

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 March 2023

Public Authority: Cabinet Office

Address: 70 Whitehall

London

SW1A 2AS

Decision (including any steps ordered)

1. The complainant has requested information about action taken by Prime Minister David Cameron to address an 11% pay increase recommended by the Independent Parliamentary Standards Authority (IPSA). The Cabinet Office confirmed that they held information within the scope of the request but that the information was exempt from disclosure in its entirety under sections 35(1)(a), (b) and (d)(formulation or development of government policy).
2. During the course of the Commissioner's investigation the Cabinet Office withdrew their reliance on section 35(1)(d)(operation of any Ministerial private office) and confirmed that they were applying section 36 (prejudice to the effective conduct of public affairs) in the alternative to section 35(1)(a).
3. The Commissioner's decision is that section 35(1)(a) is engaged to the entirety of the withheld information but that the balance of the public interest favours disclosure of the information.
4. The Commissioner requires that the Cabinet Office take the following step to ensure compliance with the legislation.
 - Disclose the withheld information within scope of the request to the complainant.
5. The Cabinet Office must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the

Commissioner making written certification of this fact to the High Court, pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

6. On 11 October 2020, the complainant wrote to the Cabinet Office and requested information in the following terms:

'Background: Back in December 2013, David Cameron was joined by other leaders in stating it was unacceptable that IPSA planned a pay increase of 11% for MPs that would have taken their pay at the time from £66,000 to £74,000. He went on to state he could be prepared to scrap the Independent Parliamentary Standards Authority (Ipsa) if it did not abandon its plan for an 11% increase in MP's salaries.

FOI request: Since December 2013 for the remaining period of when David Cameron held the position of Prime Minister, please provide documents showing action he took regarding the above matter.

Source: <https://www.theguardian.com/politics/2013/dec/11/mps-pay-rise-unacceptable-david-cameron>'.

7. The Cabinet Office acknowledged receipt of the request on 12 October 2020 and provided a substantive response on 3 November 2020. The Cabinet Office confirmed that they held 'some' of the information within scope of the request but that this information was being withheld under sections 35(1)(a)(b) and (d) of the FOIA. The Cabinet Office did not specify which policy or policies the requested information related to and the attached public interest test was entirely generic, with no reference being made to the specific information requested by the complainant.

8. The complainant requested an internal review of the decision on the same date. She stated that:

'Given the increasing public outcry of IPSA continuing to give MPs pay rises since the MPs expenses scandal, and presently more pay rises for them while the rest of the country is suffering from huge pay losses and barely able to support themselves and feed their children, we think it is outrageous that you think it's not in that same public's interest to let them see information which proves David Cameron was serious on this issue of inappropriately (his view) rewarding MPs. You can at the very least show some respect and release some of the information held, even if some of it is redacted'.

9. The complainant provided a number of links to (amongst others) the IPSA website and The Independent newspaper.

10. The Cabinet Office acknowledged receipt of the request for an internal review on 5 November 2020 and provided the complainant with a reference number. On 24 January 2021, having not been provided with the internal review, the complainant complained to the ICO.
11. The Commissioner wrote to the Cabinet Office on 6 February 2021 and requested that they provide the complainant with the outstanding internal review within 10 working days.
12. The Cabinet Office subsequently provided the complainant with their internal review on 16 February 2021.
13. The review found that the exemptions had been properly applied and that the balance of the public interest favoured maintaining the same. The Commissioner notes that the review was extremely brief, with little evidence that the original response had been subject to close scrutiny and independent assessment.
14. The Cabinet Office advised the complainant that they had considered the point which she had made about it being in the public interest to see information which proves David Cameron was serious on the issue and informed her that, *'we can neither confirm nor deny if the information held confirms your assertions'*. The Cabinet Office advised that they considered that the public interest in maintaining the safe space for officials and ministers to debate and discuss, is stronger than the public interest in favour of disclosure.
15. With regard to the complainant's comments about the increasing public outcry of IPSA continuing to give MPs pay rises since the MPs expenses scandal, the Cabinet Office advised that it would not be appropriate for them to comment on the actions of Ipsa, which is an independent body.

