

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 the some of the document 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