

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 June 2017

Public Authority: Compliance Officer for the Independent Parliamentary Standards Authority (IPSA)

Address: 4th Floor, 30 Millbank
London SW1P 4DU

Decision (including any steps ordered)

1. The complainant has requested information about particular complaints about MPs' expenses. Compliance Officer for IPSA ('the Compliance Officer') has withheld the information under section 40(2) of the FOIA because it is the personal data of third persons.
2. The Commissioner's decision is that the exemption under section 40(2) is engaged and the Compliance Officer has correctly withheld the requested information.
3. The Commissioner does not require the public authority to take any steps to ensure compliance with the legislation.

Request and response

4. On 3 October 2016, the complainant wrote to the Compliance Officer and requested information in the following terms:

"Could you please provide copies of all correspondence [between the MPs, the MPs' Offices, the Compliance Officer(s) and/or all IPSA employees] relating to the following complaints handled by the

compliance officer for IPSA where remedial action was taken before the investigation was closed:

C1415-008, C1415-011, C1415-023, C1415-028, C1415-029, C1415-033, C1516-001, COM-1047 and COM-1048?"

5. The Compliance Officer responded on 31 October 2016. It said the information the complainant has requested is exempt from release under section 40(2) of the FOIA because it is the personal data of third persons. The Compliance Officer considered that it could not anonymise the information so that it could be released.
6. Following an internal review the Compliance Officer wrote to the complainant on 1 December 2016. It upheld its original position.

Scope of the case

7. The complainant contacted the Commissioner on 8 December 2016 to complain about the way his request for information had been handled.
8. The Commissioner's investigation has focussed on whether the information the complainant has requested is exempt from release under section 40(2) of the FOIA.

Reasons for decision

Background

9. The Compliance Officer's submission to the Commissioner includes an explanation of its role. It has explained that the Compliance Officer is an independent office-holder created by the Parliamentary Standards Act 2009 (the 'PSA'), as amended by the Constitutional Reform and Governance Act 2010. The office-holder is statutorily separate from IPSA, and is a separate public authority for the purpose of the FOIA.
10. The Compliance Officer has two roles: to investigate complaints about MPs business costs and expenses paid by IPSA under the *MPs' Scheme of Business Costs and Expenses* ('the Scheme'); and, at the request of an MP, to conduct a review of a decision by IPSA not to pay an expense claim to an MP.

11. The Procedures for Investigation by the Compliance Officer ('the Procedures') list the circumstances under which information relating to complaints considered by the Compliance Officer will be published.
12. The Compliance Officer says that, in short, anyone can make a complaint about an MP's expenses claims. When a complaint is received, an assessment is conducted as to its veracity and validity. Often complaints might be bland assertions or emotionally charged outbursts, usually following a media disclosure, and contain no actionable information. The PSA stipulates that the Compliance Officer "*may conduct an investigation if [he/she] has reason to believe that a member of the House of Commons may have been paid an amount...that should not have been allowed.*" (Section 9(1) PSA).
13. The Compliance Officer may decide not to initiate an investigation if he or she considers that it would be unfair, inappropriate or disproportionate to do so. In cases where the Compliance Officer opens an investigation, a brief notice of the investigation (including the name of the MP) is published on the website. At the conclusion of an investigation, a full report is published.
14. The publication requirements for complaints set out in the Procedures therefore seeks to balance the legitimate interests of the public in holding their MPs to account with the inalienable right of MPs, as individuals, to privacy and protection from unfounded abuse, harassment and reputational damage where there is no evidence to justify the opening of a formal investigation.
15. To further the interests of transparency, the Compliance Officer confirmed it routinely publishes the following information:
 - details of investigations opened
 - the outcome of reviews
 - details of complaints handled each financial year
 - an annual report (as part of IPSA's annual report)
 - responses to FOIA requests
 - penalty notices; and
 - joint statements by IPSA and the Compliance Officer regarding how they work with other authorities.

Section 40(2) – third person personal data

16. Section 40(2) of the FOIA says that information is exempt from disclosure if it is the personal data of third persons, ie someone other

than the requester, and the conditions under either section 40(3) or 40(4) are also satisfied.

