

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 8 July 2014

Public Authority: Independent Parliamentary Standards Authority
Address: 4th Floor
30 Millbank
London
SW1P 4DU

Decision (including any steps ordered)

1. The complainant has requested copies of all correspondence between Tory MPs and the Independent Parliamentary Standards Authority (IPSA) between 11 July and 15 August 2013. IPSA responded to this request refusing to disclose the requested information under sections 22, 41 and 36 of the FOIA.
2. The complainant raised no concerns in respect of IPSA's application of sections 22 of the FOIA and during the Commissioner's investigation it was identified that IPSA does not hold any recorded information to which section 41 of the FOIA would be applicable. The Commissioner's investigation has therefore focused on the application of section 36 of the FOIA only.
3. The Commissioner has concluded that IPSA acted appropriately by refusing to disclose the requested information under section 36 of the FOIA. He therefore requires no further action to be taken.

Request and response

4. On 17 July 2013, the complainant wrote to IPSA and requested information in the following terms:

"All correspondence (letters and emails) from MPs to IPSA, regarding MPs pay and expenses, from May 7, 2010."
5. IPSA responded on 13 August 2013. It stated that it had estimated that it would take it 48 days to locate, retrieve and extract the information falling within the scope of this request. It therefore informed the complainant that it considered section 12 of the FOIA applied.
6. On 15 August 2013 the complainant rephrased his request as follows:

"In light of this, please could I submit a new FOI request:

-Could I have access to emails and letters sent by Tory MPs to IPSA, specifically after it set up its review of MPs pay and pensions."
7. IPSA responded the say day. It asked the complainant to clarify exactly what action it wished IPSA to take, as it still considered the revised request would exceed the cost limits prescribed by the FOIA.
8. The complainant responded the same day. He stated that he had reduced his request dramatically – cutting out numerous MPs and the reducing the timeframe involved. He clarified that he required access to all correspondence between Tory MPs and IPSA from 11 July 2013 (launch of the public consultation on the review of MPs pay and pensions) to the date of his request regardless of its content.
9. IPSA responded again on 10 September 2013 to inform the complainant that it required further time to consider the public interest test.
10. On 1 October 2013 IPSA issued a refusal notice. This informed the complainant that his revised request of 15 August 2013 had been refused under sections 22, 36(2)(c) and 41 of the FOIA.
11. The complainant requested an internal review on 28 October 2013.
12. IPSA responded on 20 November 2013. It informed the complainant that it remained of the view that the requested information was exempt from disclosure under sections 22, 36(2)(c) and 41 of the FOIA.

Scope of the case

13. The complainant contacted the Commissioner on 28 October 2013 (although not accepted for formal investigation until 2 December 2013) to complain about the way his request for information had been handled. Specifically, the complainant stated that he does not agree that the requested information is exempt from disclosure under section 36 and 41 of the FOIA and therefore he believes the information should be disclosed.
14. As no complaint was raised about IPSA's initial application of section 12 of the FOIA or IPSA's later application of section 22, the Commissioner has not considered these exemptions.
15. It was also established during the Commissioner's investigation that IPSA did not in fact hold any recorded information to which section 41 of the FOIA would be applicable.
16. As a result, the Commissioner's investigation has focussed on the complainant's revised request of 15 August 2013 and IPSA's application of section 36(2)(c) of the FOIA to the withheld information which was not considered exempt under section 22.

Background

17. IPSA was given responsibility to determine MPs' pay in May 2011, and the power to determine pensions in October 2011. In 2012-13 IPSA began a wide-ranging review of MPs' pay and pensions. The review looked at MPs' remuneration in the round and also considered the long-term arrangements for resettlement payments paid to MPs who leave Parliament.
18. Given the complexity of the issues and the level of interest, IPSA decided to extend the subsequent formal consultation period to allow it to consult in two phases: a 'green paper' consultation in the Autumn of 2012, inviting views in response to a wide range of open questions, followed by a more focused consultation on a range of specific options in 2013.
19. The green paper consultation ran between October and December 2012, to which IPSA received almost 700 responses. The white paper consultation document was published on 11 July 2013, drawing on the

engagement and research activities carried out in the previous consultation, and an anonymised survey of MPs. In addition to IPSA's recommendations for the pay and pensions arrangements for MPs, the consultation also asked for views on amendments to the MPs' Scheme of Business Costs and Expenses ('the scheme').

