



Freedom of Information

Volume 5, Issue 5

May / June 2009

Headlines:

- BBC board members' expenses to be made public, p.14
- Treasury says no to stress tests, p.15
- ICO upholds section 42 for purchase of parish, p.16
- ICO agrees with Cabinet Office over costs limit, p.16

Inside this issue:

Editorial	2
Practical ways of distinguishing FOI and EIR requests	3
Is open government good government?	5
Recent decisions of the Information Commissioner	8
The Information Commissioner's Swan Song	13
FOI news	14

'Chilling effect' argument fails for pregnant drinking case

The Information Commissioner's Office has ordered the Department of Health ('DoH') to release the background information it holds in relation to its official line that women should avoid all alcohol whilst pregnant or trying to conceive. According to the ICO, the release of the documents could improve the quality and administration of government decisions.

The DoH had refused the request citing section 35 of the Freedom of Information Act ('formulation of government policy'), which is subject to a public interest test.

The DoH said the public interest favoured maintaining the exemption, because officials, experts, and stakeholders, would be impeded in being frank during the discussions stage of the production of public policy advice. Recognising that the advice was already complete (and so there would be no impediment in relation to that specific advice), the DoH argued that there would be a 'wider chilling effect'.

However, the ICO found that the DoH failed to give clear evidence of such an effect.

The Decision Notice states:

"[the Commissioner] has attributed some significance to the chilling effect argument [but] disclosure would promote the accountability and transparency of the DoH for the decisions it has taken in respect of the guidance [and] placing an obligation on the DoH and officials to provide reasoned explanations for decisions made will improve the quality of decisions and administration.

*"In this case the Commissioner considers
(Continued on page 14)*

MP's expenses was a battle at outset

The *Sunday Telegraph* journalist who exposed MP's expenses has revealed that he was battling for the information as soon as the Freedom of Information Act came fully into force in 2005.

The journalist, Ben Leapman, has recently said that he submitted a request for expenses in 2005 "to test the new Act's reach." He asked to see "the receipts submitted in support of claims made by six MPs for Additional Costs Allowance, the fund, now

worth up to pounds 24,000 a year, intended to allow MPs whose seats are outside London to meet the extra cost of running two homes."

Mr Leapman describes an arduous process undergone to extract the information, after it was initially rejected by the House of Commons. According to the journalist, the Information Commissioner took two years to propose a compromise of the House of Commons providing each MP's annual claim

broken down into categories such as rent, or household goods, but without receipts or further detail. When the High Court ruled last May that the details of Additional Homes Allowance should be made public, Mr Leapman said:

"The Freedom of Information Act is one of this Labour government's biggest successes. I'm mystified as to why Speaker Michael Martin and his allies fail to recognise this."