17. The Compliance Officer has confirmed to the Commissioner that it considers that it has correctly applied section 40(2) in this case, which concerns correspondence about particular complaints that closed with no formal investigation. Both the Compliance Officer and the complainant in this case have referred to the Commissioner's decision in FS50616049¹. In that case a complainant had requested information relating to the names of the MPs who have had complaints about their expenses assessed but who were not investigated. The Commissioner found that section 40(2) was engaged.
18. With regard to this case, the Commissioner has first considered whether the requested information can be categorized as personal data.

Is the withheld information personal data?

19. The Data Protection Act (DPA) says that for data to constitute personal data it must relate to a living individual and that individual must be identifiable. The Commissioner is satisfied that the correspondence in question relates to particular MPs and their staff, who are living individuals, and that their identities is revealed through this correspondence. The withheld information can therefore be categorised as personal data. The Commissioner has gone on to consider the conditions under section 40(3) and 40(4).

Is a condition under section 40(3) or 40(4) satisfied?

20. Section 40(3)(a) says that personal data is exempt from release if disclosing it would contravene any of the data protection principles, or would cause damage or distress and so breach section 10 of the DPA.
21. In its submission, the Compliance Officer has confirmed that disclosing the requested information would breach the first data protection principle as it would not be fair to do so.
22. In assessing fairness, the Commissioner has considered whether the information relates to the individual's public or private life, whether they

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624558/fs_50616049.pdf

have consented to their personal data being released and their reasonable expectations about what will happen to their personal data.

23. The Commissioner has noted that the withheld information (which she has reviewed) relates to the individuals' public life and that the Compliance Officer has told her that it has not sought consent from the individuals concerned for the release of their personal information. The Commissioner has gone on to consider the individuals' reasonable expectations about what will happen to their personal data.
24. In considering whether it would be fair to disclose the correspondence in this context, the Compliance Officer says that the Procedures for handling complaints and the information published about this are relevant as they bear on MPs' reasonable expectations as to how it will use their personal data.
25. Where the Compliance Officer considers that an investigation is warranted, information including the MP's name is published in accordance with paragraphs 27 and 28 of the Procedures. Neither the Procedures nor the PSA stipulate the publication of information identifying the identity of an MP against whom an allegation is made where there is insufficient evidence to justify opening an investigation (which would include the withheld information in this case). Consequently, the Compliance Officer argues that it is not the reasonable expectation of the MPs, as data subjects, that information identifying them will be disclosed under FOIA, which is unrestricted disclosure to the wider public domain.
26. Where the Procedures do not provide for information to be published the Compliance Officer considers it is clearly implicit, and hence reasonable to expect, that the information will not be published.
27. When a complaint is received and an MP contacted, he or she is informed in writing (and verbally, if a meeting takes place) that the Procedures only provide for information to be published where the Compliance Officer judges that a breach of the rules may have occurred and, in consequence, an investigation is to be opened. Frequently, where the complaint is so trivial that no assessment work is required, the MP will not have been informed that a complaint was received.
28. The Compliance Officer accepts in part that MPs, as public figures holding elected office, should, in general, have a higher expectation of information being disclosed. However, it does not believe this extends to the disclosure of personal data linking them to allegations, where the Compliance Officer considers there is no case for them to answer. If this

were to be the case, the Compliance Officer says this would be a disastrous and wholly disproportionate impact on an MP's reputation when there was no evidence of impropriety. This might merely serve to encourage a plethora of copycat complaints.

29. As it also noted in the internal review, in complying with the law on data protection (as set out in the DPA), the Compliance Officer says it must also consider in this context whether any prejudice might potentially result from the publication of an unsubstantiated and/or wholly trivial/vexatious allegation made against an MP. The Compliance Officer notes that the vast majority of complaints received do not warrant an investigation being opened. Many contain unsubstantiated allegations while others are merely cathartic and contain no specific allegation at all. Most are based on ill-informed hearsay or misinterpretation of other information.
30. The Compliance Officer has told the Commissioner that politically motivated complaints are commonplace during council and Parliamentary elections and largely emanate from election candidates, local activists or other similarly motivated individuals. They are routinely unsubstantiated and perhaps made with the intention of discrediting the MP locally rather than with raising a genuine concern. It says the ramifications of unwarranted publication are self-evident.
31. The Compliance Officer has said that it understands that, generally speaking, publication can lead the MP (and their staff) in question to receive a level of contact/attention which can be close to harassment. It acknowledges that some of this is, to an extent, an inevitable consequence of the job of being an MP and being on the public stage. The Compliance Officer says it has raised this latter point to illustrate the risk of prejudice which could be made worse if it were to make disclosure in cases where an investigation was unwarranted.
32. The Compliance Officer's assessment on this point is that there is likely prejudice in the form of both personal attention and media coverage which may be both upsetting and time consuming to deal with. The Compliance Officer recognises that MPs are democratically accountable public figures who are likely to face a range of allegations at some point in the course of performing their role. This however does not in and of itself reduce any likely prejudice from this particular disclosure. It is not the case that the publication of the correspondence from and relating to MPs would illustrate that they had been exonerated of the allegations. In the Compliance Officers' experience, publication may, in itself, be sufficient to precipitate an adverse reaction by the public and the media.

