

## FOI

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**From:** FOI  
**Sent:** 13 September 2018 17:48  
**To:**   
**Subject:** FW: FOI Request - Material relating to European Research Group [CAS-121264]  
Tracking ID:0020000975

Dear

I write with a response to the remaining part of your FOI request, for: '*Copies of any and all research reports produced by the ERG that are held by IPSA*'.

As noted in our first response of 4 August, the ERG provided us with some examples of the materials they produce for their subscribers as part of our 2016 assurance review, the report of which can be found on our website.

In processing your request for information, we have considered the application of the exemption at s.36(c) of the FOI Act, where disclosure of the information you requested would, or would 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 QC, as designated by the Lord Chancellor under s.36(5)(o)(iii) of the FOIA.

Sir Robert recently made this consideration in relation to an identical request, which can be found on our website here. In considering your request, we again provided Sir Robert with the materials requested and arguments for and against disclosure, and asked whether he wished to alter his previous determination. Sir Robert has concluded that he considers the exemption is still engaged. He commented as follows.

*By email dated 6 August 2018 David Pegg, acting for and on behalf of Guardian News and Media, made a further request for disclosure of material relating to the European Research Group under the Freedom of Information Act 2000 (the Act). The request was essentially a repeat of the request made on behalf of BuzzFeed News dated 23 March, request reference CAS-109721. On 18 May 2018 I gave the opinion that the exemption under section 36(2)(c) of the Act was engaged and that the public interest in maintaining the exemption outweighed the public interest in disclosure of the material.*

*On further consideration, and there being neither any further matters to be taken into account nor any material change in the matters taken into account in my opinion dated 18 May, save for a lapse of time of approximately 4 months, I hold to that opinion in respect of the material the subject of the further request.*

We have also considered whether the public interest in disclosure outweighs the application of the exemption. In particular, we noted the significance of Brexit as an issue of concern to the general public and considered whether disclosure of the information requested would further debate and accountability on the issue, as well as current public references to the 'European Research Group' in relation to the ongoing Brexit negotiations. We also considered the information that we already publish on MPs' spending with the European Research Group, including: the publication of all claims made (including the names of all subscribing MPs) and the publication of our assurance report on their work, which contains analysis of the materials they produce and comprehensive details relating to their governance arrangements, and whether this fulfils the public interest in terms of assuring the taxpayer that funds are being spent appropriately. Given Sir Robert's conclusion that prejudice would occur (as opposed to it being likely), a higher bar must be met for the public interest to outweigh the exemption and while we recognise there are public interest arguments in favour of disclosure, we do not consider that this higher bar is met.

### **How to request an internal review of this response**

If you are dissatisfied with this response, you may request an internal review. The internal review will be carried out by someone who was not involved in the original decision, and who will assess the handling of the original request.

Our internal review procedure can be found on our website: <http://www.theipsa.org.uk/publications/freedom-of-information>.

If you wish to request an internal review, please write to IPSA within two months of the date of this email.

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office (ICO) under Section 50 of the FOIA. More details can be found on the [ICO's website](#).

Kind regards,

Policy & FOI Adviser

**Independent Parliamentary Standards Authority (IPSA)**

4th Floor  
30 Millbank  
London, SW1P 4DU

Tel: 020 7811 6400

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[www.theipsa.org.uk](http://www.theipsa.org.uk)

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**From:** FOI

**Sent:** 12 September 2018 16:09

**To:**

**Subject:** RE: FOI Request - Material relating to European Research Group [CAS-121264]

Dear

I hope you are well.

Please find attached a copy of the letter to the Government Chief Whip, as per your email last week. I should note, the bottom of the letter refers to an enclosed report – that's just the assurance report which is [on our website here](#).

I'm afraid I do not yet have a response to the rest of your request, but I thought I may as well get this over to you in the meantime. Sorry again for the delay. I still hope to be able to get back to you in full by the end of next week.

Please let me know if I can be of any assistance in the meantime.

Kind regards,

Policy & FOI Adviser

**Independent Parliamentary Standards Authority (IPSA)**

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Email: [FOI@theipsa.org.uk](mailto:FOI@theipsa.org.uk)  
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IPSA is keen to know what further support you might like to help you make the most of the new system. Answer some quick questions on their training survey [here](#).

**From:** [redacted]  
**Sent:** 05 September 2018 11:18  
**To:** FOI <[FOI@theipsa.org.uk](mailto:FOI@theipsa.org.uk)>  
**Subject:** Re: FOI Request - Material relating to European Research Group [CAS-121264]

Hello again [redacted]

Thank you again for your help. With regards to the letter to the Government Chief Whip referred to in one of the emails you have disclosed, please may we request a copy of that letter with the S40 material redacted? This will allow us to understand what the correspondence concerns without any data protection principles being infringed.

