

FOIA s.40(2) – Absolute exemption: personal data

DPA Sch 2 – Data Protection Principles

Corporate Officer of the House of Commons v IC & Ben Leapman, Heather Brooke and Michael Thomas
EA/2007/0060, 0061, 0062, 0063, 0122, 0123
26th February 2008

Cases:

The Corporate Officer of the House of Commons v IC & Norman Baker MP [2007] UKIT EA_0006_0015;

The Corporate Officer of the House of Commons v IC [2007] UKIT EA_2006_0074;

Durant v Financial Services Authority [2003] EWCA 1746;

Stone v South East Coast Strategic Health Authority [2006] EWHC 1668, C-465/00, C-138/01 and C-139/01;

Österreichisher Rundfunk and Others [2003] ECR I-4989;

Samaroo v Secretary of State for the Home Department [2001] EWCA Civ 1139

McKennitt v Ash and another [2006] EWCA Civ 1714

Facts

This appeal concerned the extent to which the House of Commons administration must disclose the details of MPs' Additional Cost Allowance (ACA) claims (for second homes or hotel bills etc.) under the FOIA. The House claimed an exemption which depended upon the application of certain provisions of the Data Protection Act ("DPA"). The total sum paid annually to each MP in respect of ACA was published in the House's publication scheme. Three members of the public sought more details, but the HOC refused the requests.

The IC decided that the House should provide the applicants with a breakdown of the total annual amounts claimed by each relevant MP for ACA in the specified years.

Findings

FOIA s.40(2) created an absolute exemption from disclosure of personal data except where disclosure would not contravene any of the data protection principles. The Tribunal therefore had to consider first whether or to what extent the information held by the House relating to the ACA claims of the 14 MPs was personal data, and then whether its disclosure would contravene or was permitted by DPA Sch 2.

Personal Data

The Tribunal looked to the definitions of personal data in the European Directive 95/46/EC and in the case of *Durant*, which they regarded as binding upon them. They held that the generality of the information held on the ACA forms sufficiently related to individual MPs, and sufficiently affected their privacy to amount to personal data. They stated the information requested was by its nature personal data, since it related to the personal expenditures of 14 MPs on their day to day living arrangements.

Disclosure

The Tribunal considered whether disclosure of some or all of the details requested would be in conformity with condition 6(1) of the DPA, Schedule II. Having regard to *Stone v South East Coast Strategic Health Authority*, *Joined Cases Österreichischer Rundfunk and Others* and *Samaroo v Secretary of State for the Home Department*, the Tribunal considered in relation to condition 6:

- (A) whether legitimate aims pursued by the applicants could be achieved by means that interfered less with the privacy of the MPs, and
- (B) if the aims could not be achieved by means that involved less interference, whether the disclosure would have an excessive or disproportionate adverse effect on the legitimate interests of the MPs.

The Tribunal listed a number of public interest factors concerned with objectives of transparency, accountability, value for money and the health of the democracy. The Tribunal concluded that the disclosure of full detailed information was necessary to meet these objectives, and in their view the aims could not be achieved by means that interfered less with the privacy of the MPs' personal data. The applicants were pursuing legitimate public interests of transparency and accountability, for which disclosure was necessary, because the ACA system was opaque, confused and not subject to adequate controls.

However, the Tribunal also stated that full disclosure would have a disproportionate effect on the privacy of the MPs. Disclosure was therefore ordered subject to certain defined exceptions concerning sensitive personal data, personal data of third parties, and matters such as bank account details and security arrangements.

Finally, the Tribunal held that DPA Schedule 2 conditions 5(aa) and 5(d) were inapplicable (disclosure was not necessary for the purposes of the functions of the HOC) and that although the IC had ordered disclosure in broad categories which differed from those in which the information was held, this was beyond his powers because it would have required HOC to create new information rather than merely disclose existing information.

Conclusion

The Tribunal concluded that the IC's decision notices were not in accordance with the law in regard to the correct application of DPA Schedule 2 condition 6 in relation to the requests. The appeals were dismissed, the cross-appeals were allowed, and a new decision notice was substituted.