The fact that the complaint does not progress to an investigation does not remove the stigma as there is no overt exoneration.

33. Having considered its arguments, the Commissioner agrees with the Compliance Officer that the individuals concerned would have the reasonable expectation that their personal data would not be disclosed. This is because they were subject to complaints that were assessed and were found to not require formal investigation. The Procedures that the Compliance Officer follows indicate that only information on formally investigated complaints will be routinely published. The provision for further scrutiny is discussed below (paragraph 40).
34. Despite the factors above, the requested information may still be disclosed if there is compelling public interest in doing so that would outweigh the legitimate interests of the data subjects.
35. The Compliance Officer has told the Commissioner that a further consequence of disclosure is that MPs may be considerably less likely to cooperate with the Compliance Officer when complaints are received, if they know that their personal data will be disclosed regardless of whether the complaint warrants a formal investigation. In the majority of instances following a complaint, the MP is approached (during the assessment process), and provides an explanation, usually supported by documentary evidence, which resolves any questions.
36. In the Compliance Officers' experience, MPs will speak candidly about sensitive personal or employment issues, knowing that their disclosures will remain confidential. If a formal investigation is opened they will be asked separately for a formal written response. This effective and objective information gathering process would be significantly undermined were they not able to speak freely at the assessment stage. The process would become overly formalised and bureaucratic, with more investigations being opened unnecessarily because the free flow of information had been stopped and clarification had not been obtained at the earlier assessment stage. That would cause prejudice both to the individual data subjects and to the functions of the Compliance Officer, with potential increased costs to the public purse without any additional benefit in return. It would further stretch the very limited resources at the Compliance Officer's disposal.
37. The Compliance Officer accepts that there is a strong public interest in MPs' expenses, in particular since the expenses scandal of 2009. It says it is important to note that in response to the scandal, the expenses system has been entirely reformed to provide for vastly improved clarity, transparency and accountability. Individual details of every

single claim are now published on IPSA's publication website. When the Compliance Officer receives a complaint and believes that there may have been a breach of the Scheme, an investigation is opened and full details are published for anyone to see. Details of every complaint made to the Compliance Officer are also published, alongside the outcome and the reason why an investigation was not opened.

38. The Compliance Officer believes this satisfies the legitimate interests of the public in providing assurance that public funds are being administered properly. The Compliance Officer does not think that, in this instance, the legitimate interests of the public are furthered to any appreciable extent by the disclosure of the personal data of MPs against whom there has been no adverse findings, who have been the subject of unfounded accusations and who would be subject to further prejudice and harm resulting from any disclosure.
39. The Compliance Officer argues that the direct consequence of requiring disclosure of correspondence relating to complaints that have been subject to careful assessment and found not to warrant formal investigation, is that its office and its website would become a platform for anyone to publicly associate any complaint, slur or accusation against an MP regardless of whether there was any truth in the accusation. It would belittle the Compliance Officer's office and undermine its ability to conduct its affairs objectively, rationally, proportionately and logically. It would not, in the Compliance Officer's view, serve our democratic system and would be contrary to the public interest.
40. The Compliance Officer accepts that there is a legitimate interest in its office being transparent and accountable in the exercise of its statutory functions. That said, it remains its view that this interest is met by the information already published and described above. Any person may review this summary complaint information, and ask follow up questions and/or make freedom of information requests about a specific complaint. If in doing so they, for example, provide fresh reasons why there is a particular public interest in further information being published about the complaint, including the identity of the particular MP, then the Compliant Officer says it would consider the merit or otherwise of those reasons balanced against the privacy and data protection rights of individuals. The Compliance Officer may determine that they give sufficient cause to provide some or all of the information requested (either in accordance with the provisions of FOIA or separately if the request is outside FOIA). This mechanism provides an appropriate balance between transparency and accountability in relation to the Compliance Officer's complaint handling function and the data protection

and privacy rights of MPs (and other individuals) about whom it receives personal information.

