

[REDACTED]

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**From:** [REDACTED]  
**Sent:** 11 July 2019 12:59  
**To:** [REDACTED]  
**Cc:** Communications; FOI (Freedom of Information)  
**Subject:** RE: Publication of ERG materials - 11th July

Hi [REDACTED]

Here is the link:

<https://www.theipsa.org.uk/publications/freedom-of-information/2019-20/ipsa-pooled-services-assurance-reviews/>

Best wishes

[REDACTED]

**From:** [REDACTED]@opendemocracy.net>  
**Sent:** 11 July 2019 11:59  
**To:** [REDACTED]@theipsa.org.uk>  
**Cc:** Communications <Communications@theipsa.org.uk>; FOI (Freedom of Information) <FOI@theipsa.org.uk>  
**Subject:** Re: Publication of ERG materials - 11th July

Hi [REDACTED]

Is there any further word on this?

Thanks

On Wed, 10 Jul 2019 at 11:27, [REDACTED]@theipsa.org.uk> wrote:

Hi [REDACTED]

I can't be sure exactly when it will go on our website tomorrow, but my FOI colleagues will make sure you get an email with the details first.

Happy to have a chat tomorrow if you need to.

From: [REDACTED]@opendemocracy.net>

Sent: 10 July 2019 09:34

To: Communications <Communications@theipsa.org.uk>; FOI (Freedom of Information) <FOI@theipsa.org.uk>; [REDACTED]@theipsa.org.uk>

Subject: Publication of ERG materials - 11th July

Dear [REDACTED]

I hope you're well.

I understand that the ERG materials are going to be published tomorrow.

Could you possibly let me know what time this is likely to go up?

Many thanks,

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[REDACTED]

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**From:** [REDACTED]@opendemocracy.net>  
**Sent:** 25 June 2019 13:06  
**To:** [REDACTED] FOI (Freedom of Information)  
**Cc:** Communications; IPSA Info  
**Subject:** Re: Request for comment - Information Tribunal ruling

Hi [REDACTED]

I've just received word from the ICO that the Commissioner has not appealed the decision.

I should expect the disclosure imminently?

Many thanks,

[REDACTED]

On Tue, 25 Jun 2019 at 09:42, [REDACTED]@opendemocracy.net> wrote:

Good morning [REDACTED]

Just wondering if you've had any luck with this?

[REDACTED]

On Thu, 20 Jun 2019 at 16:24, [REDACTED]@opendemocracy.net> wrote:

Hello [REDACTED]

That would be really helpful - much appreciated.

[REDACTED]

On Thu, 20 Jun 2019 at 13:13, [REDACTED]@theipsa.org.uk> wrote:

Hi [REDACTED]

My understanding is that it is the ICO who were the lead party in the case – I'm not sure if they have reached a decision but can check on your behalf if you would like me to.

Thanks

[REDACTED]

From: [REDACTED]@opendemocracy.net>

Sent: 20 June 2019 11:55

To: [REDACTED]@theipsa.org.uk>

Cc: Communications <Communications@theipsa.org.uk>; IPSA Info <Info@theipsa.org.uk>; FOI (Freedom of Information) <FOI@theipsa.org.uk>

Subject: Re: Request for comment - Information Tribunal ruling

Dear [REDACTED]

I hope you're well.

Could you tell me whether IPSA is likely to appeal the decision? If not, when would I expect to receive the materials sought?

Many thanks,

[REDACTED]

On Fri, 24 May 2019 at 13:07, [REDACTED]@theipsa.org.uk> wrote:

Hi [REDACTED]

If this is for a website or media article then here is a short quote from an IPSA spokesperson:

**"IPSA will be considering the Tribunal decision carefully and will respond in due course"**

You would need to contact the ICO in the event that they have a comment.

Thanks

[REDACTED]

IPSA

From: [REDACTED]@opendemocracy.net]  
Sent: 24 May 2019 09:51  
To: Communications <Communications@theipsa.org.uk>; IPSA Info <Info@theipsa.org.uk>  
Subject: Request for comment - Information Tribunal ruling

Dear Sir or Madam,

My name is [REDACTED] a reporter for openDemocracy.

I was wondering whether IPSA would like to comment on the Information Tribunal ruling that was issued yesterday, concerning the Independent Parliamentary Standards Authority and the European Research Group research materials? [appeal reference: EA/2018/0299, between Jenna Corderoy and IC and IPSA]

If so, is the ICO likely to appeal the decision? If I could have a response by 3pm today, I would be very grateful.

Many thanks,

[REDACTED]

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[REDACTED]

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**From:** [REDACTED]  
**Sent:** 24 May 2019 13:08  
**To:** [REDACTED]  
**Cc:** Communications; IPSA Info; FOI (Freedom of Information)  
**Subject:** RE: Request for comment - Information Tribunal ruling

Hi [REDACTED]

If this is for a website or media article then here is a short quote from an IPSA spokesperson:

"IPSA will be considering the Tribunal decision carefully and will respond in due course"

You would need to contact the ICO in the event that they have a comment.

Thanks

[REDACTED]  
IPSA

**From:** [REDACTED]@opendemocracy.net  
**Sent:** 24 May 2019 09:51  
**To:** Communications <Communications@theipsa.org.uk>; IPSA Info <Info@theipsa.org.uk>  
**Subject:** Request for comment - Information Tribunal ruling

Dear Sir or Madam,

My name is [REDACTED] a reporter for openDemocracy.

I was wondering whether IPSA would like to comment on the Information Tribunal ruling that was issued yesterday, concerning the Independent Parliamentary Standards Authority and the European Research Group research materials? [appeal reference: EA/2018/0299, between Jenna Corderoy and IC and IPSA]

If so, is the ICO likely to appeal the decision? If I could have a response by 3pm today, I would be very grateful.

Many thanks,

[REDACTED]

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## WhatDoTheyKnow

# FOI request - materials scrutinised by IPSA

Jenna Corderoy made this Freedom of Information request to Independent Parliamentary Standards Authority

This request has an unknown status. We're waiting for someone to read a recent response and update the status accordingly. Perhaps you might like to help out by doing that?