Scope of the case

16. The complainant contacted the Commissioner on 24 January 2021 to complain about the way her request for information had been handled.
17. During the course of the Commissioner's investigation the Cabinet Office withdrew their reliance on sections 35(1)(d) and advised that they were also applying, in the alternative to section 35(1)(a), section 36 (prejudice to effective conduct of public affairs) to the information requested.
18. The Commissioner has had sight of the withheld information.

19. The Commissioner considers that the scope of his investigation is to determine whether the Cabinet Office were correct to withhold the requested information under the exemptions applied.

Background

20. The Independent Parliamentary Standards Authority (IPSA) is responsible for setting the salaries of Members of Parliament. IPSA was given the powers to determine MPs' pay and pensions in 2011, following the MPs' expenses scandal of 2009.
21. In July 2013 IPSA launched a consultation which contained proposals for MPs' pay, pensions, resettlement payments and some of their business costs and expenses. A report on that consultation was published in December 2013, which proposed a new, cost-neutral remuneration package for MPs. One of the proposals was for a one-off adjustment to MPs' pay, from £66,396 (as it then was) to £74,000, to take effect in the new Parliament from May 2015. As IPSA explained in their later Final Report on MPs' pay published in July 2015¹:

'The intention behind the proposals was to bring MPs' pensions into line with those received by others in the public sector and, with regard to pay, to address the fact that MPs' pay had fallen behind on a number of counts, as the result of the longstanding reluctance of the government and Parliament to tackle the issue'.

22. MPs' pay was the final part of the proposals for IPSA to implement, and a consultation was launched on 2 June 2015 and closed on 30 June 2015. The paper summarised the previous findings and examined changes to the UK's economic circumstances since decisions were taken in December 2013. IPSA stated that they remained of the view that it was right to increase MPs' pay to £74,000 for the reasons they had set out in December 2013. There was a single consultation question: *Is there new and compelling evidence that might lead us to amend our determination?*

23. In their Final Report, IPSA stated that:

'We are fully aware that the majority of the public who have either responded to the consultation, or have articulated their views on social

¹ [MPs Remuneration Consultation 2015 - Final Report.pdf \(ctfassets.net\)](#)

media and through polls (such as that hosted by Change.org) are opposed to a significant pay increase for MPs. The recent austerity across the whole economy, but perhaps now more focused on the public sector, makes it difficult for anyone who has experienced falling real incomes to support a pay increase for MPs'.

24. IPSA noted that publicly articulated political opposition to the pay increase was also strong, although they stated that, *'we know from an anonymous survey of 100 MPs conducted by YouGov in October 2012 that many MPs feel that they should be paid more. Many are reluctant to speak out on the issue, because it can only lead to criticism'.*
25. IPSA concluded that during the consultation, they had not seen anything by way of evidence that was new or compelling such as to cause them to change their decision to raise MPs' pay to £74,000. However, IPSA concluded that for the remainder of the Parliament, they should index MPs' pay to changes in average earnings in the public sector rather than to earnings in the economy as a whole. IPSA stated that they regarded the continued circumstances of austerity over the next several years as compelling evidence that, *'for the next five years, it is right that changes in MPs' pay should reflect those in the public sector, not least because GPs, hospital consultants and senior people in local government are also paid from funds from the taxpayer and get much more'.*

Reasons for decision

Section 35(1)(a)(formulation or development of government policy)

26. Section 35(1)(a) applies to information if it relates to the formulation or development of government policy.
27. Although 'relates to' is given a wide interpretation, as the Court of Appeal noted in *Department of Health v The Information Commissioner and Mr Simon Lewis* [2017] EWCA Civ 374, of the First-Tier Tribunal's findings in that matter, the phrase:

'Should not be read with uncritical liberalism as extending to the furthest stretch of its indeterminacy, but instead must be read in a more limited sense so as to provide an intelligible boundary, suitable to the statutory context', and that a 'mere incidental connection between the information and a matter specified in a sub-paragraph of s.35(1) would not bring the exemption into play; it is the content of the information that must relate to the matter specified in the sub-paragraph'.
28. Therefore, there must be a clear and tangible relationship between the content of information withheld under this exemption and the process that is being protected.