41. The complainant has argued that there is a strong public interest in the information being released because the information concerns instances where the expenses scheme was breached and the MP in each case took remedial action.
42. He argues that IPSA (by which the Commissioner assumes the complainant means the Compliance Officer) is mistaken in making as its starting point the PSA Procedures, which do not require correspondence and names to be published [in certain circumstances]. The complainant considers that MPs have a reasonable expectation that FOI requests will go beyond the pre-determined publication schemes and procedures when the information requested concern their roles as public figures. He says MPs do not have the same reasonable expectation of privacy as a lay person by necessity of having an elected role in the public eye and their expenses being published.
43. In the Commissioner's view, the Compliance Officer has addressed this in its submission. It has recognised that MPs, as public figures holding elected office, should, in general, have a higher expectation of information being disclosed. But the Compliance Officer's position is that, in this case, because the complaints against the MPs were not formally investigated, the requested information should not be published, for the reasons it has given above. The Commissioner has noted that, while remedial action may have been taken as a result of the complaints, the complaints were not formally investigated. As such, the Commissioner is satisfied that the MPs concerned, despite being public figures, would have the reasonable expectation that their personal data would not be disclosed.
44. As discussed above, the Compliance Officer has said that, if any person provides fresh reasons why there is a particular public interest in further information being published about a complaint, including the identity of the particular MP, then the Compliance Officer would consider the merit or otherwise of those reasons balanced against the privacy and data protection rights of individuals. It may determine that they give sufficient cause to provide some or all of the information requested (either in accordance with the provisions of FOIA or separately if the request is outside FOIA).
45. The complainant has requested information about a number of complaints. Other than that they are complaints in which remedial action was taken, he has not, as far as the Commissioner is aware,

provided reasons for disclosure that are of *such* public interest that this outweighs the public interest in withholding the information, for the reasons the Compliance Officer has given. As noted above, the Compliance Officer – an independent office-holder – assessed the complaints, remedial action was taken and the complaints were concluded without formal investigations.

46. The Commissioner has considered the arguments presented by both parties in their correspondence with each other, the complainant's complaint to her and the Compliance Officer's submission. Having considered all the circumstances the Commissioner is satisfied that disclosure would not be fair in this case because, despite being public figures, the MPs in question would have the reasonable expectation that the information would not be disclosed. This is because the PSA Procedures indicate that information on complaints about MPs' expenses that are investigated will be published. The complaints in this case were assessed, remedial action was taken and no formal investigation was found to be necessary.
47. The Commissioner recognises that, post the MPs' expenses scandal, there is considerable public interest in the expenses that MPs claim. However, she considers this interest is satisfied through the independent role of the Compliance Officer and the information that the Compliance Officer routinely publishes. The Compliance Officer has also told the Commissioner that it is prepared to publish further information – including the identity of an MP - where fresh and compelling reasons to do so have been brought to it. Such fresh and compelling reasons do not appear to be evident in this case.
48. The Commissioner considers that in this case there is greater public interest in the Compliance Officer being able to carry out its role effectively and efficiently. This is achieved through objective information gathering and through MPs being prepared to cooperate with it at the stage when it is assessing a complaint. It is at this stage when the majority of complaints are closed. The Commissioner accepts that, if MPs considered that their personal data would be disclosed as a result of complaints that were not formally investigated but where they took remedial action following assessment, it is likely that the Compliance Officer's ability to carry out its functions would be undermined.

49. The Commissioner therefore does not consider that the requested information in this case is of such compelling public interest that it overrides the data subjects' rights and freedoms.
50. The Commissioner is satisfied that the Compliance Officer is correct to apply section 40(2) to the information it is withholding under this exemption. It is the personal data of third persons and a condition under section 40(3) is satisfied because releasing it would breach the first data protection principle as it would not be fair or lawful. Noting some of the arguments in the Compliance Officer's submission, the Commissioner also considers that disclosure would be likely to cause the MPs in question a degree of damage and distress, and so breach section 10 of the DPA.
51. Since a condition under section 40(3) has been met, it is not necessary to consider the condition under section 40(4).

Right of appeal

52. 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: 0870 739 5836
Email: GRC@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

53. 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.
54. 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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