

# Appellant's notice

(All appeals except small claims track appeals)

For Court use only	
Appeal Court Ref. No.	C0/2288/2008
Date filed	26/3/08.

Notes for guidance are available which will help you complete this form. Please read them carefully before you complete each section.



## Section 1 Details of the claim or case you are appealing against

Claim or Case no. EA/2007/60-63/122-23/131

Name(s) of the  Claimant(s)  Applicant(s)  Petitioner(s)

The Corporate Officer of the House of Commons

Name(s) of the  Defendant(s)  Respondent(s)

The Information Commissioner  
Ben Leapman  
Heather Brooke  
Michael Jonathan Ungood-Thomas

### Details of the party appealing ('The Appellant')

Name

The Corporate Officer of the House of Commons

Address (including postcode)

The House of Commons,  
London,  
SW1P 3JA

Tel No.	020 7219 3874
Fax	020 7219 2479
E-mail	rosev@parliament.uk

### Details of the Respondent to the appeal

Name

The Information Commissioner

Address (including postcode)

Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire,  
SK9 5AF

Tel No.	01625 545 320
Fax	01625 545 836
E-mail	mark.thorogood@ico.gsi.gov.uk

Details of additional parties (if any) are attached

Yes  No

**Section 2** Details of the appeal

From which court is the appeal being brought?

The County Court at

High Court District Registry at

The Royal Courts of Justice

Other (please specify)

The Information Tribunal

What is the name of the Judge whose decision you want to appeal?

The Information Tribunal comprising Andrew Bartlett QC (Chair), David Wilkinson and Pieter De Waal

What is the status of the Judge whose decision you want to appeal?

District Judge or Deputy

Circuit Judge or Recorder

Master or Deputy

High Court Judge or Deputy

What is the date of the decision you wish to appeal?

26th February 2008

To which track, if any, was the claim or case allocated?

Fast track

Multi track

Not allocated to a track

Nature of the decision you wish to appeal

Case management decision

Grant or refusal of interim relief

Final decision

A previous appeal decision

**Section 3 Legal representation**

Are you legally represented?

Yes  No

If 'Yes', please give details of your solicitor below

Your solicitor's name

TREASURY SOLICITORS

Your solicitor's address (including postcode)

One Kemble Street  
London  
WC2B 4TS

Tel No.	020 7210 3521
Fax	020 7210 3001
E-mail	rhys.maynard@tsol.gsi.gov.uk
DX	123242 Kingsway
Ref.	LT7/2024G/RTM:3B

Are you, the Appellant, in receipt of a Legal Aid Certificate or a Community Legal Service Fund (CLSF) certificate?

Yes  No

Is the respondent legally represented?

Yes  No

If 'Yes', please give details of the respondent's solicitor below

The respondent's solicitor's address (including postcode)

Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire,  
SK9 5AF

Tel No.	01625 545 320
Fax	01625 545 836
E-mail	mark.thorogood@ico.gsi.gov.uk
DX	
Ref.	

**Section 4 Permission to appeal**

Do you need permission to appeal?

Yes  No

Has permission to appeal been granted?

Yes

No

Date of order granting permission

Name of Judge granting permission

I

the Appellant('s solicitor) seek permission to appeal.

## Section 5 Other information required for the appeal

Please set out the order (or part of the order) you wish to appeal

The Decision of the Information Tribunal dated 26th February 2008 requiring the Corporate Officer of the House of Commons to disclose the disputed information to the complainants/requestors.

Does your appeal include any issues arising from the Human Rights Act 1998?

Yes  No

Are you asking for a stay of execution of any judgment against you?

Yes  No  
If 'Yes' you must complete  
**Part A of Section 8**

Have you lodged this notice with the court within 21 days of the date on which the Judge made the decision you wish to appeal?

Yes  No  
If 'No' you must complete  
**Part B of Section 8**

Are you making any other applications?

Yes  No  
If 'Yes' you must complete  
**Part C of Section 8**

## Section 6 Grounds for appeal and arguments in support

Please state, in numbered paragraphs, **on a separate sheet** attached to this notice and entitled 'Grounds of Appeal' (also in the top right hand corner add your claim or case number and full name), why you are saying that the Judge who made the order you are appealing was wrong.

The arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' will follow within 14 days of filing this Appellant's Notice

**OR**

The arguments (known as a 'Skeleton Argument') in support of the 'Grounds of Appeal' are set out **on a separate sheet** and attached to this notice.

## Section 7 What are you asking the Appeal Court to do?

I am asking the appeal court to:-  
(please tick the appropriate box)

set aside the order which I am appealing

vary the order which I am appealing and substitute the following order. Set out in the following space the order you are asking for:-

order a new trial

## Section 8 Other applications

Complete this section **only** if you are asking for orders **in addition** to the order asked for in Section 7.

### Part A

I apply for a stay of execution because:

Please see attached sheet

### Part B

I do not need an extension of time for filing my appeal notice because it has been filed within the extended time granted by the Judge whose decision I am appealing.

