

The Information Commissioner's response to the Independent Parliamentary Standards Authority (IPSA) consultation paper on their publication proposals

Introduction:

The Information Commissioner has responsibility for promoting and enforcing the Data Protection Act 1998 and the Freedom of Information Act 2000. He is independent from government and promotes access to official information and the protection of personal information. The Commissioner does this by providing guidance to individuals and organisations, solving problems where he can, and taking appropriate action where the law is broken.

The Information Commissioner welcomes the opportunity to comment on the proposals in the IPSA consultation paper, "Consultation on IPSA's Publication Proposals".

Background:

The Information Commissioner's Office (ICO) has an interest in the contents of this consultation, as it engages proactive publication of information about individuals who are employed or paid for services by Members of Parliament, and the Members of Parliament themselves. IPSA, as a public authority, are required to adopt a publication scheme under section 19 of the Freedom of Information Act 2000. However, IPSA also have an obligation to ensure that any disclosure of information, relating to individuals, is in accordance with the data protection principles. As is set-out in section 2 of the consultation, the ICO's has made several decisions on Freedom of Information (FOI) requests for details of MPs' expenses and has advised on the requirement for the Independent Parliamentary Standards Authority (IPSA) to process and publish MPs' expense claims.

As noted in sections 2.4 and 5.4, the ICO has been consulted in the drafting of the consultation document and has offered advice and guidance on a number of issues relating to the requirements of the Freedom of Information Act 2000 and the Data Protection Act 1998.

Section 3 - Principles:

We note that IPSA have identified the importance of balancing the need for transparency and openness with the need to protect personal data. We would agree that this is the key issue: striking the correct balance between these competing demands. We believe that the measures laid out in the consultation document strike an acceptable balance between meeting the public interest in transparency and openness and giving due consideration to the concerns of MPs over issues surrounding personal data, security and commercial interests. We will outline the reasoning behind our opinion in greater detail.

Sections 4.2 & 4.3 - Staff Salaries:

We believe that the proposal of publish salaries for all staff, in ranges of £5000, achieves an acceptable balance between the need for transparency and the need to protect the personal data of MPs' staff.

In February 2009 the ICO produced a guidance note entitled 'When should salaries be disclosed?' The note can be found at the following link:

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/practical_application/salaries_v1.pdf

The guidance note sets out the key considerations that will be engaged when considering whether or not the routine publication of salary details is appropriate.

The key areas to consider are the public interest, the expectations of employees and whether or not the publication would represent an unfair intrusion which is likely to cause unwarranted damage or distress.

Given that there is an overwhelming public interest in the issue of MPs expenses we believe it is likely that the majority of MPs' employees would have some degree of expectation that their salary details, at some level, would be likely to be released in the event of an FOI request being received. With this in mind we take the view that the need for salary details to be disclosed, within the appropriate banding, would be likely to be within their expectations. In the fullness of time, we consider that it will be generally accepted that the routine publication of salary details is part and parcel of being employed by an MP, just as it is in many other areas of the public sector.

We would recommend that MPs are advised to inform their employees about how they will be affected by these changes and to ensure that future employees are made fully aware that their salary details will be published.

The proposal to publish precise salaries for connected parties is a more difficult issue. On the one hand, our previous guidance has been that the publication of precise salary details should only occur in exceptional circumstances and should normally be reserved for senior members of staff. We do recognise that publication of precise salaries does have implications for the personal privacy of those individuals who are named as part of publication.

However, it is an important public interest that the public have confidence in the payments given to connected parties by MPs. Given the previous cases that the House Of Commons authorities have considered, in relation to the employment of connected parties, the Commissioner is of the view that publication of the exact payments made to connected parties by MPs is in the legitimate interests of IPSA and the public. Furthermore, while recognising that this does constitute a more intrusive disclosure than banding alone, the Information Commissioner is of the view that it is in the legitimate interests of IPSA to publish this information. We are persuaded that, in these exceptional circumstances, there is sufficient justification for publishing precise salary details for connected parties.

Again, we would consider that those connected parties would have a reasonable expectation that the wider public would have an interest in their salary. Indeed we would consider that, as they are connected parties, they would have an equal interest in ensuring that there can be no suggestion of improbity in relation to their employment, both from their own perspective and that of their employer.