29. The Information Tribunal has made it clear that in cases where section 35(1)(a) applies, the timing of the request is central to the consideration of the public interest test. This is because once the formulation or development of a policy has been completed, the risk of prejudicing the policy process by disclosing information is likely to be reduced and so the public interest in maintaining the exemption will require less weight.
30. Furthermore, the Tribunal has made it clear that policy formulation and development is not one which is a 'seamless web', i.e. a policy cycle in which a policy is formulated following which any information on its implementation is fed into the further development of that policy or the formulation of a new policy.
31. In submissions to the Commissioner, the Cabinet Office confirmed that the information within scope of the request relates to the formulation of policy on the pay of Members of Parliament and on the pay of senior officials. The Cabinet Office further confirmed that the policy on the pay of MPs and that of senior officials, *'which would have been undergoing development at the time the information within scope came into being'* is now concluded.
32. Having sight of the withheld information, the Commissioner is satisfied that it relates to the formulation or development of the Government's policy on the pay of MPs and other senior officials. Consequently, the Commissioner is satisfied that the information is exempt under the exemption.
33. Section 35(1)(a) is subject to the public interest test and the Commissioner must decide whether the public interest factors in favour of disclosing the information outweigh those public interest factors which favour maintaining the exemption.

Public interest factors favouring disclosure

34. In their original request response the Cabinet Office recognised that there is a *'general'* public interest in the disclosure of information and that openness in government makes for greater accountability, increases public confidence in government decision making and helps to encourage greater public engagement with political life.
35. The Cabinet Office referenced the above general public interest in submissions to the Commissioner but evidenced no recognition or appreciation of the public interest weight and value carried by the *specific* withheld information.
36. The complainant has contended that given *'the increasing public outcry of IPSA continuing to give MPs pay rises since the MPs expenses scandal'* against a backdrop of the public *'suffering from huge pay losses and barely able to support themselves and feed their children'* there is a

public interest in seeing information *'which proves David Cameron was serious on this issue of inappropriately (his view) rewarding MPs'*.

Public interest factors favouring maintaining the exemption

37. In their original request response the Cabinet Office stated that the general public interests in favour of disclosing the withheld information had to be weighed against a strong public interest that policy-making and its implementation are of the highest quality and informed by a full consideration of all the options.
38. The Cabinet Office contended that:

'Ministers must be able to discuss policy freely and frankly, exchange views on available options and understand their possible implications. The Cabinet is vitally important to this process and is the ultimate arbiter of all government policy. The candour of all those involved in the Cabinet and collective decision-making process would be affected should the content of the discussions be disclosed prematurely. If discussions were routinely made public there is a risk that Ministers may feel inhibited from being frank and candid with one another. As a result, the quality of debate underlying collective decision making would decline, leading to worse informed and poorer decision making'.
39. The Cabinet Office stated that there is a very strong and well recognised public interest that Ministers (and especially Prime Ministers) must be able to discuss policy freely and frankly, exchange views on available options and understand their possible implications. The Cabinet Office contended that the necessary candour of all involved would be affected if their assessments of whether the content of the discussions were disclosed prematurely.
40. In submissions to the Commissioner, the Cabinet Office cited the Commissioner's (then) guidance on section 35, specifically the Commissioner's observation that government *'needs a safe space to develop ideas, debate live issues, and reach decisions away from external interference and distraction'*, and that *'this will carry significant weight in some cases'*. The Cabinet Office also noted that the Commissioner's guidance recognised the potential for disclosure to *'inhibit free and frank discussions in the future, and that the loss of frankness and candour would damage the quality of advice and lead to poorer decision making'*.
41. The Cabinet Office stated that they considered that there is a necessity in Ministers and officials being able to discuss approaches to policy freely and frankly and in circumstances in which options to potential implications can be discussed.

