



Reference Number:	F2014-001
Date of disclosure:	6 August 2014
Request summary:	Evidence obtained by Compliance Officer
Exemptions used:	Section 36

Request:

Will you please supply me with the information on which the Compliance Officer based his decision as communicated to me in his letter of 19 February 2014?

Response:

The Compliance Officer for IPSA holds the information that you request.

Background

On 5 November 2014, you made a complaint regarding an MP. In the course of the Compliance Officer's assessment of the complaint, research was conducted into your complaint for a period from 2011 to the present day and evidence was obtained from a number of sources including the MP and his staff. This resulted in the Compliance Officer's decision not to open a formal investigation. This was communicated to you in a letter dated 19 February 2014, which contained the conclusions reached and the reasons why he would not be pursuing the matter.

You subsequently made a request for the evidence obtained during the course of the assessment. [Name redacted] responded in an email, dated 25 February 2014, stating:

We do not, under any circumstances, provide to complainants any hardcopy evidence obtained during the course of assessments, as we believe that the information we provide to complainants is sufficient for them to understand the outcome of assessments. In the case of the assessment of your complaint, the Compliance Officer believes that the information provided to you in his letter of 19 February 2014 provides sufficient explanation to enable you to understand the reasoning behind the outcome.

Your request

We have considered your subsequent request for the evidence obtained under the Freedom of Information Act. We take seriously our obligations under the Act and have considered, on a case by case basis, all the pieces of information requested.

Some of the evidence obtained relates to claim information from IPSA, which is already publicly available on their publication website. The FOIA states that information that is accessible by other means is not subject to release. Therefore, as the information you have requested is already available on IPSA's website, it is exempt from disclosure under section 21 of the FOIA (information accessible to applicant by other means).

Other evidence was obtained from separate sources, including the MP and staff.

With regards to this information, we have considered the application of the exemptions at s.36(2)(c)

(prejudice to the effective conduct of public affairs) of the FOI Act. The relates to information which, if disclosed, would, or would be likely to, prejudice the effective conduct of public affairs.

The application of this qualified exemption requires consideration by a Qualified Person, who proves a 'reasonable opinion' as to the exemption's application, followed by a public interest balancing test. The Compliance Officer for IPSA, as designated by the Minister of State for Justice under s.36(5)(o)(ii) of the FOI Act, acts as the Qualified Person for the purposes of the FOIA.

The Compliance Officer considered your request, the information held, and the arguments surrounding the release of the information requested. He has considered that the Compliance Officer for IPSA, as a publicly-funded body, is accountable for the decisions it makes and that there is a public interest in understanding how decisions are reached within the organisation. He also considered that the release of the information would be extremely likely to discourage other individuals from cooperating with assessments and investigations in the future, were they to consider that any information they voluntarily hand over to the Compliance Officer may end up in the public domain. This would severely inhibit the ability of the Compliance Officer to effectively and thoroughly investigate complaints, and would prejudice the effective conduct of public affairs.

In balancing these arguments, the Compliance Officer has commented as follows:

I have considered all of the information to which the request refers.

In determining whether the evidence obtained should be exempt from disclosure as prejudicing the effective conduct of public affairs, I have done so cognisant of the presumption in the FOIA that information should be released on request. While formulating my opinion, in the forefront of my mind was my obligation under the FOIA to ensure that the complainant's right to trust that their complaint has been accorded fair consideration and due process had been met.

Whilst acknowledging the validity of the competing arguments, it is essential that MPs trust that information they provide to the Compliance Officer, in the course of his investigations and assessments, is handled with sensitivity and in confidence. MPs have a reasonable expectation that sensitive and private documents, provided in confidence, will not enter the public domain. Indeed there are very few, if any, regulatory bodies which publish evidence obtained during their investigations and/or assessments. There is no reasonable expectation that such evidence would be made freely available.

Were this information to be released, it would deter MPs from providing the information the Compliance Officer requires to effectively carry out the duties of his office. This being the case, it would undermine his effectiveness and compromise his ability to ensure MPs complied with the expenses scheme. In short, the release of the information would be extremely likely to prejudice the effective conduct of public affairs.

In light of the above, I have reached the reasonable opinion that the release of the information requested in this case would prejudice the effective conduct of public affairs and is therefore exempt from release under s.36 of the FOI Act.

For these reasons, the Compliance Officer has, in his capacity as the Qualified Person, concluded that in his reasonable opinion, disclosure of the information would prejudice the effective conduct of public affairs, and therefore warrants engagement of the exemption at section 36(2)(c) of the FOIA.

We also carried out a public interest test, considering whether the public interest in disclosing the

information you requested outweighed the Compliance Officer's reasonable opinion that disclosure would prejudice the effective conduct of public affairs. We considered that there is a public interest in transparency and accountability, promoting public understanding and ensuring justice and fair treatment for all. We also considered that undermining the ability of the Compliance Officer to carry out his public functions would not be in the public interest, and that the information provided to you in the letter of 19 February 2014 went some way to explaining why the decision was made, balancing the need for transparency with the protection of private documents. We do not consider that the likely prejudicial harm caused by the release of the information is in the public interest, nor that the public interest in disclosure warrants the likely prejudicial harm which would be caused.

As such, we have applied section 36(2)(c) to the information you have requested to exempt the requested information from release.