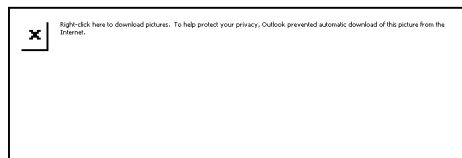
Many thanks,

[redacted]

[redacted]  
Reporter  
Guardian News & Media

[redacted]

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Kings Place, 90 York Way,  
London N1 9GU  
[theguardian.com](http://theguardian.com)

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On 4 September 2018 at 17:17, [redacted] wrote:

Dear [redacted] thank you very kindly for this thorough response. We look forward to receiving your further response to part 3 of our request.

Thank you once again,

[Redacted]

[Redacted]

Reporter  
Guardian News & Media

[Redacted]

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On 4 September 2018 at 17:07, FOI <[FOI@theipsa.org.uk](mailto:FOI@theipsa.org.uk)> wrote:

Dear [Redacted]

Thank you for your email of 6 August 2018 in which you requested information relating to the European Research Group (ERG). Your request has been handled under the Freedom of Information Act 2000 (FOIA).

Please find attached a response to your request.

### **How to request an internal review of this response**

If you are dissatisfied with this response, you may request an internal review. You can find a copy of our internal review procedure on our website [via this link](#). If you wish to request an internal review, please write to IPSA within two months of the date of this response at [foi@theipsa.org.uk](mailto:foi@theipsa.org.uk), or via our postal address (below).

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office (ICO) under Section 50 of the FOIA. For further information, you may wish to visit the [ICO's website](#).

Kind regards,

[Redacted]

Policy & FOI Adviser

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**From:** [Redacted]  
**Sent:** 06 August 2018 18:00  
**To:** FOI <[FOI@theipsa.org.uk](mailto:FOI@theipsa.org.uk)>  
**Subject:** FOI Request - Material relating to European Research Group

Dear Sir/Madam,

I am writing to request information under the Freedom of Information Act 2000. In order to assist you with this request, I am outlining my query as specifically as possible.

I would like to be provided with:

1) Copies of any and all correspondence between IPSA and the European Research Group or its representatives from 1 January 2017 to the present.

2) Copies of any and all documents obtained by IPSA for its 2016-17 Assurance Review relating to the ERG's formal governance structure and internal controls, as referenced in paragraph 90 of IPSA's Annual Review of Assurance 2016-17.

3) Copies of any and all research reports produced by the ERG that are held by IPSA.

#### Additional Notes on Exemptions

a) Where you consider that any relevant material engages an exemption under the Act, please redact that material alone, specifying the exemption, and provide the remaining material. For instance, where a correspondent is identified by name and you consider that disclosure of that name would breach S40(2), please redact the name alone and release the rest of the letter or email.

b) IPSA has previously argued that ERG research reports are exempt under S43 (Commercial Confidentiality), however we believe this exemption has been incorrectly applied.

c) Releasing the material would not have any impact upon the commercial interests of the ERG: it seems most unlikely that MPs who wish to subscribe to the group, or contribute to it financially in the future, would refrain from doing so on the basis of old research work being disclosed. If IPSA continues to believe that disclosure would or would be likely to harm the commercial interests of the ERG, please explain in appropriate detail how such harm would result.

d) Even if disclosure would or would be likely to harm the commercial interests of the ERG, there is a greater public interest in disclosing the material than there is in withholding it. The material has been created at taxpayers' expense. Further, it is playing a prominent role in public life by influencing public debate around leaving the European Union. It is fair that the public should have access to these same research papers so as to assess for themselves the evidence underpinning matters of public discussion.

e) IPSA has also previously argued that material submitted to IPSA for assurance reviews is exempt under S36(2)(c) ("otherwise prejudice the effective conduct of public affairs"). While we recognise that Sir Robert Owen QC formed a reasonable opinion pursuant to the previous request, we believe the public interest favours disclosure.

f) Sir Robert argues that disclosure would a) breach an understanding of confidentiality with the ERG, and b) discourage future cooperation by the ERG and other pooled staffing services. Public authorities cannot agree or contract with third parties that certain material should be exempt from FOI, and any such understandings have no weight. Any understanding of confidentiality on the part of the ERG was therefore misplaced. On the second point, we believe it is more likely than not that disclosure would have no substantive impact on IPSA's ability to discharge its principal function. The ERG and other pooled staffing services will continue to be required to cooperate with IPSA in order to administer expenses claims, and it is not clear how the disclosure of old reports would impinge upon this.

h) As detailed in d) above, there is a very strong public interest in disclosure that outweighs the unlikely prospect of prejudice to the effective conduct of public affairs.

i) By way of a procedural note: under the Act, the public interest test is made by the authority and weighed *against* the reasonable opinion that disclosure would cause harm. The public interest test is not carried out *as part of* the reasonable opinion: it must be carried out by IPSA, and not Sir Robert.

If you have any queries relating to this request, or if I can clarify or narrow any aspect of it to facilitate its success, please contact me on  or

If my request is denied in whole or in part, I ask that you justify all deletions by reference to specific exemptions of the Act. I will also expect you to release all non-exempt material.

I would be grateful if you could confirm in writing that you have received this request. I look forward to your response.

Yours sincerely,

Reporter

Guardian News & Media

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