



FREEDOM OF INFORMATION REQUEST	
Reference Number:	F2014-004
Date of disclosure:	14 October 2014
Request summary:	Communications regarding complaint
Exemptions used:	Section 21, Section 36

NOTE: Elements of this request were overturned following an internal review. Details of that internal review can be found below.

ORIGINAL REQUEST

Under the FOIA, please can you supply me with the communications between yourselves and IPSA, regarding my complaint about Jeremy Hunt MP, made by email on 5 November 2013? Also please can you supply the communications sent to Jeremy Hunt MP, his office and any other people or offices regarding Compliance's assessment of my complaint?

ORIGINAL RESPONSE

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

Background

On 5 November 2014, you made a complaint regarding Jeremy Hunt MP. In the course of the Compliance Officer's assessment of the complaint, correspondence was exchanged with IPSA, and with Jeremy Hunt MP (and his office). Following completion of the assessment, the Compliance Officer concluded that he did not believe there was any breach of the *MPs' Scheme of Business Costs and Expenses*, and that he would not be opening an investigation.

You subsequently asked for the evidence obtained during the course of the assessment and received a response, 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.

On 5 March 2014, you made a request under the FOIA, reference F2014-001, for the evidence obtained during the course of the assessment. We responded on 6 August 2014, withholding the information under section 36(2)(c) of the FOIA.

A large part of the correspondence requested under this current request, F2014-004, is the same information previously withheld under your earlier request, reference F2014-001. Nonetheless, we took the opportunity to reconsider the correspondence requested, to evaluate whether disclosure would still be likely to prejudice the effective conduct of public affairs.

Your current request

We have considered your request for correspondence exchanged obtained, under the terms of the FOIA. We take seriously our obligations under the Act and have considered, on a case by case basis, all the pieces of correspondence requested.

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Some of the correspondence exchanged with IPSA 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).

With regards to the remaining correspondence, we have considered the application of the exemption at s.36(2)(c) (prejudice to the effective conduct of public affairs) of the FOI Act. This 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.

In exercising his role as Qualified Person, 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 should be as transparent as is reasonably practicable in its dealings with MPs. He acknowledged that there is a public interest in understanding how decisions are reached and in ensuring trust in the procedures. He further considered that elements of the correspondence to which Section 40 (personal information) and Section 41 (information provided in confidence) might apply, can be redacted from any potential disclosure.

However, he also considered that MPs and their staff do not have a reasonable expectation that often sensitive and private correspondence, provided in confidence, will be put into the public domain – outside of that already specified in the publication procedures. There are very few, if any, regulatory bodies which publish correspondence exchanged during assessments or investigations. As such, he noted that there is no reasonable expectation that such correspondence would be made freely available.

He considered whether the release of the correspondence requested would be 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.

Were this to be the case, 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 mindful that, on balance, information should be released on request under the FOIA. While formulating my opinion, in the forefront of my mind was my duty, as Compliance Officer, to act as transparently as reasonably practicable so that complainants trust that their grievances have been accorded fair consideration and due process has been met.

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My procedures for assessing and investigating complaints necessitate the cooperation of MPs and their offices. They cooperate on a basis of trust – that information provided to me is handled with sensitivity and in confidence.

MPs, who voluntarily cooperate with the Compliance Officer, do not have a reasonable expectation that this sensitive and private correspondence, provided in confidence, will be put into the public domain – outside of that already specified in the publication procedures.

In contrast, MPs have a reasonable expectation that sensitive and private correspondence, made in confidence, will not enter the public domain. As previously noted, there are very few, if any, regulatory bodies which publish all correspondence obtained during their investigations and/or assessments, and especially not where the complaint did not proceed to an investigation. There is no reasonable expectation that such correspondence will be made freely available.

Were correspondence between the Compliance Officer and MPs to be released in full, it would undoubtedly deter MPs from communicating with me in writing and create a ‘chilling effect’, whereby my ability to effectively conduct investigations, which is in the public interest, would be severely undermined.

This being the case, it would undermine the effectiveness of the functions of the Compliance Officer and compromise my (and any successors’) ability to ensure MPs complied with the expenses scheme. This would not be in the public interest. 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 transparent dealing with MPs and in ensuring 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.

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.

INTERNAL REVIEW

INTERNAL REVIEW REQUEST	
Reference Number:	F2014-004-IR
Date responded:	11 November 2014

NOTE: Following the response to this request, the requestor asked for an internal review to be carried out. Elements of the original response were overturned in that internal review. Below is the content of that internal review.

INTERNAL REVIEW RESPONSE

Thank you for your email of 23 October 2014 requesting an internal review of our response to your Freedom of Information (FOI) request F2014-004, regarding communications relating to your complaint. I have conducted the internal review and have set out my findings and conclusions below.