20. The consultation ran until 20 October 2013. IPSA received over 550 written replies, 530 posts on its website and a further 3,450 responses to its online survey, including a number of submissions from MPs. These results were then analysed, and amendments were made, before a final report was published in December 2013. The recommendations are intended for implementation from the start of the next Parliament which is expected in May 2015.
21. IPSA confirmed that it publishes large amounts of information relating to consultations held on its website. This includes all submissions made, including the name of the respondent, except in cases where anonymity was specifically requested or the information was provided in confidence. With regards to the consultation referred to in the complainant's request, IPSA confirmed that it published a large number of the submissions it received in December 2013, and has a settled intention to publish the remainder in the near future (subject to certain caveats). IPSA confirmed the published information can be accessed "[via this link to our website](#)".
22. IPSA confirmed that the complainant's request was received in the middle of the second, 'white paper' public consultation, which ran between 11 July and 20 October 2013.

Reasons for decision

23. Section 36(2) of the FOIA states that information is exempt from disclosure if, in the reasonable opinion of the qualified person, disclosure of the information –
 - (b) would, or would be likely to, inhibit –
 - (i) The free and frank provision of advice, or
 - (ii) The free and frank exchange of views for the purposes of deliberation, or
 - (c) would otherwise prejudice, or would be likely to otherwise prejudice, the effective conduct of public affairs.

24. Section 36 is also a qualified exemption and is therefore subject to the public interest test.
25. For a public authority to cite section 36 of the FOIA the qualified person must give their reasonable opinion that the exemption is engaged. For the Commissioner to determine that the exemption is engaged it must be demonstrated that the designated qualified person has given their opinion, and that the opinion is reasonable.
26. IPSA confirmed that its qualified person, as designated by the Secretary of State for Justice, is its chair, Sir Neil Butterfield QC. Information relating to this request and a sample of the withheld information were given to Sir Neil Butterfield on 2 and 23 September 2013. Sir Neil Butterfield gave his opinion that section 36 of the FOIA applied to the complainant's request on 25 September 2013.
27. The Commissioner is satisfied from the information supplied by IPSA that Sir Neil Butterfield QC is an appropriate qualified person for these purposes. He needs also to consider whether that opinion is reasonable. It is important to highlight at this point that this is not determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold.
28. IPSA stated that it is the qualified person's opinion that disclosure of the requested information would be likely to lead to a significant breakdown in trust between MPs and IPSA – not just those MPs of the party referred to in this request but all MPs. Such a breakdown in trust would be likely to impact negatively on the way MPs and IPSA interact with each other. The qualified person confirmed that he had given due consideration to the expectations of MPs and it is his view that MPs would not expect *all* their correspondence with IPSA relating to the detailed administration of the scheme or internal processes to be released into the public domain. He stated that whilst MPs have an expectation that they should be held to account by the public, such as through publically available details of expenses claimed, paid and refused, he does not consider MPs have a reasonable expectation that vast quantities of their private correspondence with IPSA relating to anything at all would be disclosed in response to a wide-ranging and unfocused information request.
29. IPSA explained that a large part of its duties relate to the processing, validation and regulation of MPs' expenses. This can include exchanges by letter and email with MPs, upon which both IPSA and a particular MP rely, in order to effectively and efficiently pay MPs and their staff and administer the expenses system. IPSA confirmed that it receives thousands of emails and letters from MPs and their staff each year, some of which are largely routine in nature, and some of which relate to

sensitive issues which require the trust of MPs in IPSA's discretion. Such correspondence falling under the remit of this wide-ranging request would include emails relating to confirmation of invoices submitted, clarification of rules, changes to proxy email addresses, questions regarding administration of the expenses system and request for P60s. Knowledge that all correspondence could be routinely released to FOI applicants would be likely to inhibit the free and open character of current exchanges and thus tend to imperil the effectiveness and efficiency of IPSA's functions, themselves dependent on full and reliable disclosure by MPs.