Sections 4.4 to 4.7 - Journeys by Public Transport:

We note that the key objection to the proposal to publish details of MPs journeys relates to the risk of compromising the security of MPs if details of their regular journeys are made publically available.

We believe that the proposal to publish the date, origin and destination of a MP's journey is likely to represent a fair compromise between transparency and security.

We consider that publication of these details will not expose individuals to a significantly increased security risk. As stated in the consultation document, MPs are public figures to whom the public have regular access. Generally details such as a MP's constituency, when and where they hold their surgeries and, in many cases, their home address are likely to be in the public domain. Therefore, it seems reasonable to assume that their regular journeys will be obvious in most cases and, thus, publication is unlikely to present a significantly increased risk.

We believe that the proposed categories of information are comprehensive enough to allow the public to gauge the necessity of an MP's journey without putting the individual at increased risk on their regular journeys.

We note that IPSA will liaise with the appropriate security organisations to take advice, on a case-by-case basis, where particular security threats are identified. This seems a sensible approach which allows IPSA a certain amount of scope to amend their approach where circumstances require it.

Sections 4.8 to 4.12 - Residential Address details:

We agree that the proposal to publish the first half of MPs' post-codes strikes the correct balance between transparency and security.

We are satisfied that this level of publication will be sufficient to satisfy the public interest in ensuring that expenses claims are genuine and justified. It should also be sufficient to identify incidences of 'flipping', which generated a great deal of public concern.

We are not aware of any suggestion that there is a compelling need for the public to have access to the precise address in order to be satisfied that expenses claimed were legitimate and justifiable. As such, there would appear to be an argument that the publication of that level of detail might be considered disproportionate, particularly considering the right to privacy of MPs' families.

Sections 4.12 to 4.15 - Security and Disability Claims:

We are aware that reimbursement claims for these types of expenses are likely to be considered sensitive and that there would be misgivings if these claims were to be published in any detail.

Firstly, with regards to Disability Claims, given that the Data Protection Act 1998 affords greater protection to information relating to an individual's 'physical or mental health or condition' within its definition of 'sensitive personal data', we would argue that there would need to be strong justification for publishing information that might allow inferences to be drawn in relation to a person's physical or mental wellbeing.

We consider that the public interest in ensuring that MP's expense claims are justified would not necessarily outweigh the MP's right to privacy in relation to their physical or mental condition.

With this in mind we would consider that publishing details of such claims in an aggregated form represents a reasonable compromise.

With regards to expenses claims relating to security measures employed by MPs, we understand that concerns have been raised that publishing details of how an MP has chosen to protect their home might undermine the effectiveness of the measures and consequently the safety of MPs and their families.

Given these arguments it is understandable that IPSA have taken the decision to limit publication to the amounts claimed by Parliament as a whole.

It will remain to be seen whether this level of detail will be sufficient to satisfy the public's appetite for transparency. It may be that IPSA will need to consider whether there is an alternative method by which they can ensure that public that claims for security and disability expenses are given the appropriate level of scrutiny. We would be happy to consult on any such undertakings at the appropriate time.

Section 5 - Publication Scheme:

The ICO has reviewed the content of IPSA's proposed publication scheme and, as stated in section 5.4, we are broadly satisfied that the scheme will meet the requirements of the ICO Model Publication Scheme 2009.

Sections 6.1 to 6.5 - Publication of rejected claims:

We feel that there is some scope for clarification in relation to how rejected claims will be handled. It is not entirely clear, from the process set-out in the consultation document, whether claims which

are initially rejected due to genuine administrative errors will be published even when they are subsequently amended and resubmitted by the MP in question. Will all rejected claims be published or only those which are not rejected for reasons of administrative error or which the MP declines to amend and resubmit?

Guidance

We would like to take this opportunity to re-iterate a point that we made in one of the initial consultation meetings. Namely that there will be a need for guidance to be produced to assist MPs in ensuring that their staff and 3rd Parties who might be affected are adequately informed about how they may be affected by the publication of expense details.

3rd Parties will include individuals such as landlords, lease-holders, mortgagees and service suppliers. It is important that such 3rd Parties are aware that their details will be published. It will be important the MPs have sufficient information to allow them to field any queries that these individuals may have and, if necessary, the ability to refer them elsewhere if they require further information.

Information Commissioner's Office
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