouse tended to travel. Nor is there any information about routes travelled or the timing of journeys, of the kind that could give rise to a risk to the security either of the MP or their spouse.
70. He points out that the Commissioner is aware of the need to give proper protection to the private and family life of an MP and their spouse, and in an

appropriate case will refuse to require disclosure of information sought where it would involve an unacceptable infringement of personal or family privacy: see e.g. the Commissioner's recent decision of 13th June 2007 relating to disclosure of MPs' Additional Cost Allowance (reference FS50124671).

71. Ms Grey argues that as Members' spouses, civil partners and children under the age of 18 are entitled to up to 15 return journeys each year between London and their constituency and the Member's main home claims for these expenses should not be disclosed because:

- (1) they relate solely to the private life of the couple concerned. They are payable in order to help MPs retain some sort of family life, despite the travel requirements of the job and the difficult pattern of working hours at Westminster; and
- (2) the public can properly debate whether or not MPs should be entitled to receive these allowances on the basis of the published details of the scheme for Members Allowances. It is possible to take a view on whether or not this is a justified use of public money. It is not necessary to detail the costs individually incurred by each MP and his or her family, in order to have a sensible public debate.

The Tribunal's findings

72. Following the Baker decision some of the information requested, which is identified by a tick (✓) alongside the item in the Annex, is not in dispute and we are assured by the House that this information will be disclosed. So we do not need to consider these parts of the requests further.

73. We are being asked to consider, in effect, two further levels of disclosure of an MP's travel expenses other than those already disclosed in the House's publication scheme but in relation to a particular MP, Ms Moffat. Firstly spouse's expenses and secondly a level below modes of travel, which relates

largely to numbers of journeys and their average cost. The requests also relate to European travel.

74. We considered European travel in the Baker case. In that case the evidence before us was that it was difficult to identify total European travel costs for the reasons set out in paragraph 16 of that decision. In this case it is possible to identify Ms Moffat's European air fares. We have applied the balancing test set out in paragraph 30 above to the circumstances of the Moffat case and find that the legitimate interests of the requesters and members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of Ms Moffat, similar to our finding in the Baker case, and that the information held by the House should be disclosed.
75. We do not regard spouses' travel expenses as a level below that already disclosed under the Baker case. They are, in our view, at a level comparable with the overall disclosure of an MP's travel expenses disclosed before the Baker case. They are the part of an MP's overall travel expenses at this level, without breakdown by mode of travel or further, which has not yet been disclosed. If Ms Moffat was to claim for her own travel and that of her spouse and family these claims would amount to the sum of what she can claim under the House's travel allowance schemes (excluding staff travel). We have taken into account all the factors considered above and in the annexes in the particular circumstances of this case in order to undertake the balancing test set out in paragraph 30 above. We find that the legitimate interests of members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of Ms Moffat and her spouse, particularly as the requests at this general level do not in our view impinge on Ms Moffat's private life. As a result we order that the overall figure for claims for spouse's expenses, without breakdown, made by Ms Moffat, if any, for the years covered by the requests should be disclosed.
76. The other parts of the requests are at a further level of detail and are, in effect, a drill down to a more detailed level of information on travel claims from the current disclosures made by the House under its publication scheme. To

repeat these elements of Ms Moffat's travel expenses which are being requested are:

- (1) number of trips by some modes of travel;
- (2) average cost of some individual trips by some modes of travel;
- (3) mileage for car travel;
- (4) number and cost of taxi journeys.

77. In relation the latter we accept the evidence of Mr Walker that the number and actual cost of taxi journeys is not held by the House. Taxi journeys are claimed by way of mileage in a similar way to car journeys. We understand from the parties that the requesters would be satisfied by the disclosure of taxi information by the way it is claimed by Ms Moffat and therefore we will consider car and taxi mileage together as one category of request.

78. In relation to the cost of trips by rail we again accept the evidence of Mr Walker that the House does not hold accurate information on individual journeys for the years in question. We understand from Mr Pitt-Payne that the Commissioner would be content with the disclosure of the figures held by the House and this would be sufficient to satisfy the requesters or complainants in these cases.

79. We therefore turn to considering whether the information requested at the level described in paragraph 76, subject to the limitations set out in the previous two paragraphs, should be disclosed as found by the Commissioner in his various Decision Notices referred to above.

80. We have taken into account all the legitimate interests set out in this decision and its annexes. We find the legitimate interests of members of the public are weighty. This is particularly because Ms Moffat was in the top 5% of the travel expense claimers in the years in question and the highest for at least one of these years.

81. In relation to the rights, freedoms and legitimate interests of Ms Moffat we would make the following findings on what appear to be some of her strongest interests:

- (1) She has legitimate concerns, based on actual incidents, about her safety and security. We approach these concerns sympathetically, both in this particular instance and more generally. Mr Walker told us that there have been other cases in his experience where MPs have had unwarranted attention that goes beyond awkwardness, including cases threatening physical safety or even the lives of MPs or their staff. Both Ms Moffat and Mr Walker said it was difficult to be certain whether or how disclosure of further information relating to travel could make a difference to security, but there was a concern that it might. We are inclined to agree that disclosure of travel details which could reveal the times, origins and destinations of journeys, and the modes of transport likely to be used at particular times and circumstances could be of potential use to malevolent individuals, especially where such information was not otherwise available to them. But such details would not be divulged in this case as a result of the Commissioner's decisions, and we find that information that relates to the total number or average costs of journeys can be distinguished from information giving details about particular journeys. While the latter could give rise to a credible increase in security risks, the former is much less likely to do so and we find that the information in the generalised form ordered to be disclosed by the Commissioner is unlikely to worsen security risks or concerns;
- (2) Ms Moffat is concerned that disclosure of further information about her travel expenses would inevitably lead to further questioning about her choices of travel, and the reasons for and costs of particular journeys. Again we distinguish the generalised information that would fall to be disclosed if the Commissioner's Decision Notices are upheld, from the more specific information that is not at issue concerning particular journey details. It was put

to us that questioning could be aggressive and persistent and that the need to deal with it would effectively leave the burden of further disclosure with the Member of Parliament, rather than with the House to whom FOIA duties applied. It was also put to us that it would be difficult for MPs to maintain a clear distinction between the private considerations that influenced a particular journey choice, and the public duties that were a necessary element of making a claim. While these considerations would have more weight if there was a request for details of particular journeys, we find them of limited weight at the level of aggregation and in the form of disclosure which the Commissioner has ordered in this case.

82. Although under the test in paragraph 6 of Schedule 2 DPA we are only required to consider the rights, freedoms and legitimate interests of the individual data subject, namely Ms Moffat, Ms Grey invites us not to remove from our minds the overall context of this case and the likely far reaching impact on the position of other MPs if we should order disclosure of the requested information. Mr Pitt-Payne says, well that is the way the House chooses to implement FOIA, not what the legislation requires. We agree with Mr Pitt –Payne, although we also understand the desire of the House to settle on a form of disclosure which would not be open to continual amendment as individual FOIA requests are made and new possibilities for extending disclosure requirements arise.
83. Taking into account all the above considerations and submissions and whether disclosure is necessary for the purposes of the legitimate interests of the requesters and members of the public balanced against the prejudice to the rights and freedoms or legitimate interests of Ms Moffat we find that the legitimate interests of the requesters and members of the public outweigh the prejudice to the rights, freedoms and legitimate interests of Ms Moffat.
84. The case does not require us to consider any wider or further disclosure. However we would observe that although we are unable to bind future

Tribunals we would hope that the general indications we have given concerning the distinction between disclosure of particular journey details, and information which provides an understanding of the numbers of journeys and average costs by mode of transport will provide a helpful guideline in relation to any future such cases should they arise.

85. As set out earlier in this decision we are aware that the disputed information does not completely satisfy the requests. Mr Walker gave evidence that not all the information requested is held by the House. The Commissioner accepted after consultation with some of the requesters that the information provided to the Tribunal in confidence would meet the requests in relation to information held by the House. We therefore find that the disclosure of the disputed information provided to the Tribunal in confidence will satisfy the requests and that no further information need be disclosed.

Signed:

John H Angel
Information Tribunal Chairman

Dated 9 August 2007

Annex

Anne Moffat Travel Requests: Information already in the public domain (√ = already published, * = not held) x = not disclosed.

EA/2006/0074 (2003/04)			EA/2006/0075 (2003/04)			EA/2006/0076 (2002/03)		
1	X number of rail tickets London-Edinburgh, Edinburgh-London at Y£s:		1	Total average cost of each mode of transport (specifically plane, rail, rail sleeper and taxi)	X	1	X number of rail tickets London-Edinburgh, Edinburgh-London at Y£s:	
	• Number of tickets	X					• Number of tickets	X
	• Total for rail travel	√					• Total for rail travel	√
2	total cost X airline tickets London-Edinburgh, Edinburgh-London at Y£s:		2	The breakdown should specifically identify the total number of trips between London and East Lothian and the average cost of journeys between these two locations.	X	2	total cost X airline tickets London-Edinburgh, Edinburgh-London at Y£s:	
	• Number of tickets	X					• Number of tickets	X
	• Total for Air travel	√					• Total for Air travel	√
3	Total cost, total mileage and cost of car/petrol allowance claimed:		3	Total travel expense incurred in travelling within East Lothian/ the Lothians on constituency business but not the expense incurred on individual journeys.	X	3	Total cost, total mileage and cost of car/petrol allowance claimed:	
	• Total mileage	X					• Total mileage	X
	• Total cost	√					• Total cost	√
4	Total number of taxi journeys	*	4	Total cost	X	4	Total number of taxi journeys	*

5	Total cost of taxi journeys	*		claimed for travel involving a spouse, if applicable, and in particular the cost, if any, involving a spouse travelling between London and East Lothian.		5	Total cost of taxi journeys	*
6	Total cost of travel claimed for spouse	X				6	Total cost of travel claimed for spouse	X
7	All other travel expense claimed:		5	Total cost for all other travel not involving trips between London and East Lothian.	X	7	All other travel expense claimed:	
	• EU travel	X						
<p>General points on availability:</p> <p>Already in the public domain:</p> <ul style="list-style-type: none"> • Total expenditure under each of the allowances available to MPs including the travel allowance (which includes the total for EU travel) • Breakdown of the travel allowance into modes of transport (the ‘Baker’ details) <p><u>Not</u> in the public domain:</p> <ul style="list-style-type: none"> • Number of tickets, journey start points or destinations, number of miles claimed for, spouse and family travel costs, details of EU travel (but the cost of EU travel in 2006/07 will be separately reported in October 2007 as part of the House’s next general publication) 								