Jenna Corderoy 21 January 2018

Delivered

Dear Independent Parliamentary Standards Authority,

This is a request for information under the Freedom of Information Act.

I understand that as part of IPSA's assurance review, it scrutinised examples of materials produced by each of the pooled staffing services, including the European Research Group.

In light of this, I would like to request all materials produced by the European Research group that was scrutinised by IPSA as part of its assurance review.

I would like to receive this information in an electronic format. If you feel that a substantive response to this request is not possible within a reasonable time frame, I would be grateful if you could contact me and provide assistance as to how I can refine the request. If you need any clarification, please contact me. I look forward to receiving a response in 20 working days. Many thanks.

Yours faithfully,

Jenna Corderoy

---

FOI, Independent Parliamentary Standards Authority 23 January 2018

Dear Jenna,

Thank you for your email, reference CAS-103847.

We received a similar request in October 2017 for 'all examples of research done for the European Research Group held by IPSA'. In our response, [1]which can be viewed here, this information was withheld from disclosure under [2]section 43 of the Freedom of Information Act (FOIA).

This exemption relates to information which, if disclosed, would be likely to prejudice the commercial interests of any person.

Materials are produced by the ERG for paying subscribers, and the commercial viability of the organisation relies upon these paid subscriptions. Disclosure of this material would directly prejudice the commercial interests of the ERG (as the content can only otherwise be obtained via a paid subscription), and as such the information is exempt from disclosure under the terms of the FOIA.

However, you can view a copy of our assurance report on pooled staffing services, which includes our review of the ERG materials, which is available on our website at the following address:

[3]<http://www.theipsa.org.uk/publications/a...>

Kind regards,

Chris Veck

Policy & FOI Adviser

Independent Parliamentary Standards Authority (IPSA)

4th Floor

30 Millbank

London, SW1P 4DU

Tel: 020 7811 6400

Email: [4][IPSA request email]

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—Original Message—

From: Jenna Corderoy [mailto:[FOI #458769 email]]  
Sent: 21 January 2018 21:25  
To: FOI <[IPSA request email]>  
Subject: Freedom of Information request - FOI request - materials  
scrutinised by IPSA

Dear Independent Parliamentary Standards Authority,

This is a request for information under the Freedom of Information Act.

I understand that as part of IPSA's assurance review, it scrutinised examples of materials produced by each of the pooled staffing services, including the European Research Group.

In light of this, I would like to request all materials produced by the European Research group that was scrutinised by IPSA as part of its assurance review.

I would like to receive this information in an electronic format. If you feel that a substantive response to this request is not possible within a reasonable time frame, I would be grateful if you could contact me and provide assistance as to how I can refine the request. If you need any clarification, please contact me. I look forward to receiving a response in 20 working days. Many thanks.

Yours faithfully,

Jenna Corderoy

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[8][FOI #458769 email]

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contact us using this form;

[10][https://www.whatdotheyknow.com/change\\_re...](https://www.whatdotheyknow.com/change_re...)

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#### References

##### Visible links

1. <http://www.theipsa.org.uk/publications/l...>
2. <https://ico.org.uk/media/for-organisatio...>
3. <http://www.theipsa.org.uk/publications/a...>
4. mailto:[IPSA request email]
5. <http://www.theipsa.org.uk/>
6. <https://www.twitter.com/ipsauk>
7. <http://www.ipsaonline.org.uk/>
8. mailto:[FOI #458769 email]
9. mailto:[IPSA request email]
10. [https://www.whatdotheyknow.com/change\\_re...](https://www.whatdotheyknow.com/change_re...)
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[hide quoted sections](#)

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Jenna Corderoy 23 February 2018

Delivered

Dear Chris,

Many thanks for your email.

I was wondering whether you could possibly explain to me why Section 43(2) of the FOI Act has been applied in my case?

According to the ICO guidelines, Section 43(2) "exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any person (an individual, a company, the public authority itself or any other legal entity)."

I think it has been previously stated that the European Research Group is an unincorporated association. I believe unincorporated associations are not legal entities, and so does not fit in with the Section 43(2) categories?

Any help would be gratefully received.

Jenna

---

FOI, Independent Parliamentary Standards Authority 23 February 2018

Dear Jenna,

Thank you for your email.

As noted in our most recent assurance report, the ERG is governed by a Board of two current Conservative MPs, one who acts as Chair, and one who acts as Treasurer. The ERG itself comprises one member of staff, a Senior Researcher who is solely responsible for conducting and producing all subscriber material. The organisation charges an annual subscription fee of £2,000, which is used exclusively to pay the salary of the ERG's single member of staff. Disclosure of the material produced by this member of staff would undermine the need for customers to subscribe and would we therefore consider that this individual's commercial interests would thus be prejudiced.

I hope this clarifies. Please do let me know if I can be of any further assistance.

Kind regards,

Chris Veck

Policy & FOI Adviser

Independent Parliamentary Standards Authority (IPSA)

4th Floor

30 Millbank

London, SW1P 4DU

Tel: 020 7811 6400

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Year-end is 31 March. The year-end process is vital for ensuring that your costs are allocated to the correct financial year. You can access guidance

at: [4]www.IPSAOnline.org.uk

-----Original Message-----

From: Jenna Corderoy

[[5]mailto:[FOI #458769 email]]

Sent: 23 February 2018 10:04

To: FOI <[6][IPSA request email]>

Subject: RE: Freedom of Information request - FOI request - materials scrutinised by IPSA

Dear Chris,

Many thanks for your email.

I was wondering whether you could possibly explain to me why Section 43(2) of the FOI Act has been applied in my case?

According to the ICO guidelines, Section 43(2) "exempts information whose disclosure would, or would be likely to, prejudice the commercial interests of any person (an individual, a company, the public authority itself or any other legal entity)."

I think it has been previously stated that the European Research Group is an unincorporated association. I believe unincorporated associations are not legal entities, and so does not fit in with the Section 43(2) categories?

Any help would be gratefully received.

Jenna

-----Original Message-----

Dear Jenna,

Thank you for your email, reference CAS-103847.

We received a similar request in October 2017 for 'all examples of research done for the European Research Group held by IPSA'. In our response, [1]which can be viewed here, this information was withheld from disclosure under [2]section 43 of the Freedom of Information Act (FOIA).

This exemption relates to information which, if disclosed, would be likely to prejudice the commercial interests of any person.

Materials are produced by the ERG for paying subscribers, and the commercial viability of the organisation relies upon these paid subscriptions. Disclosure of this material would directly prejudice the commercial interests of the ERG (as the content can only otherwise be obtained via a paid subscription), and as such the information is exempt from disclosure under the terms of the FOIA.

However, you can view a copy of our assurance report on pooled staffing services, which includes our review of the ERG materials, which is available on our website at the following address:

[3][7]<http://www.theipsa.org.uk/publications/a...>

Kind regards,

**Chris Veck**

**Policy & FOI Adviser**

**Independent Parliamentary Standards Authority (IPSA)**

**4th Floor**

**30 Millbank**

**London, SW1P 4DU**

**Tel: 020 7811 6400**

**Email: [4]{IPSA request email}**

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Dear Sir or Madam,

I would like to request an internal review regarding a recent Freedom of Information (FOI) response I received from the Independent Parliamentary Standards Authority (IPSA). For ease, the reference given to the original FOI request was CAS-103847, and that the request was entitled "Materials scrutinised by IPSA".

The request:

Using the WhatDoTheyKnow site, I submitted a request to IPSA on 21st January 2018. In the introduction of the request, I explained how I understood that as part of IPSA's assurance review, it scrutinised examples of materials produced by each of the pooled staffing services, including the European Research Group (ERG). Following this, I requested all the materials produced by ERG that was scrutinised by IPSA.

The response:

Two days after my submission, I received a response from IPSA, informing me that there had been a similar request. I was also informed that the information was withheld from disclosure under Section 43 of the FOI Act, which relates to information which, if disclosed, would be likely to prejudice the commercial interests of any person. I have interpreted this as referring to Section 43(2).

In the response, it stated how *"Materials are produced by the ERG for paying subscribers, and the commercial viability of the organisation relies upon these paid subscriptions. Disclosure of this material would directly prejudice the commercial interests of the ERG (as the content can only otherwise be obtained via a paid subscription), and as such the information is exempt from disclosure under the terms of the FOIA."*

In this request for an internal review, I do not believe that IPSA has taken into full consideration the powerful public interest factors in favour of disclosure when it applied Section 43(2).

The application of Section 43(2):

According to the ICO guidelines, in order for the information to be exempt, *"the public authority must show that because it is commercially sensitive, disclosure would be, or would be likely to be, prejudicial to the commercial activities of a person (an individual, a company, the public authority itself or any other legal entity)."*

I understand, through further correspondence, the ERG is composed of a chair, treasurer and a researcher, who is solely responsible for producing subscriber material, and that subscription fees are used to pay the salary of the researcher. However, I do not believe that the disclosure of the requested materials would or would be likely to be prejudicial, to that individual.

IPSA states that *"Disclosure of this material would directly prejudice the commercial interests of the ERG (as the content can only otherwise be obtained via a paid subscription)."* Yet in my request, I am only asking for the ERG materials that were scrutinised by IPSA, which I'm assuming is only a very small percentage of all ERG materials ever produced. A disclosure of such sample is hardly going to be prejudicial to commercial interests. As the ICO guidelines state, *"If the consequences of disclosure would be trivial or insignificant there is no prejudice."*<sup>1</sup>

I also ask whether there is evidence that IPSA's response about prejudicing commercial interests does in fact represent the concerns of the third party in question, ERG. As the ICO guidelines state, *"It is not sufficient for the public authority to speculate on the prejudice which may be caused to the third party by the disclosure."*<sup>2</sup>

#### Consideration of the public interest test:

Since Section 43(2) is a qualified exemption, the public interest test must be conducted. In my case, I do not believe IPSA has sufficiently considered the powerful public interest factors in favour of disclosure. In fact, there is no mention of the public interest in its initial response.

As reported in the press, the ERG has been described as influential, placing pressure on the Prime Minister to deliver a hard Brexit. But questions have been raised over its openness, as well as the extent of its membership.

According to the ICO guidelines, IPSA must *"bear in mind the strong case for openness and transparency."*<sup>3</sup> As previously stated in an IPSA publication, the ERG provides research and briefing materials to Conservative MPs on issues relating to the UK's relationship with the European Union.<sup>4</sup> In light of Brexit, the UK's future relationship with the EU will have a huge impact on citizens. Citizens therefore need to know whether the ERG materials that MPs are relying upon are robust and well-researched. Factcheckers and media outlets outside Parliament must also have access to the materials to vigorously study the sources of data and claims. It cannot simply rely on assurances - they must view the original materials.

As well as the need to know whether ERG materials are robust, the media and citizens should be able to assess the quality of the materials. MPs are using taxpayers' money to fund ERG activities, and the public needs to know whether the materials are not a waste of money. There has to be accountability for the spending of public money.

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<sup>1</sup> [https://ico.org.uk/media/for-organisations/documents/1214/the\\_prejudice\\_test.pdf](https://ico.org.uk/media/for-organisations/documents/1214/the_prejudice_test.pdf)

<sup>2</sup>

<https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

<sup>3</sup>

<https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

<sup>4</sup> [http://www.theipsa.org.uk/media/184678/ico-led-services-assurance-report\\_final.pdf](http://www.theipsa.org.uk/media/184678/ico-led-services-assurance-report_final.pdf)

**Conclusion:**

In light of the above, I believe that Section 43(2) has been incorrectly applied, and that the public interest factors in favour of disclosure has not been properly acknowledged. Assuming that the assurance review is now over, I believe that there is no good reason as to why the materials scrutinised by IPSA are being kept from the public. I would therefore like to request an internal review.

Many thanks,

Jenna Corderoy





Independent Parliamentary  
Standards Authority  
4<sup>th</sup> Floor  
30 Millbank  
London  
SW1P 4DU

Jenna Corderoy  
Via email

T 020 7811 6400  
E [info@theipsa.org.uk](mailto:info@theipsa.org.uk)  
W [www.theipsa.org.uk](http://www.theipsa.org.uk)

Our ref: CAS-103847  
Your ref:

22 May 2018

Dear Ms Corderoy,

#### INTERNAL REVIEW OF FREEDOM OF INFORMATION REQUEST

Thank you for your email of 11 March 2018 in which you requested an Internal review of the response you received to a request made under the Freedom of Information Act 2000 (FOIA), reference CAS-103847.

Your original request was as follows.

*I understand that as part of IPSA's assurance review, it scrutinised examples of materials produced by each of the pooled staffing services, including the European Research Group.*

*In light of this, I would like to request all materials produced by the European Research group that was scrutinised by IPSA as part of its assurance review.*

In our original response to your request, we confirmed the information was held and withheld it from disclosure in full, under section 43 of the Freedom of Information Act (FOIA), where disclosure could prejudice the commercial interests of any person, company or organisation.

Following our response, you made a request for an Internal review. This review was undertaken by Alastair Bridges, IPSA's Director of Corporate Services, as a member of IPSA's staff not involved with the original response. In reviewing our handling of your request, he considered:

- the original request for information;
- the reply sent to you;
- your email requesting an Internal review;
- the information being requested; and
- the ICO's guidance on section 43 of the FOIA.

He commented as follows.

*I note that ERG's annual subscription fee is £2000, and in 2016/17 ERG received £52,000 of subscription income, paid by IPSA on behalf of subscribing MPs. Our 2016/17 assurance review of pooled services says that ERG has no other substantive sources of income. Since they don't produce published accounts we don't really have any way of knowing the scale of their other resources. However it seems to me that, on the basis that MPs are paying for access to ERG's briefings, if the briefings were to be made more widely available free of charge, the main motivation for MPs to subscribe to ERG would disappear, which could put at risk ERG's financial*

*viability (which I am taking to be the same thing for these purposes as the commercial interests in question under S43). Some subscribing MPs might choose to continue subscribing out of loyalty to ERG, but that is a matter of speculation. So as a general point I think the application of the S43 commercial interests exemption is justified.*

*However in relation to the material specifically requested, all of the samples forwarded date from 2016. My impression from a scan of some of the documents - not a full review - is that most consist of analysis and largely factual commentary on information which at the time was already in the public domain, which subscribing MPs can draw on in public discussions and debates on Britain's place in Europe. It seems to me that the sample materials have lost their immediate topicality and value simply by virtue of the passing of time (though probably still have other value, for example for background research). I don't think, based on the limited sample I scanned, that subscribing MPs would gain much present advantage over free-riders through having exclusive access to these older briefings. It may well follow that releasing them would be unlikely to have a material impact on ERG's financial viability. Different considerations would apply to more up-to-date briefings, where ERG's financial interests could be undermined if their paid-for briefings to subscribing MPs were immediately or shortly afterwards put in the public domain.*

*So although we are not guardians of ERG's financial interests, the S43 exemption seems to me to be something we can justifiably apply where it bears on the ERG's viability as an organisation. I would take this to mean in relation to briefings which MPs are happy to pay for because they get value from them, which probably means topical briefings: say, those produced over at least the past twelve months. But I am not proposing twelve months as a hard rule and that may be something which should be considered further.*

As such, he concluded that the section 43 exemption cannot be applied to the information that has been requested.

Concurrently to the review taking place, we received further requests for the same information. In responding to these requests, we considered the exemption at section 36 of the FOIA, where disclosure would or would not be likely to prejudice the effective conduct of public affairs. The exemption at section 36 can only be engaged if, in the reasonable opinion of a 'qualified person', disclosure would result in any of the effect set out in section 36(2) of the Act.

IPSA's qualified person, Sir Robert Owen, as designated by the Lord Chancellor under s.36(5)(o)(iii) of the FOIA, considered the application of the exemption. He concluded that the exemption was engaged, and the information was exempt from disclosure under these provisions of the Act. His full consideration can be viewed in full at Annex A.

#### **How to complain to the ICO**

If you remain dissatisfied with this response, you have the right to apply for a decision by the Information Commissioner's Office (ICO) under Section 50 of the FOIA. You may contact the ICO at the following address, whose details can be found on the ICO's website: <http://www.ico.gov.uk>.

Yours sincerely,

Chris Veck  
Policy & FOI Advisor

Freedom of Information Act – Request reference CAS-109721

1. On 23 March 2018 IPSA received a request under the Freedom of Information Act 2000 ("the Act") in the following terms :-

*"Please provide copies of the research materials supplied to IPSA by the European Research Group ((ERG) for the purposes of assurance reviews.  
In particular, please provide the documents referred to in paragraph 100 of IPSA's assurance annual review of November 2017 – specifically the material produced by the ERG since the general election 2017 that IPSA requested to conduct additional scrutiny in response to questions from the media and MPs"*

2. On 4 April 2018 my opinion was sought as IPSA's 'qualified person' under the Act as to whether the material requested is exempt from publication under section of the Act. I was asked specifically to consider whether it is my reasonable opinion that release of the material in question *"would, or would be likely otherwise to prejudice the effective conduct of public affairs, and therefore whether the exemption at section 36(2)(c) should apply."*

3. I have considered the material in question, namely 41 briefing notes on various aspects of the UK's relationship with the EU which were sent to subscribers (about 30 Conservative MPs) to the European Research Group (ERG), a registered pooled service.

4. Pooled services are organisations that provide research and other services to MPs of a single political party. They are widely used by MPs to provide detailed background briefings, template correspondence and other material that can be used in parliamentary debates. Paragraph 7.4 of *"The Scheme of MPs' Business Costs and Expenses 2017-2018"* provides that

*7.4 Staffing Expenditure may be use to meet the following costs:*

*...  
b. payments for pooled staffing services, which provide research briefing and drafting services to groups of MPs, and have an arrangement with IPSA in place."*

5. The material the subject of the request was obtained from the ERG in response to requests from IPSA in the course of assurance reviews, one conducted in 2016 with regard to pooled services in general, and the second in November 2017 specifically in relation to ERG. In each case IPSA requested copies of material produced by ERG for its subscribers so that it could be assured that such material fell within paragraph 7.4.b of the Scheme, and did not amount to work carried out "*for or at the behest of a political party*" (see paragraph 3.5.b of the Scheme) and therefore ineligible for funding from IPSA. In each case ERG provided the material on the assurance that it would remain confidential. In relation to the 2016 review similar assurances were given to other pooled service providers.
6. The analysis of the arguments for and against the engagement of the section 36 exemption set out in the decision proforma attached as an appendix, is comprehensive in that it identifies all the relevant considerations. I have taken all into account in my consideration of where the balance is to be struck between the competing arguments.
7. I recognize the importance of maintaining a high degree of transparency and accountability as to the manner in which IPSA discharges its statutory duties. I also recognize that some of the documents the subject of the request are months and in some cases years old, mitigating any commercial disadvantage that ERG might suffer from the disclosure of their material. But I have come to the conclusion that the arguments in favour of the engagement of section 36 are compelling.
8. First the material in question was provided to IPSA on the assurance that it would remain confidential. Its disclosure would constitute a breach of the assurance given to ERG, and could significantly damage our working relationship with the group. Hitherto IPSA's relationship with the ERG, based in part upon that assurance, has enabled us effectively to discharge IPSA's principal function, the proper administration and regulation of MP's business costs and expenses.
9. I am satisfied that were IPSA to disclose the material, it is very likely that the ERG would not cooperate with IPSA as fully in the future. IPSA has no legal power to

compel such organisations to provide information. If in the future IPSA were to be unable to provide the assurance that such materials would be treated as confidential, its ability effectively to regulate expenditure would be impaired, a consequence that would be against the public interest.

10. Secondly it is also likely that a decision to disclose the material, in breach of the undertaking given as to confidentiality, would have a wider effect in that it could inhibit other parties from whom IPSA requests information for assurance purposes from producing such information, in particular other pooled services. Such a consequence, which would adversely affect IPSA's ability effectively to regulate expenditure, would be against the public interest.

11. I am therefore satisfied that the section 36(2) exemption is engaged.

12. As to the public interest in disclosure, I recognize the importance of the current debate in Parliament as to Brexit; and that MP's subscribing to the pooled service provided by ERG do so in order to obtain material to be deployed in the course of the debate with the intention of influencing the government's policy as to Brexit. But I am satisfied that the public interest in the proper use of public funds in this regard is met by the publication of claims by MPs for their subscription to ERG's pooled services, and by the publication of IPSA's 2016 assurance report into pooled services and the 2017 annual review of assurance, which provide a comprehensive summary of the work undertaken by ERG. Such publication satisfies the public interest in transparency as to the manner in which IPSA regulates MP's expenditure, and specifically in this context in the nature of the services provided to subscribing MPs by ERG.

13. Thus in my opinion the public interest in maintaining the exemption outweighs the public interest in disclosing the material.

Sir Robert Owen

18 May 2018



**From:** casework@ico.org.uk  
**Sent:** 10 October 2018 10:53  
**To:** FOI  
**Subject:** correspondence from the ICO concerning a complaint[Ref. FS50756874]

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

**Categories:** ICO Complaint

10 October 2018

**Reference Number FS50756874**  
**Your reference CAS-103847**

Dear Sir/Madam

**Freedom of Information Act 2000 (FOIA)**  
**Complainant: Ms Jenna Corderoy**

We wrote to you previously to let you know that we have accepted this case for investigation. I have now been asked to investigate it.

You should now reconsider the way the Independent Parliamentary Standards Authority (IPSA) has handled this request and respond as detailed below.

### **ICO's approach**

On receipt of a complaint under the FOIA, we will give a public authority one opportunity to justify its position before issuing a decision notice. Please consider the [Guide to freedom of information](#) for organisations on our website for more information about how we handle complaints.

### **The request**

On 21 January 2018 the complainant made the following request for information under the FOIA :

"I understand that as part of IPSA's assurance review, it scrutinised examples of materials produced by each of the pooled staffing services, including the European Research Group.

In light of this, I would like to request all materials produced by the European Research group that was scrutinised by IPSA as part of its assurance review."

You responded on 23 January 2018 and refused to provide the requested information citing the following FOIA exemption -

Section 43(2)

The complainant asked for an internal review on 11 March 2018 and this was provided on 22 May 2018. The internal review response revised IPSA's position and cited **section 36(2)(c)** – prejudice to the effective conduct of public affairs.

### **What you need to do now**

Where possible we prefer complaints to be resolved by informal means, and we ask both parties to be open to compromise. It is also your responsibility to satisfy us that you have complied with the law. Our website has guidance which you should refer to in order to check whether your original response to the information request was appropriate.

This is your opportunity to finalise your position. With this in mind, you should revisit the request. After looking at our guidance, and in light of the passage of time, you may decide to reverse or amend your position. If you do, please notify the complainant and me within the timeframe specified at the end of this letter. This may enable us to close this case informally without the need for a decision notice.

In any event, we need the following information from you to reach a decision.

- A copy of the withheld information clearly marked with the FOIA exemption applied.
- Detailed explanations for the application of section 36 to the requested information. In particular please answer the following questions in relation to the specific exemption.

### **Section 36 – prejudice to effective conduct of public affairs**

Section 36 is a prejudiced based exemption which works in a slightly different way to the other prejudiced based exemptions contained within the Act. Section 36 can only be engaged if, in the reasonable opinion of the qualified person, disclosure would result in any of the effects set out in section 36(2) of the Act.

In order for the ICO to determine whether section 36 was correctly applied please provide a copy of the submissions given to the qualified person in order for them to reach their opinion and a copy of the opinion which was subsequently provided. The ICO has the review response but not the appendix that was attached. Please can you provide the appendix.

Furthermore, if in providing the documentation, the following is not clear, please provide a response to the following questions:

- When was this opinion sought and when was it given?
- What information did the qualified person have access to when giving this opinion?
- For example, did the qualified person have access to the information itself or just a summary of the information that had been withheld?
- Was the qualified person provided with any submissions supporting a recommendation that the exemption was engaged?
- Similarly, was the qualified person in fact provided with any contrary arguments supporting the position that the exemption was not engaged?

Please clarify which limb(s) of section 36(2) the qualified person considered to be engaged; please note the limbs are not mutually exclusive, but the qualified person does need to specify which limb or limbs they consider to be engaged.

If IPSA is relying on section 36(2)(c) – i.e. ‘otherwise prejudice the effective conduct of public affairs’ – please clarify what the nature of this prejudice is.

In order to determine whether the public interest tests have been applied appropriately, the ICO will require answers to the following questions:

What public interest arguments in favour of disclosing the information were taken into account?

What public interest arguments in favour of maintaining the exemption were taken into account?

Please explain why you consider that, on balance, the public interest in maintaining the exemption outweighs that in disclosing the withheld information. Please include details of any particular weighting exercise that has been carried out.

Please ensure that your submissions focus on the content of the information that has actually been withheld rather than simply being generic public interest arguments.

We strongly recommend that your response is guided by recent decision notices, our guidance and our lines to take, which demonstrate our approach to the procedural sections of the FOIA. These can be found on our website via the following links:

- [decision notices](#)
- [for organisations](#)

Having revisited the request, you may decide to apply a new exemption. We will consider new exemptions but it is your responsibility to tell the complainant why the new exemption applies and to provide us now with your full submissions.

For the avoidance of doubt, you should now do the following.

- Consider whether to change your response to the information request, and let us know the outcome.
- Send us the withheld information.
- Send us your full and final arguments as to why you think the exemptions apply.
- Answer all of the questions in this letter.

Please provide your response within 20 working days of the date of this letter, that is by **7 November 2018**, ensuring that you fully set out your final position in relation to this request. If you have any concerns please contact me at [casework@ico.org.uk](mailto:casework@ico.org.uk) quoting the above reference in this format [Ref. FS50...] or call me on the number below.

Yours sincerely

  
Senior Case Officer, FOI Complaints & Appeals  
Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF  
T. 0330 414 6770 F. 01625 524510 [ico.org.uk](http://ico.org.uk) [twitter.com/Iconews](https://twitter.com/Iconews)  
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For information requests please use [accessicoinformation@ico.org.uk](mailto:accessicoinformation@ico.org.uk)

For information about what we do with personal data see our [privacy notice](#)

*We are often asked for copies of the correspondence we exchange with third parties. We are subject to all of the laws we deal with, including the Data Protection Act 2018 and the Freedom of Information Act 2000. You can read about these on our website ([www.ico.org.uk](http://www.ico.org.uk)). Please say whether you consider any of the information you send us is confidential. You should also say why. We will only withhold information where there is good reason to do so.*

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Independent Parliamentary  
Standards Authority  
4<sup>th</sup> Floor  
30 Millbank  
London  
SW1P 4DU

Senior Case Office, ICO  
Via email

T 020 7811 6400  
E [Info@theipsa.org.uk](mailto:Info@theipsa.org.uk)  
W [www.theipsa.org.uk](http://www.theipsa.org.uk)

Our ref: CAS-103847  
Your ref: FS50756874

7 November 2018

Dear [REDACTED]

Case Reference: FS50756874

I write further to your email of 10 October 2018 regarding the complaint made by Ms Jenna Corderoy. I have set out below our response.

I can confirm that the Independent Parliamentary Standards Authority's (IPSA's) view remains that the information sought by Ms Corderoy is exempt from disclosure by virtue of section 36 of the Freedom of Information Act (FOIA).

I have set out, in some detail, some background information, including the information requested in your email of 10 October 2018. This is intended to assist the Information Commissioner's understanding of the context of the request and the application of the FOIA exemption. I then take your queries in turn.

This letter also makes reference to ICO complaint reference, FS50742951, the decision notice for which was published on 6 November 2018. This complaint related to exactly the same information as has been requested by Ms Corderoy, and our handling of the two requests overlaps.

#### Background to the request

IPSA was established in May 2010 and is responsible for regulating MPs' business costs and expenses and providing financial support to MPs in carrying out their parliamentary functions under the *Scheme of MPs' Business Costs and Expenses* ('the Scheme').

Under the Scheme, MPs can claim for the costs of payments to pooled staffing services, which provide research briefing and drafting services to groups of MPs. There are currently five such services which are registered with IPSA:

- the Parliamentary Research Service (for Labour MPs);
- the Policy Research Unit (for Conservative MPs);
- the Scottish National Party Research Team (for SNP MPs);
- the Parliamentary Support Team (for Liberal Democrat MPs) and
- the European Research Group (ERG), which provides briefings to Conservative MPs on issues relating to the UK's relationship with the European Union.

To assure both ourselves and the public that public funds claimed are in accordance with the Scheme (in particular, that costs are being claimed for parliamentary and not party-political purposes, we conduct regular assurance reviews on different areas of spending, including that related to pooled staffing services. We last conducted such a review in 2016, the report of which is available on our website, during which we examined all expenditure claimed by MPs relating to such services, reviewed the governance and operations of each service and scrutinised examples of output material.

In addition in September 2017, we conducted a further review of material produced by the ERG since the 2017 General Election. Whilst a small degree of party-political language was identified (which has been highlighted to the ERG), the vast majority of the material was factual, informative and not in conflict with the Scheme.

#### The request

As you note, on 21 January 2018 the complainant requested information of the following description:

*"I understand that as part of IPSA's assurance review, it scrutinised examples of materials produced by each of the pooled staffing services, including the European Research Group.*

*In light of this, I would like to request all materials produced by the European Research group that was scrutinised by IPSA as part of its assurance review"*

On 23 January 2018 we responded, withholding the information citing section 43 – prejudice to commercial interests, as the basis for doing so.

The complainant requested an internal review on 11 March 2018. We sent her the outcome of the internal review on 22 May 2018. We revised our position and withdrew our reliance on section 43, continuing to withhold the information under section 36(2) – prejudice to the conduct of public affairs.

The remainder of this response addresses our decision to apply the exemption at section 36 to Ms Corderoy's request.

IPSA's Qualified Person, as designated by the Secretary of State for Justice, is Sir Robert Owen QC, a member of IPSA's board and a former High Court Judge. Sir Robert is based outside of London and does not work regularly in IPSA's offices. He has separate work commitments and undertakes his role as Qualified Person in his spare time.

Turning to your requests for information, relating to the qualified person's reasonable opinion, detailed in your email of 10 October 2018:

- 1) *When was this opinion sought and when was it given?*
- 2) *What information did the qualified person have access to when giving this opinion? For example, did the qualified person have access to the information itself or just a summary of the information that had been withheld?*
- 3) *Was the qualified person provided with any submissions supporting a recommendation that the exemption was engaged?*
- 4) *Similarly, was the qualified person in fact provided with any contrary arguments supporting the position that the exemption was not engaged?*

During the period between December 2017 and May 2018, we received a number of identical and/or overlapping requests for information relating to the ERG, and specifically, the materials they produced. We sought to ensure a coherent and consistent response was provided to all requestors, and so our handling of separate requests occasionally overlapped.

Following Ms Corderoy's request for an internal review, our Director of Corporate Services, Alastair Bridges, was tasked with undertaking that review. He provided an internal response on 16 March 2018, concluding that we could not rely upon the section 43 exemption. At the point, we decided to seek the reasonable opinion of the qualified person on the section 36 exemption and began preparing the documentation.

At the time the Qualified Person's opinion was sought, we were in receipt of an identical request for the same information. Thus, we incorporated this second response into our submission to the Qualified Person, to ensure a consistent response would be provided to both requestors, and the Qualified Person was provided with a submission via email on 10 April 2018. This consisted of:

- a covering letter, which did not make a recommendation either way but requested Sir Robert's reasonable opinion;
- a pro forma containing arguments in favour and against the engagement of the exemption – including arguments provided by the requestor; and
- all of the material requested.

The Qualified Person subsequently provided a response on 21 May 2018.

However, we now understand, as a result of ICO complaint reference FS50742951, that this approach is not valid, and every single request needs to be considered individually by the Qualified Person, even if multiple requests made in a small space of time relate to the same information. As such, we returned to Sir Robert on 19 October 2018 to obtain a revised opinion, which individually addressed each request. He was again provided with all the information listed above. He responded on 24 October 2018 with a revised opinion, detailing each of the individual requests and confirming he still considered the information exempt under section 36(2)(c). Copies of all these documents are attached to this letter.

- Annex A – Covering letter
- Annex B – Request pro forma
- Annex C – the information requested, which is provided to the ICO in confidence.
- Annex D – Qualified Person's revised opinion

#### Reviewing our handling

The arguments considered by Sir Robert in relation to section 36(2)(c) are covered within Annex B. The qualified person also undertook the public interest test, so Annex B also includes the public interest arguments considered in favour of disclosing and maintaining the exemption. His recorded opinion, at Annex D details why, on balance, he considered the public interest lay in maintaining the exemption.

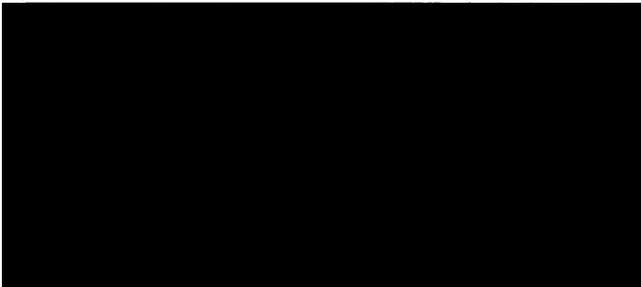
In summary:

- Our statutory function requires us to regulate MPs' business costs and expenses.

- In order that we can regulate effectively, we require the cooperation of third parties (such as the ERG) in voluntarily providing to us materials that they produce. We have no legal powers to compel them to do this.
- The ERG provided us with the documents that we requested on the explicit assurance that they would remain confidential.
- Disclosure would constitute a breach of that assurance and would damage our working relationship with the group, which would in turn be likely to damage our relationship with subscribing MPs. Our positive relationship thus far has allowed us to effectively and efficiently conduct our public function: the proper administration and regulation of MPs' business costs and expenses.
- Were we to disclose these materials, it is very likely that the ERG – and quite possibly other pooled staffing services - would not consent to cooperating as openly with us in the future, which would significantly prejudice our ability to regulate effectively.

I hope this provides a clear outline as to our handling of the request and the rationale for our decision. Should you require any further information, please do not hesitate to get in touch.

Yours sincerely,



Enc.

[REDACTED]

---

**From:** casework@ico.org.uk  
**Sent:** 29 November 2018 10:03  
**To:** FOI  
**Subject:** Service of decision notice[Ref. FS50756874]  
**Attachments:** FS50756874 signed PDF DN.pdf

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

29 November 2018

FAO Mr Marcial Boo  
[REDACTED]

**Case Reference Number FS50756874**  
**Your reference CAS-103847**

[FOI@theipsa.org.uk](mailto:FOI@theipsa.org.uk)  
Mr Marcial Boo  
Chief Executive  
IPSA

Dear Mr Boo

**Freedom of Information Act 2000**  
**Ms Jenna Corderoy**

Please find enclosed a decision notice relating to a complaint from the above individual.

The complaint has been considered by the Commissioner and the decision notice sets out the reasons for the decision. If you disagree with the decision notice you have the right to appeal to the First-tier Tribunal (Information Rights).

The Commissioner will publish this decision on the ICO website, but will remove all names and addresses of complainants. If you choose to also reproduce this decision notice, then the Commissioner expects similar steps to be taken.

Yours sincerely

[REDACTED]  
Senior Case Officer

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## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 29 November 2018

**Public Authority:** Independent Parliamentary Standards Authority  
**Address:** 4th Floor  
30 Millbank  
London  
SW1P 4DU

**Complainant:** Ms Jenna Corderoy  
**Address:** [REDACTED]

### Decision (including any steps ordered)

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1. The complainant has requested the materials provided to the Independent Parliamentary Standards Authority (IPSA) by the European Research Group (ERG) in relation to the 2015-2016 Assurance Review of Pooled Services (updated in June 2017) undertaken by IPSA.
2. IPSA originally withheld the information under section 43(2) – prejudice to commercial interests. However during the internal review of its handling of the request, IPSA withdrew its reliance on section 43(2) and instead withheld the information under section 36(2)(c) – prejudice to the conduct of public affairs.
3. The Commissioner's decision is that IPSA is entitled to rely on section 36(2)(c) to withhold the information.
4. The Commissioner does not require the public authority to take any steps in respect of this matter.

### Request and response

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5. On 21 January 2018, the complainant wrote to IPSA and requested information in the following terms:  
  
"I understand that as part of IPSA's assurance review, it scrutinised examples of materials produced by each of the pooled staffing services,

Including the European Research Group.

In light of this, I would like to request all materials produced by the European Research group that was scrutinised by IPSA as part of its assurance review."

6. IPSA responded on 23 January 2018. It cited a previous request that had asked for the same information as the complainant where IPSA had withheld the requested information under section 43(2) – prejudice to commercial interests.
7. Having asked IPSA for an explanation of how this section applied to the requested information, the complainant requested an internal review on 22 March 2018. Following the internal review on 22 May 2018 IPSA revised its position and withdrew its reliance on section 43(2). However IPSA continued to withhold the information, now citing section 36(2) – prejudice to the conduct of public affairs.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 17 June 2018 to complain about the way her request for information had been handled.
9. The Commissioner considers the matter to be decided is whether IPSA is entitled to withhold the requested information under section 36(2)(c) on the basis that its disclosure would or would be likely to prejudice the conduct of public affairs.

### **Background**

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10. IPSA was established in 2010. Under the Scheme of MPs' Business Costs and Expenses (the Scheme) it is responsible for regulating MPs' business costs and expenses and for providing financial support to MPs in carrying out their parliamentary functions. Under the Scheme money is available to support Parliamentary work, but not for party political purposes.
11. Where a group of MPs share a particular interest and require research and briefing papers on that topic, they are able to pool their resources and collectively pay for that service. Under the Scheme MPs can claim for the costs of subscribing to such services. There are currently five such services, one of which is the European Research Group (ERG), which provides briefings to Conservative MPs on issues relating to the UK's relationship with the European Union.

12. IPSA carries out regular assurance reviews of different areas of spending to assure itself, and the public, that the claims made under the Scheme are in accordance with its conditions, including that it is spent on parliamentary work, not for party political purposes. The request relates to an assurance review of all five pooled services that was conducted in 2016 and the further review that was conducted in 2017, following which the earlier report was updated. As part of the assurance review IPSA was supplied with samples of the briefing materials produced by the pooled services, including ERG.
13. The updated report was published on IPSA's website. In respect of ERG the report concluded that the cost of the services it provided were eligible costs under the Scheme, that the service did not constitute party political work and that the costs of the service did not constitute campaign expenditure.

### Reasons for decision

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14. The complainant sent a detailed argument questioning the reasonableness of the qualified person's opinion as follows –
  - That she did not see how the release would jeopardise IPSA's relationship with the ERG and that it was not clear if the ERG had been asked whether it would cooperate with IPSA in the future should this information be released.
  - The complainant questioned the issue of confidentiality between IPSA and the ERG and on what it was based.
  - She also questioned whether the inhibition to the other pooled services was speculative and whether they had been asked.
  - The complainant argued that the idea that releasing this information would upset the other organisation went against the principles of the FOIA.
15. The complainant also asked the Commissioner to look at the public interest reasons that IPSA had provided. She stated that the funding and activities of the ERG had been questioned by Labour MPs. She further argued that Brexit was of such importance that the public had a right to know and access the information that MPs were relying on to influence government policy. She argued that tax payers' money was being used by MPs to fund the ERG and for that reason it should be accountable.
16. The Commissioner is aware that only one month separated this request to IPSA from another request (FS50742951) for the same information which had also been the subject of a complaint to the Commissioner. Although the Commissioner has considered this complaint on its own merits, the circumstances at the time of the request were substantially

the same. Consequently she is relying on the reasons for the decision made in FS50742951.

17. The qualified person's opinion was sought on both this request and the request in FS50742951. IPSA has relied on the same arguments and reasoning for its refusal to provide the requested information in this case as in FS50742951. The Commissioner is satisfied that the similarity between the arguments submitted in this complaint and the request in FS50742951 are such that she is able to reach the same decision. For this reason the Commissioner has adopted the analysis set out in paragraphs 13-40 of that decision notice. Accordingly she does not intend to replicate the reasons for her decision here. IPSA is therefore entitled to rely on section 36(2)(c) of the FOIA.

## Right of appeal

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18. 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

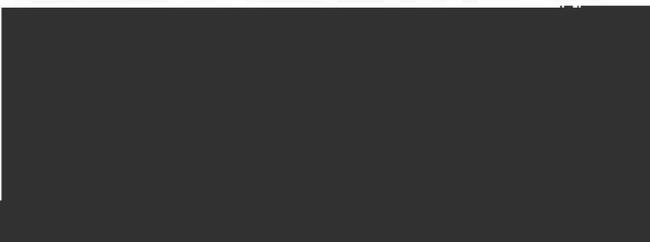
Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

19. 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.
20. 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

  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**

