

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 August 2023

Public Authority: Independent Parliamentary Standards Authority

Address: 2nd Floor, 85 Strand
London WC2R 0DW

Decision (including any steps ordered)

1. The complainant has requested expense receipts for Caroline Nokes MP. The Independent Parliamentary Standards Authority (IPSA) disclosed relevant information and withheld some under sections 31(1)(a), 38(1) and 40(2) of FOIA. These exemptions concern law enforcement, health and safety and personal data respectively.
2. The Commissioner's decision is that IPSA holds no further relevant information and has complied with section 1(1) of FOIA. IPSA is entitled to withhold some of the relevant information under sections 31(1)(a), 38(1) and 40(2) of FOIA. However, IPSA breached sections 10(1) and 17(1) of FOIA as its response to the request fell outside of the required timescales.
3. The Commissioner doesn't require IPSA to take any corrective steps.

Request and response

4. The complainant made the following information request to IPSA on 4 November 2022:

"I can see that you have refused this FOI request due to section 21 of the FOIA.

I have requested all the receipts that Caroline Nokes has submitted for the period 2020-2021. You have quoted an exemption under section 21.

I have looked at the link you provided and that does not include a list of expense receipts but just a list of expenses she has claimed for and does not include any details of items that have been purchased and the date of the purchase. If I am looking at the wrong location for that info please can you point me to exact location so I can see the individual receipts that I have requested.

As you have quoted section 21 as a reason to refuse my request then please can you confirm that section 17 listed below in your view has been satisfied in this request?

If only part of the requested information is in the public domain, section 21 can only apply to that part of the request (subject to the circumstances of the individual applicant).

"I can see in 2015 you lost a court of appeal challenge against an order that it must release copies of receipts submitted by politicians. That order was put on hold pending any move by IPSA to the supreme court.

If you are going to refuse this appeal please can you confirm if you have successfully challenged at the supreme court or please provide any relevant legislation that overrides the court of appeals decision"

5. IPSA initially relied on section 14(1) of FOIA (vexatious request) to refuse the request because of the disproportionate burden it considered complying with the request would entail. However, IPSA withdrew its reliance on section 14 and its final position was to disclose relevant information to the complainant with some information redacted or withheld under sections 31, 38 and 40 of FOIA.

Reasons for decision

6. This reasoning focusses on IPSA's reliance on sections 31, 38 and 40 to withhold information within scope of the complainant's request. It also considers whether IPSA holds further relevant information and the timeliness of its response. The matter of IPSA's internal review is considered under 'Other Matters'.

Section 31 – law enforcement

7. Under section 31(1)(a) of FOIA, which is the specific exemption under section 31 that IPSA has cited, information is exempt information if its disclosure would or would be likely to prejudice the prevention or detection of crime.
8. In its internal review, IPSA said it was withholding suppliers' bank details and other transactional details under section 31. It said that disclosing this information could leave those concerned more open to financial crime, in particular fraud and electronic crime, especially with the increase in cyber-attacks. In its submission to the Commissioner, IPSA has indicated that the information to which it has applied section 31 also includes sensitive financial details of an MP as well as a supplier to an MP. It's confirmed that it wouldn't generally disclose such information.
9. The Commissioner is satisfied that the information in question engages section 31(1)(a) of FOIA; disclosing banking and other transactional details to the world at large would indeed be likely to leave those parties open to fraud and electronic crime by those motivated to commit such crimes.
10. The Commissioner is also satisfied the public interest in transparency around MPs' expenses has been met through the information IPSA has disclosed and the information it routinely, pro-actively publishes. Specific banking and transactional details don't provide any meaningful insight into the matter of an MP's expense claims. And the complainant has not made a case for there being any public interest in this specific information and certainly not a level of such interest that would justify leaving suppliers and others at risk of fraud.
11. The Commissioner's decision is therefore that the public interest favours maintaining the section 31(1)(a) exemption.

Section 38 – health and safety

12. Under section 38(1) of FOIA information is exempt information if its disclosure would or would be likely to (a) endanger the physical or mental health of any individual, or (b) endanger the safety of any individual. IPSA appears to be relying on both section 38(1)(a) and 38(1)(b).
13. In its internal review, IPSA said it was withholding contact details and names of staff, travel patterns and accommodation under section 38. It said that disclosing this information carried a high risk of endangering the MP in question and her staff. IPSA noted that there had been an increase in media reporting on the threats made to MPs and their staff.

It said that although not all reports relate to physical attacks on MPs and their staff, the fear which can be felt from receiving a threat can be mentally and physically damaging.