42. The Cabinet Office contended that officials must be able to formulate draft responses setting out a proposed policy position and Ministers must be at liberty to comment upon such drafts in order to express their views and to indicate what they consider policy should be. They must be able to do this in circumstances which encourage free expression and are free of concerns about premature disclosure.
43. The Cabinet Office also contended that officials must be able to give frank accounts of their meetings with third parties that contribute towards the development of policy, *'particularly on the sensitive matter of remuneration'*. Ministers must have the benefit of a full appraisal of the view of third parties that are relevant to the development of a policy.
44. The Cabinet Office advised the Commissioner that they considered that if the withheld information were to be disclosed into the public domain then it would negatively affect the candour with which officials and Ministers would express themselves as they would be giving consideration as to whether those views would be disclosed prematurely. The Cabinet Office stated that *'the routine publication of internal deliberations before they would ordinarily be published could inhibit officials and Ministers from being frank and candid in expressing their views, leading to less thorough debate and worse informed and poorer decision making'*.
45. Whilst noting that the withheld information was almost seven years old and *'relates to areas of policy development which are either complete or always ongoing'* the Cabinet Office maintained that the public interest balance was in favour of withholding the information. The Cabinet Office stated that the information *'is still comparatively recent and is not due to be opened under the Public Records Act 1958 for another 13 years'*. They also noted that the issue of MPs pay *'is a salient one at the present time'*, with IPSA having increased the pay of MPs by 2.7% from 1 April 2022.

Commissioner's consideration

46. As the Cabinet Office will be aware from the Commissioner's previous published decisions in section 35 cases, the Commissioner entirely recognises and appreciates the strong and important public interest in protecting and maintaining a safe space for government to formulate and develop policy/policies. The Commissioner also recognises and accepts the well established convention of Cabinet collective responsibility and the public interest in protecting and maintaining the same.
47. However, the weight that the Commissioner will accord to the above public interests will necessarily differ from case to case, depending on

the individual facts and circumstances. As noted above, key to the determination of the public interest in every case is the timing of the request.

48. As the Upper Tribunal recently confirmed in *Montague v The Information Commissioner and The Department of Trade (UA – 2020- 000324 & UA-2020-000325) [13 April 2022]*², the time for judging the competing public interests in a request is the time when the public authority should have given a response in accordance with the timeframe required by the FOIA. Therefore the appropriate time in this case is 6 November 2020 (i.e. 20 working days after the complainant's request of 11 October 2020).
49. Since the complainant submitted her request, the Commissioner notes that the country is experiencing a cost of living crisis, caused by, amongst other factors, high inflation and high energy and food prices. However, whilst this situation in many ways reinforces the austerity context provided by the complainant in her request, as it post-dates the same, the Commissioner has not taken this worsening public privation into account for the purposes of this case.
50. As the complainant noted in her request, in December 2103, when IPSA proposed a recommendation of an 11% pay rise to MP salaries, the then Prime Minister, David Cameron, was strongly and emphatically critical of this proposal, stating that the idea of an 11% pay rise in one year at a time of pay restraint, was '*simply unacceptable*'. Mr Cameron even hinted that he might scrap IPSA if they did not rethink the recommendation, saying that, '*unless they do so, I don't think anyone will want to rule anything out*'. Mr Cameron stated that, '*no one wants to go back to MPs voting on their own pay but we have got to have a process and an outcome that can build public confidence*'.
51. However, in June 2015, when IPSA confirmed that they would be going ahead with their recommendation to raise MP's pay from £67,060 to £74,000, it was reported that Mr Cameron had '*ditched his threat to block a 10.3 per cent increase in MPs' pay*'³. The Prime Minister's spokesman said that although Mr Cameron still opposed the increase in MPs' pay, it was a matter for the watchdog (IPSA) to determine.

² [IN THE UPPER TRIBUNAL \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

³ [David Cameron caves and accepts 10% pay rise for MPs | Daily Mail Online](https://www.dailymail.co.uk)

52. Then CEO of the Taxpayers Alliance, Jonathan Isaby, stated that the pay rise was *'inappropriate'* and criticised IPSA as being *'out of touch'* and *'not fit for purpose'*. He stated that:

'IPSA spent £70,000 on a consultation which showed that the public believed the current pay level to be broadly fair, yet have ignored the findings. MPs shouldn't be divorced from the same pay restraint as everywhere else in the public sector'⁴.

53. GMB union general secretary, Paul Kenny stated:

'We trust that none of the MPs accepting this pay rise as public servants will have the audacity to oppose the recommendations of pay review bodies or decent pay rises for public sector workers'.