On 18 September 2014 you requested correspondence falling into the two following categories:

1. Communications between myself and IPSA, regarding your complaint about Jeremy Hunt MP; and
2. Communications sent to Jeremy Hunt MP, his office and any other people or offices, relating to my assessment of your complaint.

In our response, dated 14 October 2014, we informed you that part of the correspondence exchanged with IPSA included claim information, which is now publically available on IPSA's website. As such, this information was exempted for release under section 21 of the FOIA (information accessible to applicant by other means). This is correct. All claims made by MPs are published on IPSA's website and are therefore publically available.

Our response went on to consider the application of the exemption at section 36 of the FOIA with regards to the remaining correspondence, both with IPSA and sent to Jeremy Hunt MP, concluding that disclosure would be likely to prejudice the effective conduct of public affairs. In reviewing our response, I have reconsidered the application of the exemption.

With regards communications between myself and IPSA, the only other information we hold is a copy of an email sent to a member of IPSA's staff requesting claim information. As just noted, this was withheld in our original response under section 36. That this was being withheld under section 36 was not sufficiently clear in our response. Further, having reviewed the email, I do not believe this exemption was correctly applied to this information under the terms of the FOIA. As such, please find attached an extracted copy of that email, in which we have withheld the following:

- Personal data of third parties, under section 40 of the FOIA; and
- content falling outside the remit of your request.

Section 40(2) provides that personal information about third parties is exempt information if one of the conditions set out in section 40(3) is satisfied. Under the FOI Act disclosure of this information would breach the fair processing principle (Principle 1) of the Data Protection Act 1998 (DPA), where it would be unfair to those persons or is confidential. For further information, you may wish to visit the UK Legislation website.

INTERNAL REVIEW

Similarly, I have reviewed the remaining information withheld under section 36, relating to correspondence sent to Jeremy Hunt MP. In this instance, I have concluded the exemption was applied correctly, for the reasons noted in the original response.

ANNEX A – EXTRACTED EMAIL

Sent	Wed 06/11/2013 16:43
From	[REDACTED]
To	[REDACTED]
Cc	
Subject	Compliance Office: Information Request
Attached	C1314-015 – 2013-11-06 – Information Requested from [REDACTED].docx

[REDACTED],

We would like to request some information in relation to complaints we've received in Compliance, in order to assist us in assessing the complaints.

The complaints relate to [...] and accommodation/travel claims by Jeremy Hunt MP. The complaints are attached, along with what we would like to specifically request.

We normally agree a 5 working day deadline for these and so we would be grateful for this information by Wednesday 13 November.

Very happy to discuss if there are any issues/questions about the above.

Cheers,

[REDACTED].

Compliance Office

7th Floor
Portland House
Bressenden Place
London, SW1E 5BH

Tel: 0844 225 0036

www.parliamentarycompliance.org.uk

ATTACHMENT TO EMAIL - C1314-015 – 2013-11-06 – Information Requested from [REDACTED].docx

Compliance Officer for IPSA

INFORMATION REQUEST

Request reference	C1314-015
Date allocated	6 November 2013
Request deadline	12 November 2013

Complaint

The IPSA funded accommodation expenses of my MP, Jeremy Hunt, are in my view in breach of the Code of Conduct and Guide to the Rules. I contend that he is not entitled to make claims under the rules of the scheme and I would therefore request for his expense claims to be investigated.

"Accommodation Expenditure is designed to meet costs necessarily incurred on overnight accommodation which is required for the performance of an MP's parliamentary functions. Where an MP is claiming Accommodation Expenditure under paragraph 4.9b or c, the MP must be routinely resident at the property supported by IPSA, and may not sublet this property."

According to your publically available expense records, Jeremy Hunt has rarely stayed overnight in his IPSA funded home and I attach a file showing the expense claim numbers that substantiate that he is claiming mileage for daytrips to the constituency and in 10 cases he has claimed mileage on consecutive days for daytrips from London to the constituency or allowed destination.

Since Jeremy Hunt re-started claiming for second home expenses in April 2011, having stopped in 2009, he appears to have only spent 5 nights at his IPSA funded home: 4 nights in 2011/2012 and only 1 night in 2012/2013, with an apparent gap of 15 months. Over the same period he seems to have visited the constituency on at least 15 daytrips in 2011/2012 and at least 22 daytrips in 2012/2014 (see attached file). I have so far seen no Accommodation claims for 2013/2014.

Information requested by Compliance

1. A report from e@w of all mileage claims made since 1 April 2011
2. A report from e@w of any other travel claims made between the constituency and London since 1 April 2011
3. A report from e@w of all accommodation rent claims made since 1 April 2011