14. In its submission to the Commissioner, IPSA has confirmed that there would clearly be a potential safety concern arising from disclosing the information. This is because the information could be used to track the movements and location of a given individual.
15. The Commissioner is satisfied that the information in question engages section 38(1) of FOIA; disclosing specific names, contact details, travel patterns and locations to the world at large would be likely to endanger the physical and mental health (through the fear of unwanted approaches) and the safety of the individuals concerned.
16. The Commissioner is also again satisfied the public interest in transparency around MPs' expenses has been met through the information IPSA has disclosed and the information it routinely, pro-actively publishes. Specific names, contact details, travel patterns and locations provide little meaningful insight into the matter of an MP's expense claims. And the complainant has not made a case for there being any public interest in this specific information and certainly not a level of such interest that would justify risking individuals' health and safety.
17. The Commissioner's decision is therefore that the public interest favours maintaining the section 38(1) exemption.

Section 40 – personal data

18. Under section 40(2) of FOIA information is exempt information if it's the personal data of another individual and disclosing it would contravene one of the data protection principles.
19. In its internal review and submission to the Commissioner, IPSA said it was withholding names of MPs' staff members and details about their employment with MPs and personal addresses under section 40.
20. The Commissioner is satisfied first, that the information in question is personal data – it relates to living individuals and they can be identified from it. Those individuals are the 'data subjects'. The Commissioner has gone on to consider whether disclosing the information would contravene the data protection principle under Article 5(1)(a) of the UK General Data Protection Regulation. This says that personal data must be processed lawfully.
21. When considering whether disclosure would be lawful, the Commissioner considers the complainant's legitimate interests and whether disclosure

is necessary to meet those legitimate interests. If appropriate he will finally go on to balance the complainant's legitimate interests against the data subjects' rights and freedoms.

22. The Commissioner appreciates that the complainant has an interest in a particular MP's expenses, which is a legitimate interest for them to have. However, in their request the complainant states that they are specifically interested in the details of items that have been purchased and the date they were purchased. The Commissioner doesn't consider that disclosing the information being withheld under section 40(2) – detailed at paragraph 19 - would meet the legitimate interest that the complainant has.
23. As the Commissioner has decided in this case that disclosure isn't necessary to meet the legitimate interest in disclosure, he hasn't gone on to conduct the balancing test. As disclosure isn't necessary, there's no lawful basis for this processing and it's unlawful. Disclosure would therefore contravene a data protection principle; that set out under Article 5(1)(a) of the UK GDPR.
24. As such, the Commissioner's decision is that IPSA is entitled to withhold some of the requested information under section 40(2) of FOIA.

Procedural matters

25. Under section 1(1) of FOIA anyone who requests recorded information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it's held and isn't exempt information.
26. Under section 10(1) and section 17(1) of FOIA, a public authority must comply with section 1(1) or issue a refusal notice, or both, within 20 working days following the date of receipt of the request.
27. The complainant says that in earlier correspondence to them, IPSA referred to there being 253 documents in scope of their request, but they have only been provided with 189. The complainant has queried what they consider to be a discrepancy.
28. In its submission, IPSA confirmed that it has withheld 64 documents in their entirety because the above exemptions applied to each of those documents as a whole. The Commissioner has reviewed a representative sample of those documents.

29. The Commissioner accepts IPSA's explanation and is satisfied that IPSA holds no further relevant information that it either hasn't either already disclosed or hasn't already withheld under the above exemptions. The Commissioner therefore finds that IPSA has complied with section 1(1) of FOIA.
30. However, the complainant submitted their request on 4 November 2022, but IPSA didn't provide its initial refusal notice until 23 February 2023. IPSA went on to comply with section 1(1) and issue a new refusal on 14 June 2023. IPSA therefore breached section 10(1) and section 17(1) of FOIA.

Other matters

31. Providing an internal review isn't a feature of FOIA but is a matter of good practice. The Commissioner considers that a public authority should provide an internal review within 20 working days of the date of the request for a review. Only in the most complex cases should further time be needed, up to a maximum of 40 working days.
32. In this case, the complainant requested an internal review on 16 March 2023, but IPSA didn't provide one until 14 June 2023. The Commissioner has noted IPSA's explanation to him that it considered that the request was extremely wide in parameter, and it needed to review and redact the documents before releasing them. This included considering the public interest test for two of the exemptions on which it relied. IPSA said that, in the circumstances, it had responded as quickly as it was reasonably able to.
33. It remains the case, however, that the time IPSA took to provide its internal review exceeded the 40 working days that the Commissioner considers should be the maximum. This has been recorded for monitoring purposes.
34. As noted, providing an internal review isn't a requirement of FOIA, but it does form part of the section 45 FOIA Code of Practice. The Commissioner therefore will consider appropriate action where he has evidence to suggest a public authority is repeatedly failing to complete internal reviews in a timely manner.

Right of appeal

35. 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

36. 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.
37. 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

Cressida Woodall
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