54. Given Mr Cameron's strong public opposition and criticism in 2013 of IPSA's proposal to increase MPs' pay, the Commissioner considers that there is clearly an important and legitimate public interest in transparency and accountability in knowing what action (if any) Mr Cameron took, as Prime Minister, to address his concerns about the IPSA proposal, and subsequent decision.

55. The Commissioner considers that this public interest in transparency and accountability is particularly strong and compelling, given Mr Cameron's softened stance on this matter following the 2015 General Election.

56. On 16 July 2015, the Guardian newspaper reported Mr Cameron's *'surprise U-turn'* in saying that the 10% pay increase for MPs recommended by IPSA was *'the rate for the job'* despite pay being capped for the rest of the public sector for 1% for another four years⁵. The Guardian reported that Mr Cameron's *'bold position, a reversal of his past statements that the rise is unacceptable, will give cover to many Tory MPs who wish to keep the cash'*. The newspaper reported that in an interview on ITV News, the Prime Minister stated:

'My view is this money is paid straight to MPs. It's a matter for IPSA. Personally I think the right thing to do is to be paid the rate for the job and that's what I will do. As many MPs have said, it gives you an opportunity to do more in terms of charitable giving and things like that but I think MPs...you're paid a rate for the job and it's done

⁴ [MPs in line for 10% pay rise to £74,000 - BBC News](#)

⁵ [David Cameron backs MPs' 10% pay rise as 'the rate for the job' | House of Commons | The Guardian](#)

independently. I don't actually think this was the right decision but the bit I'm responsible for, ministers' pay, cut and frozen'.

57. In addition to Mr Cameron's previous criticism of the IPSA proposal to increase MPs' pay, the Commissioner notes that in their published Final Report, IPSA stated that the Government had responded to the 2 June 2015 consultation with a letter from the Leader of the House of Commons. *'He noted that "a pay rise of this nature at this time is not appropriate". The letter went on to describe the Government's commitment to cutting the cost of politics and improving the fortunes of the economy'.* Taken together with Mr Cameron's critical comments, the Commissioner considers that the above letter makes clear that the Government's position was that they were not in favour of the pay rise for MPs proposed by IPSA.
58. In this case the scope of the request covers the period December 2013 to July 2016 (Mr Cameron's resignation as Prime Minister) and the information was, at the time of the request, over four years old. By that time the IPSA recommendation and subsequent decision in respect of MP's pay had taken effect for some time. This, coupled with the Cabinet Office confirmation that the formulation and development stage(s) of the Government's policy on the pay of MPs and senior officials had been completed at the time of the request, substantially reduces, in the Commissioner's view, the sensitivity of the withheld information and the need for the safe space contended by the Cabinet Office. The Commissioner expands upon this point in the Confidential Annex attached to this notice.
59. For the reasons given above and expanded upon in the Confidential Annex, the Commissioner considers that the safe space and chilling effect arguments which would usually have a strong application to the withheld information, do not, on the individual and compartmentalised facts and circumstances of this case, have sufficiently powerful strength to outweigh the public interest in disclosure of the specific withheld information.
60. Having found that the public interest in maintaining the section 35(1)(a) exemption does not outweigh the public interest in disclosure of the withheld information, the Commissioner orders the Cabinet Office to disclose the withheld information to the complainant.
61. For the avoidance of doubt, had the Commissioner found that section 35(1)(a) was not engaged in respect of the withheld information and had instead considered the application of section 36 to the same, the Commissioner's decision in respect of the public interest balance would have been no different.

Other matters

62. Although internal reviews are not subject to statutory time limits, the Commissioner's well established guidance is very clear in that he expects public authorities to complete most internal reviews within 20 working days, with a maximum of 40 working days in exceptional cases.
63. In this case the complainant requested an internal review on 3 November 2020 but the review was not provided by the Cabinet Office until 16 February 2021. The Commissioner recognises and appreciates that this period coincided with the Covid-19 pandemic, and the resources and efficiencies of public authorities were inevitably restricted and adversely impacted as a result. The Commissioner made due allowance for this extraordinary situation and recognised that some measure of delays in the usual FOI processes were inevitable and unavoidable.

Right of appeal

64. 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: 0203 936 8963
Fax: 0870 739 5836
Email: grc@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

65. 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.

66. 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

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