OR

I apply for an extension of time for filing my appeal notice because (set out the reasons for the delay. You must also set out in Section 9 what steps you have taken since the decision you are appealing).

### Part C

I apply for an order that:

1. PartB - This is a statutory appeal and the time limit for lodging the appeal is within 28 days of the date of the decision, so this appeal is being lodged in time (CPR, PD52 para 17.3). Time for lodging the appeal expired on 25th March 2008. The Court was closed on that day and so this has been filed on the following day in accordance with the requirements of CPR 2.8(5).

2. Directions be given concerning the use made of confidential, closed material deployed before the Information Tribunal.

because

Please see attached sheet

**Section 9 Evidence in support**

In support of my application(s) in Section 8, I wish to rely upon the following evidence:

Not applicable

## Statement of Truth

~~XXXXXX~~ (The appellant believes) that the facts stated in this section are true.

Full name Rhys Tudor Maynard

Name of appellant's solicitor's firm The Treasury Solicitor

signed



Appellant ('s solicitor)

position or office held  
(if signing on behalf  
of firm or company)

Solicitor

## Section 10 Supporting documents

To support your appeal you should file with this notice all relevant documents listed below. To show which documents you are filing, please tick the appropriate boxes.

If you do not have a document that you intend to use to support your appeal complete the box over the page.

- two additional copies of your appellant's notice for the appeal court;
- one copy of your appellant's notice for each of the respondents;
- one copy of your skeleton argument for each copy of the appellant's notice that is filed;
- a sealed (*stamped by the court*) copy of the order being appealed;
- a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- any witness statements or affidavits in support of any application included in the appellant's notice;
- a copy of the order allocating the case to a track (*if any*); and
- a copy of the legal aid or CLSF certificate (*if legally represented*).

A bundle of documents for the appeal hearing containing copies of all the papers listed below:-

- a sealed copy (*stamped by the court*) of your appellant's notice;
- a sealed copy (*stamped by the court*) of the order being appealed;
- a copy of any order giving or refusing permission to appeal, together with a copy of the judge's reasons for allowing or refusing permission to appeal;
- any affidavit or witness statement filed in support of any application included in the appellant's notice;
- a copy of the skeleton argument;
- a transcript or note of judgment, and in cases where permission to appeal was given by the lower court or is not required those parts of any transcript of evidence which are directly relevant to any question at issue on the appeal;
- the claim form and statements of case (where relevant to the subject of the appeal);
- any application notice (or case management documentation) relevant to the subject of the appeal;
- in cases where the decision appealed was itself made on appeal (eg from district judge to circuit judge), the first order, the reasons given and the appellant's notice used to appeal from that order;

- in the case of judicial review or a statutory appeal, the original decision which was the subject of the application to the lower court;
- in cases where the appeal is from a Tribunal, a copy of the Tribunal's reasons for the decision, a copy of the decision reviewed by the Tribunal and the reasons for the original decision and any document filed with the Tribunal setting out the grounds of appeal from that decision;
- any other documents which are necessary to enable the appeal court to reach a decision; and
- such other documents as the court may direct.

Reasons why you have not supplied a document and date when you expect it to be available:-

Title of document and reason not supplied	Date when it will be supplied
Sealed copy of the Order being appealed	The Information Tribunal does not produced sealed orders. Decision of 26th February 2008 stands as the Order.
Closed material	After directions have been made concerning its use.
Additional Material before the Tribunal	With the Skeleton Argument - Advice is being taken on what should be included.

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Signed *Raymond* Appellant('s Solicitor)

**IN THE HIGH COURT**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**  
**ON APPEAL FROM THE INFORMATION TRIBUNAL**

**B E T W E E N:**

**THE CORPORATE OFFICER OF THE HOUSE OF COMMONS**

**Appellant**

**-and-**

**(1) THE INFORMATION COMMISSIONER**

**(2) BEN LEAPMAN**

**(3) HEATHER BROOKE**

**(4) MICHAEL JONATHAN UNGOED-THOMAS**

**Respondents**

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**Grounds of Appeal**

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1. The Information Tribunal ("the Tribunal") erred in law in its decision promulgated on 26 February 2008 pursuant to the Freedom of Information Act 2000 ("FOIA"), concerning information relating to claims by Members of Parliament for Additional Costs Allowance ("ACA"), in the following two respects.

**First ground of appeal**

2. The Tribunal held that (subject to the exceptions specified in paragraph 84 of the Tribunal's decision) the information requested by the applicants under FOIA should be disclosed to them, even though it constituted personal data of which the Member of Parliament in question was the data subject, and that the information was not exempt from disclosure by virtue of FOIA s 40(2).
3. The Tribunal's said decision depended upon its conclusion that such disclosure would not contravene the first data protection principle, as set out in paragraph 1 of Schedule 1 Part I to the Data Protection Act 1998.

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4. In reaching that conclusion the Tribunal misdirected itself in law and/or failed to have regard to a relevant consideration and/or reached a conclusion not reasonably open to it, in that at paragraphs 45 and 79(b) of its decision it held that Members of Parliament had no reasonable expectation that information of the kind in question would not be released save to the extent set out in the publication scheme adopted by the House of Commons pursuant to FOIA s 19. The Tribunal so held on the basis that "MPs, as part of the legislature, would or should have been fully aware of the provisions of FOIA which might affect them". The Tribunal ought to have held that:
- (i) The fact that Members of Parliament would or should have been aware of the provisions of FOIA, and of the fact that requests for information might be made pursuant to FOIA which would have to be considered on their merits, was logically irrelevant to the question before the Tribunal, namely to what extent FOIA in fact required disclosure of the information in question;
  - (ii) There was no inconsistency between the fact that information might theoretically be disclosable pursuant to FOIA on the one hand, and a reasonable expectation that there would not be such disclosure on the other;
  - (iii) Members of Parliament were entitled to form a reasonable expectation, as to what information concerning their ACA claims would be publicly disclosed, by reference to the treatment of such information in the House of Commons' statutory publication scheme, which was required to be approved by the Information Commissioner, as well as by reference to letters sent to them by the Speaker and referred to in the Tribunal's decision.
5. To the extent that the Tribunal, in paragraph 45 of its decision, relied upon a letter sent to an individual Member of Parliament in May 2002, that was logically irrelevant to the reasonable expectations of any Member of Parliament save for the recipient of that letter. Further, it was not reasonably open to the Tribunal to interpret that letter (if it did) as representing a considered position by the House of Commons authorities as to what information was likely to be subject to disclosure pursuant to FOIA.
6. If the Tribunal had held, as it should have done, that Members of Parliament had had a reasonable expectation that the relevant information would not be publicly disclosed, then the Tribunal would have been obliged to take that expectation into account in deciding whether

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such disclosure would constitute unfair processing of that personal data contrary to the first data protection principle and/or whether such processing was "necessary" and/or "unwarranted" within the meaning of paragraph 6 of Schedule 2 to the Data Protection Act 1998, which had to be satisfied if the first data protection principle was not to be contravened.

Second ground of appeal

7. The Tribunal misdirected itself and/or reached a conclusion not reasonably open to it, insofar as it held at paragraph 85 of its decision that the addresses of Members of Parliament should not be exempt from the disclosure which it ordered, save in the case of a "special security reason".
8. The Tribunal ought to have directed itself that any disclosure of an individual's residential address was an intrusion upon the privacy of that individual and a disclosure of his or her personal data which could not be justified unless there was some pressing social need for that disclosure and it represented a proportionate measure in the pursuit of a legitimate interest.
9. Although the Tribunal applied that approach in considering the disclosure of information about ACA claims generally, it failed to do so in the context of the specific issue about whether the addresses of Members of Parliament should be disclosed.
10. Further or alternatively, the Tribunal in its decision failed to identify any specific positive reason why there was a legitimate public interest in the disclosure of the addresses in respect of which ACA was claimed. In the absence of any such identified reason, the Tribunal's conclusion was one not reasonably open to it, and/or the Tribunal failed to give adequate reasons for its decision.
11. Further, insofar as the Tribunal relied upon the fact that some addresses of Members of Parliament were already in the public domain, that was irrelevant to the question of whether there should be public disclosure of addresses in other cases.
12. Still further, the Tribunal in acknowledging that Members of Parliament might potentially be subject to special security reasons making the public disclosure of their addresses inappropriate, failed to consider the implications of ordering such disclosure for cases in which such a reason might arise after that disclosure had taken place.

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NIGEL GIFFIN QC  
11KBW  
25<sup>th</sup> March 2008

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## **SECTION 8, PART A: STAY OF EXECUTION**

1. By its determination, the Tribunal ordered that the House disclose the information requested within 28 days of the date of the decision. That deadline was extended following an application by the Appellant to Thursday, 27<sup>th</sup> March 2008.
2. The House now applies for a stay of execution of the Tribunal's order, until disposal of this appeal or further order.
3. The reason for the application is that, unless a stay is granted, disclosure of the disputed data will have to take place, and the appeal will become academic. A stay is necessary to protect the confidentiality of the disputed data until this appeal has been disposed of, and is therefore in the interests of justice.

## **SECTION 8, PART C: THE PROTECTION OF CLOSED MATERIAL**

4. Before the Tribunal:
  - a. Samples of the disputed material was provided to the Tribunal and to the Information Commissioner in confidence; and
  - b. Certain parts of the evidence were heard in closed, ie confidential, session.
5. In order to preserve the confidentiality of all this material (to be contained in an Appellant's 'Closed' Bundle), the Court is asked to direct that copies of the Appellant's 'Closed' Bundle should be marked as 'confidential', should be stored securely and should not be made available to either Mr Leapman, Ms Brooke or Mr Ungoed-Thomas or non-parties (whether for inspection or copying), save by Court order following an application on notice to the parties.
6. These suggested orders are consistent with CPR Part 5, but should further clarify the status of the 'Closed' material. Further directions may be sought by the Appellants at trial, concerning its use at that stage.