

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 31 May 2024

Public Authority Independent Parliamentary Standards Authority

Address: 2nd Floor
85 Strand
London
WC2R 0DW

Decision (including any steps ordered)

1. The complainant has requested information relating to increased pay-offs for MPs. The Independent Parliamentary Standards Authority ("IPSA") refused to provide the requested information, citing section 36(2)(b)(i), (ii) and 36(2)(c) (prejudice to the effective conduct of public affairs).
2. The Commissioner's decision is that section 36(2)(b)(i) and (ii) are engaged but section 36(2)(c) isn't. In relation to section 36(2)(b), the balance of the public interest lies in disclosing the majority of the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the requested information, with all personal data redacted under section 40(2) (personal information), except the document titled 'Annex 1 – Consultation responses. Consultation on boundary changes and support to MPs leaving Parliament – Summary of Online Survey and Email Consultation responses.'
4. The public authority must take these steps within 30 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

5. On 25 August 2023, the complainant wrote to IPSA and requested information in the following terms:

“Under the Freedom of Information Act 2000, I kindly request access to the following documentation:

1. Any and all records, minutes, reports, memos, or correspondence related to the decision to increase pay-offs for MPs who lose their seats or voluntarily step down, including details about the discussions, considerations, and rationale leading to this decision.

2. Documentation outlining the specific factors and considerations that IPSA deemed to be in the public interest when making the decision to increase pay-offs, given the current economic challenges and financial difficulties experienced by many members of the public.

3. Any internal assessments, analyses, or impact evaluations conducted by IPSA or other relevant parties regarding the potential effects of this pay-offs increase on the broader public perception, government spending, and the financial well-being of citizens.

4. Information about any consultations or public engagement activities conducted by IPSA or involving stakeholders and experts in the field of government transparency, fiscal responsibility, and public finance before reaching this decision.

I believe that access to the above-mentioned documentation is in the public interest, as it will contribute to a better understanding of the decision-making process and the factors that were considered when increasing pay-offs for MPs. Given the financial hardships faced by a significant portion of the population, including challenges in affording basic necessities like food, transparency in this matter is crucial for maintaining public trust in the democratic process.”

6. IPSA responded on 14 December 2023. It refused to provide the requested information, citing section 36(2)(b)(i), (ii) and 36(2)(c) (prejudice to the effective conduct of public affairs) and section 21 (information reasonably accessible to applicant via other means).
7. The complainant requested an internal review on 14 December 2023. They didn't raise any concerns about IPSA's application of section 21 but did argue that all information withheld under section 36 should be disclosed.
8. IPSA provided its internal review outcome on 22 January 2024. It upheld its previous position.

Reasons for decision

Section 36 – prejudice to the effective conduct of public affairs

9. Section 36(2) of FOIA states that:

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act –

(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 otherwise to prejudice, the effective conduct of public affairs.”

10. Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised, qualified person ('QP') for that public authority. The QP's opinion must also be a 'reasonable' opinion, and if the Commissioner decides that the opinion is an unreasonable one, he may find that section 36 has been applied inappropriately.

11. It's not necessary for the Commissioner to agree with the opinion of the QP or for it to be the 'most' reasonable opinion. The Commissioner only needs to satisfy himself that it's an opinion that a reasonable person could hold.

12. Section 36 is a qualified exemption, other than for information held by Parliament. This means that even if the Commissioner finds that the exemption has been applied properly, he must still consider whether the public interest in disclosure outweighs that of maintaining the exemption(s).

Who is the qualified person and how was their opinion sought?

13. IPSA has confirmed that its QP is Richard Lloyd, Chair of IPSA. Their opinion was sought on 6 December 2023 and it was received on 7 December 2023.

14. The Commissioner has had sight of the submission provided to the QP to help inform their opinion; they were provided with the requested data, a summary of the request, supporting arguments in favour of the application of section 36 and also counter arguments.

15. The QP's opinion was recorded using the template provided on page 24 of the Commissioner's guidance¹ on Prejudice to the effective conduct of public affairs (section 36).

Is the qualified person's opinion reasonable?

16. In relation to section 36(2)(b)(i) and (ii), the QP must give a reasonable opinion that disclosure would, or would be likely to, prejudice the free and frank provision of advice or the free and frank exchange of views for the purposes of deliberation.
17. The QP expressed concern that the withheld information has been provided by MPs, to IPSA, for policy or decision making purposes and under the belief that it would only be only summarised in consultation reports or noted in minutes of board meetings (both of which are published by IPSA). The QP is concerned that were this advice to then be published, MPs would be less likely to provide such advice or views. In turn, this would be likely to undermine trust between ISPA and MPs, making it more difficult for IPSA to deliver its statutory functions.
18. There's clear overlap between these two subsections. Looking at the withheld information and the QP's concerns, the Commissioner is satisfied that the QP's opinion is a reasonable one.
19. In relation to section 36(2)(c), the QP must give a reasonable opinion that disclosure would, or would be likely to, otherwise prejudice the effective conduct of public affairs. Otherwise indicates that the prejudice must be separate and distinct from that relevant to section 36(2)(b)(i) and (ii).
20. The QP expressed concern that the withheld information concerns 'live matters', specifically the funding of MPs, in the run up to the general elections.
21. It's the role of IPSA to regulate the funding and spending of MPs, in that sense the funding of MPs will always be a 'live issue'. However, the decision to which the request relates had already been reached at the time the request was made.
22. IPSA has explained that it considers disclosure would 'mislead' the public, since the withheld information largely comprises of 'preliminary discussions' which 'differ from the final published version', drafts,

¹ [section 36 prejudice to effective conduct of public affairs.pdf \(ico.org.uk\)](https://ico.org.uk/section-36-prejudice-to-effective-conduct-of-public-affairs.pdf)

'incomplete datasets or 'decisions that were never taken or evidence that is subsequently updated following further investigation.'

23. FOIA concerns information held by public authorities, regardless of whether it is accurate or not. The Commissioner doesn't accept this argument, or that IPSA has demonstrated any prejudice that is separate or distinct from that relevant to section 36(2)(b)(i) or (ii). The QP has failed to express a reasonable opinion in relation to section 36(2)(c), so IPSA isn't entitled to rely upon it.
24. However, the Commissioner is satisfied that the QP has expressed reasonable opinions in relation to section 36(2)(b)(i) and (ii). Therefore, these exemption(s) are engaged. The Commissioner will now go onto consider where the balance of the public interest lies; in either disclosure or maintaining these exemptions.

Public interest test

Arguments in favour of maintaining the exemption

25. IPSA is concerned that:

"The nature of a free and frank discussion prior to formal decision-making depends upon the trust between all parties. If stakeholders, for example MPs, thought that every spoken or written word could be immediately published without context or verification, that trust would be eroded and the relationship with stakeholders significantly damaged. For example, if we were to release information that undermines trust between both parties and impairs decision-making, communication channels between both parties would be at risk, negatively impacting IPSA's duty to support parliamentary activity."

26. This argument is what is known as the 'chilling effect' argument, which concerns the loss of the 'safe space' officials need to conduct public affairs appropriately. It's a common argument when considering section 36(2)(b).
27. If the requested information was disclosed, it wouldn't 'immediately' be published, much of the withheld information is at least a year old at the time that the request was made. Furthermore, it could have context published alongside it. However, the Commissioner does accept IPSA's argument, it's not in the public interest to dilute the information sharing between IPSA and its stakeholders, or IPSA's work in general, which involves regulating MPs staffing and business costs.

28. IPSA has also argued that:

“the publication of such information could contain incomplete datasets, decisions that were never taken or evidence that is subsequently updated following further investigation. Again, should this be released it would be misleading to the public...It would contravene our section 16 FOIA duty to advise and assist if we released data that could confuse or mislead the public. It would also contravene the data protection principles if we released data that contained inaccuracies because it had not been checked, finalised and approved through internal governance processes.”

29. This is the same argument discussed in paragraph 22, which the Commissioner rejects. FOIA provides a right to information that public authorities hold but it doesn't require that the information is complete, accurate or up-to-date. IPSA can choose to publish a supplementary statement alongside the requested information if it wishes, explaining that it includes information in 'draft' form or relates to early discussions.
30. The Commissioner doesn't consider arguments about inaccurate information, or misleading the public, to hold any weight when considering the public interest. These arguments also hold no relevance to IPSA's obligations under section 16 of FOIA, which concerns its obligation to offer appropriate advice and assistance to requestors, or prospective requestors, or the considerations of data protection principles under FOIA.

Arguments in favour of disclosure

31. In favour of disclosure, IPSA has identified:

- “Public authority transparency.
- Public understanding of decision-making processes concerning MPs's funding arrangements.
- Accountability for public funds.”

32. The Commissioner agrees, transparency and accountability underpin FOIA and disclosure would shed light on IPSA's processes, from consultation through to the amendment of existing policy.

33. The above three arguments are all IPSA has submitted in favour of disclosure and they are all generic public interest arguments.

34. The Commissioner notes the decision to increase severance pay for MPs leaving Parliament has been divisive.² The decision IPSA made involves a significant increase in the use of taxpayer's money. There is a public interest in allowing the public to scrutinise all of the information that IPSA based its decision upon, especially since 100 MPs are due to stand down at the next election.³

Balance of the public interest test

35. In this case, the Commissioner believes the balance of the public interest test lies in disclosure, except one document.
36. The consultation⁴ and subsequent report⁵ that are in the public domain outline the feedback received from respondents and justify the decisions IPSA chose to take. These two documents do address the public interest identified in the issue.
37. So, the Commissioner has considered how much further the withheld information would go to add to this public interest. Firstly, the withheld information includes draft copies of the aforementioned consultation. Disclosure of this information would demonstrate the thought process behind the consultation and how it developed. Since the actual consultation itself is in the public domain, and there are minimal revisions between the versions, the Commissioner doesn't see that the prejudice envisaged is highly likely in this case.
38. Also being withheld are board papers, including duplicate copies with minimal revisions, presented internally within IPSA. In the Commissioner's opinion, these board papers add to the information about the decision that's already in the public domain. Most importantly, these board papers discuss the risk of the change in policy which the Commissioner notes information in the public domain doesn't. There are also resources that IPSA has developed internally to explain and reach its decision, which would aid the public in understanding the decision.
39. Also included in the withheld information is specific feedback received by individual respondents. This is important information in justifying, or allowing for further scrutiny, of the decision that has been taken. It

² [MPs' severance pay to double at next general election - BBC News](#)

³ [100 MPs to stand down at the next general election - BBC News](#)

⁴ [Constituency boundary changes and support for MPs leaving Parliament \(ctfassets.net\)](#)

⁵ [Consultation report constituency boundary changes support 092023.pdf \(ctfassets.net\)](#)

gives real life examples of why the policy needed, or didn't, need to change, and the Commissioner acknowledges the public interest in this information.

40. However, the Commissioner doesn't consider the public interest in identifying individual respondents or disclosing consultation responses verbatim, and from which individual respondents could be identified, outweighs the public interest in maintaining the exemption in relation to this specific information. This information is found in the document titled 'Annex 1 – Consultation responses. Consultation on boundary changes and support to MPs leaving Parliament – Summary of Online Survey and Email Consultation responses.'
41. This is because naming specific respondents, or disclosing information which would allow them to be identified, would be likely to result in the chilling effect referred to in paragraph 25. The Commissioner doesn't consider this proportionate when the respondents' views have already been summarised throughout the rest of the withheld information. In the case of this one document, the Commissioner believes it should continue to be withheld.
42. Alongside how much each piece of information contributes to the public interest in the information, the Commissioner must also consider the timing of the request and whether, at that time, the issue was still live, as well as the actual content and sensitivity of the information being withheld.
43. IPSA hasn't directed the Commissioner to any examples of particularly sensitive information. The changes to MPs pay offs came into effect on 19 July 2023 and the request was made on 25 August 2023. The decision had already been reached, albeit very recently, to change the payout for MPs.
44. The Commissioner's guidance states:

"Once you have made a decision, a safe space for deliberation will no longer be needed. If it was a major decision, there might still be a need for a safe space to properly promote, explain and defend its key points without getting unduly side-tracked. However, this can only last for a short time and you would have to explain clearly why it was still needed at the time of the request on the facts of each case."
45. However, IPSA's arguments don't revolve around its need to defend, justify, or implement the new policy. It revolves entirely around not misleading the public (an argument which the Commissioner rejects) and the chilling effect.

46. The Commissioner disagrees with IPSA when it says:

“documents which are in draft or relate to initial discussions around a matter yet to be decided will inevitably contain opinions which may not be totally factual. If published, these would be prejudicial towards IPSA because it would not present an accurate depiction of our decisions and activities.”

47. Discussions are just that – discussions. They will contain a variety of opinions, solutions and outcomes, and even if they don't come to fruition, the Commissioner fundamentally disagrees that such discussions are factually inaccurate.

48. Also, conversely to what IPSA has said, disclosure of these discussions would present an entirely accurate depiction of IPSA's decisions and activities; from how discussions start, through to how they develop and how a final decision is reached.

49. IPSA is concerned that:

“if MPs and IPSA staff felt that every word they spoke or wrote would be automatically published, without context or careful consideration and application of the Freedom of Information Act, then free and frank discussion would cease and the decision-making function would be disabled.”

50. MPs, civil servants and other public officials are expected to be impartial and robust when giving advice and participating in discussions, and not easily deterred from expressing their views by the possibility of disclosure. The Commissioner isn't convinced that, when it comes to their pay, MPs will be easily deterred from expressing their opinions. However, the Commissioner agrees that information that identifies individual respondents should be withheld.

51. Furthermore, IPSA can provide the context it's concerned with. It also can't use FOIA as a means to claim that disclosure of information, which is in the public interest and relates to a decision which has already been taken, could lead to a generalised chilling effect on all future discussions.

52. IPSA is the Independent Parliamentary Standards Authority. It's role is to regulate the finances of MPs. MPs are already looked upon with heavy scrutiny and accountability; and IPSA should be aware it will be subject to the same.

53. Looking at the withheld information, it discusses the views of respondents and IPSA, largely as a whole. The Commissioner believes the concerns about the chilling effect can be minimised by anonymising or withholding any feedback that identifies any individual respondent

and redacting any information that identifies a specific member of staff at IPSA.

54. IPSA has failed to persuade the Commissioner of the severity, or likelihood, of the envisaged chilling effect occurring. Returning to paragraph 17, the majority of the withheld information is drafts of briefing papers, minutes of board meetings or consultation reports, albeit in draft format. MPs gave their opinions in the belief that they would be summarised in this way, and this is exactly what's happened, so disclosure of this information via FOIA shouldn't result in the chilling effect that IPSA envisages.
55. The Commissioner also believes IPSA has grossly underestimated the public interest in further understanding the decision that was made in this instance, especially against the backdrop of the cost of living crisis. The withheld information details the research IPSA has taken, comparing what pay rises other public servants have, or haven't had. This is important information when it comes to scrutinising the decision that's been made.
56. The Commissioner isn't aware that severance pay for MPs is going to be revisited prior to the upcoming general election. However, it is in the public interest to help individuals understand why MPs will receive more money, which is funded by the tax payer, in certain circumstances. It's also in the public interest to help individuals understand how the body that regulates the use of these funds came to make this decision, especially when more MPs are choosing to step down.

Procedural matters

57. Section 10(1) states that a request must be complied with 'promptly and in any event not later than the twentieth working day following the date of receipt.' IPSA breached section 10(1) in its handling of this request.

Right of appeal

58. 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

59. 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.

60. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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