30. IPSA stated that the effective administration of the scheme relies on MPs corresponding with it in writing detailing the specific nature of their queries so that such queries and concerns can be tracked and dealt with. If this correspondence was subject to publication MPs and their staff would be deterred from dealing with IPSA in writing, which would have a negative effect on IPSA's ability to conduct its duties thereby subverting the statutory objectives given to it in the first place.
31. IPSA explained that the qualified person felt trust between MPs and IPSA is of fundamental importance. If MPs felt they were unable to communicate with IPSA without all their correspondence being put into the public domain that would unquestionably be detrimental to the way in which they dealt with IPSA. Disclosure would much reduce the confidence they would otherwise have in dealing freely and frankly with IPSA.
32. The Commissioner is satisfied in this case that the qualified person's opinion that sections 36(2)(c) is engaged is a reasonable opinion to hold. He has therefore concluded that this exemption applies in this case.
33. As stated previously section 36 of the FOIA is a qualified exemption. The Commissioner has therefore gone on to consider the public interest test.
34. IPSA stated that it understood there is a strong public interest in members of the public being able to hold their MPs to account. As a result, in relation to the review of MPs' pay and in conformity also with the requirements of s.3A of the Parliamentary Standards Act 2009, IPSA has committed to publishing all submissions made by MPs to the pay and pensions consultation (except those made in confidence).
35. IPSA explained that the complainant's request was made in the context of the pay and pensions' consultation and large amounts of the material being sought was at the time of the request intended for publication in the near future and has since been published. However, it was noted that the complainant was not only requesting this information but *all*

correspondence received during the period in question from Tory MPs regardless of its contents. IPSA confirmed that disclosure of all correspondence regardless of its topic would be likely to be prejudicial to the effective conduct of public affairs and such consequences are not in the interests of the public.

36. Additionally, IPSA responded to the complainant's specific concerns that it is "vital that MPs are seen to be held to account for how much public money they take home". IPSA confirmed that it is committed to transparency and publishes details of claims made by MPs for business costs and expenses on its website every two months, three months in arrears. It also advised that it publishes annualised data relating to claims made.
37. The Commissioner has given the arguments for and against disclosure detailed consideration. He accepts there is a significant public interest in holding MPs accountable for the positions they hold and for the strained public resources they use. He notes in the past there have been issues with MPs' expenses with instances where MPs have made inappropriate claims. Such issues led to the creation of IPSA to regulate independently MPs' business costs and expenses, pay and pensions.
38. The Commissioner considers it is important to highlight in this case the full range of the information caught by the complainant's request. The complainant asked for *all* correspondence between Tory MPs and IPSA from a specific date regardless of the topic or the contents. The complainant's request was therefore not just for information relating to MPs' pay and expenses but also for information relating to anything to do with the overall administration of the scheme and its rules. IPSA accepted that some correspondence will be general administrative enquiries but others however will be on more sensitive issues which require confidentiality and trust between MPs and IPSA that they will be dealt with appropriately.
39. While the Commissioner considers there should be a high degree of transparency of and accountability for expense claims, he does not consider this should extend to include all correspondence between MPs and IPSA regardless of content. IPSA routinely publishes all MPs' expenses and costs for the public to see on its website. This largely satisfies the public interest in transparency and accountability.
40. It is the Commissioner's view that there will be occasions when MPs and IPSA need to correspond privately and discuss openly and frankly issues surrounding MPs' pay, claims and expenses. MPs should be afforded this opportunity and have a right to private space in which to discuss matters relating to their pay and expenses with IPSA as the regulator. The Commissioner accepts IPSA's view that although MPs will have an

expectation that they are accountable to the public for the public resources they use and the positions they hold, they will not have the expectation that *all* correspondence they exchange with IPSA will be disclosed to the public.

41. The Commissioner also notes that IPSA routinely publishes responses to public consultations on its website unless the individual has specifically requested to remain anonymous in order to promote transparency and accountability. Although the complainant's request was not just limited to such responses it is clear that his request was related to the review of MPs pay and pensions that was ongoing at the time of the request.
42. A large part of IPSA's duties relate to the processing, validation and regulation of MPs' expenses. IPSA confirmed that it relies heavily on exchanges of emails and letters with MPs in order to effectively and efficiently administer the pay and expenses scheme. The Commissioner accepts that often such communications will be free and frank in nature. Given MPs' expectations with regards to disclosure and the level of information already made available, the Commissioner considers in this case that disclosure of *all* correspondence between Tory MPs and IPSA between the dates specified would be likely to result in a breakdown of communication between the two parties and a breakdown in trust. IPSA was set up to manage and oversee MP's pay and expenses effectively and efficiently. If its internal processes were hindered it would be unlikely to be able to carry out these important functions successfully.
43. Although there are convincing arguments for and against disclosure in this case, it is the Commissioner's decision in relation to this request that the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining this exemption.

Right of appeal

44. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

45. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
46. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Graham Smith
Deputy Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF