THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Appeal No. GIA 2383 2013

Appellant:	**The Independent Parliamentary Standards Authority**
Respondent (1):	**The Information Commissioner**
Respondent (2):	**Ben Leapman**

DECISION OF THE UPPER TRIBUNAL
Judge David Williams

ON APPEAL FROM:

Tribunal:	First-tier Tribunal General Regulatory Chamber information jurisdiction
Tribunal Case No:	EA 2012 0242
Hearing date:	**29 04 2013**

THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER

Appeal No. GIA 2383 2013

Independent Parliamentary Standards Authority v Information Commissioner and another (GIA)

Oral hearing 16 December 2012
Philip Coppel QC, instructed by Addleshaw Goddard LLP, for the appellants
Robin Hopkins of counsel, instructed by the solicitor to the Information Commissioner, for the first respondent
The second respondent did not appear and was not represented

DECISION

The appeal is dismissed.
A direction to the parties about the relevant information is set out at the end of this decision.

REASONS FOR DECISION

1 This appeal is part of the long-running debate about the publication of invoices and receipts submitted by members of Parliament to the relevant authorities for reimbursement. As a result of the controversy arising about the previous processes for reimbursement, Parliament passed the Parliamentary Standards Act 2009. This created a new office, the Independent Parliamentary Standards Authority (IPSA). IPSA is the appellant in this case. The appeal is in response to a FOIA request that is in effect a challenge to the way in which, and the extent to which, IPSA publishes details of invoices produced by, and amounts refunded to, members of Parliament under the new system.

2 The focus of this case is a formal request under the Freedom of Information Act 2000 for specific invoices produced to IPSA by three named members of the House of Commons. That request was made by an individual, Ben Leapman. I consider it relevant to note that in a Telegraph Media press release of 27 October 2012, in an article under the name of Ben Leapman, it was claimed that the ruling of the Information Commissioner to which I refer below "is a victory for the *Sunday Telegraph*". The article also states that the original request for the invoices was a request by "this newspaper". The article then recalls the history of the dispute about publishing receipts of this sort, noting that Mr Leapman was a party to earlier applications also.

3 I make those comments because it is unfortunate in my view that, for whatever reason, neither Mr Leapman nor, if it was involved, the Telegraph group took any part in the hearing before me or the submissions that led up to it. As a result I found myself during part of the hearing listening to rival submissions by the two parties present about what Mr Leapman was actually requesting by way of information. The public record shows that he is well versed in the relevant processes and his comments would have been of assistance. However, it is always important to have in mind that the identity and personal purposes of any applicant under the Freedom of Information Act 2000 (FOIA) are irrelevant as the Act is "motive blind". In the Upper Tribunal I am concerned only with issues of law arising from the decision of the First-tier Tribunal. The arguments before me show that IPSA and the Information Commissioner are some distance apart in their views about what ought to be put on the public record by IPSA as a matter of law. That must be my focus. As that must apply in principle to every invoice produced by every member of Parliament (of both Houses)

under the current system, individual details of individual requests or receipts are of limited relevance.

Background to the appeal

4 IPSA is now the official body set up to deal with expenses of members of Parliament. It describes itself on its website (http://parliamentarystandards.org.uk/Pages/default.aspx) as follows:

> "The Independent Parliamentary Standards Authority (IPSA) was created by Parliament in the wake of the MPs' expenses scandal. IPSA was given the remit and powers to introduce independent regulation of MPs' business costs and expenses and, subsequently, pay and pensions.
>
> Our approach and rules are a clean break from the old system of self regulation by MPs and the House of Commons. The new rules are fair to MPs and the public purse, workable and, crucially, transparent – anyone can go online and see what their MP has claimed for and what they are paid.
>
> IPSA is independent and in everything we do, we focus on our main duty: to serve the interests of the public."

5 Mr Leapman did not accept that. On 9 12 2010 he made the following request to IPSA. As there was some dispute about what he actually asked for, I repeat the terms of his request:

> "I would like to see the original receipts submitted by several MPs in support of expenses claimed during the period May-August 2010. IPSA has published details of the claims on its website. Ipsa has published details of the claims on its website, but as not published the original receipts (despite the High Court ruling in May 2008 that he disclosure of receipts was in the public interest.)
>
> The receipts I would like to see relate to the claims:
>
> [Details of three claims, taken I assume from the website, are then itemised]
>
> Please do not hesitate to contact me if you need to clarify any aspect of this request. Whilst I would prefer to see the original receipts in unredacted form, I appreciate that elements may need to be redacted for security reasons."

6 The response to this by IPSA was to provide transcripts of information from the requested receipts with redactions, including the individual numbers of the invoices, made under section 31(1) of FOIA. Mr Leapman did not accept that as adequate. He asked for a review, commenting:

> "My request was for the original receipts. What I have been sent is a copy of the wording on the receipts, retyped. This is not the same thing, and I would still like to see the original receipts."

7 When IPSA declined to change its stance, Mr Leapman complained to the Information Commissioner asking him specifically to consider "the refusal ... to release copies – redacted if necessary – of the original receipts submitted by MPs to justify their expenses claims."

8 The Commissioner investigated the matter and on 23 10 2012 issued decision FS50442125. This dealt, as discussed below, with what were seen as different aspects of Mr

Leapman's request. IPSA's stance to the Commissioner was, to quote from the Commissioner's decision:

> 'We are confident that images of the invoices/receipts contain no additional data that imparts or conveys knowledge to the recipient. The only additional attributes of the invoice/receipt are merely "presentational" such as the colour of the font used or the design of the logo. Unlike visual materials such as photographs or charts, these presentational attributes do not impart or convey any additional knowledge or information. In short, [the complainant] has been provided with an accurate transcript or copy of all of the information contained within the receipts.'

9 The Commissioner concluded, however, that IPSA was obliged to provide copies of the requested receipts/invoices. The central approach taken by the Commissioner was to look at what had been disclosed and what was missing (save for justified redactions). At paragraph 25 of his decision, he adopted the following approach to what was missing:

> "25. The four categories of information contained within the documents, which the Commissioner considers can be used as general descriptors, are as follows:
> □ Characters – letters, figures or symbols – this includes the wording (including the exact phrasing) and figures recorded within the document (characters may also form part of the style/layout and/or design of a document).
> □ Logos and letterheads.
> □ Handwriting/manuscript comments.
> □ Layout, style and/or design of a document."

After examination of the invoices against that approach the Commissioner concluded that it was necessary for IPSA to release copies, redacted as necessary, of the documents and that transcripts were not enough.

10 IPSA appealed. Mr Leapman was joined as a party to that appeal. After detailed exchanges between IPSA and the Commissioner, the matter came before a First-tier Tribunal for full hearing on 23 04 2013. The tribunal (Judge Angus Hamilton sitting with two expert members) unanimously dismissed the appeal on 29 04 2013 and endorsed the Commissioner's decision.

Grounds of appeal

11 When IPSA sought permission to appeal from the First-tier Tribunal a judge responded by refusing permission. This was because in the view of the judge the disputed points were points of fact and there was no arguable error of law. When the application was renewed in the Upper Tribunal I granted it. I did so because in my view it raised two questions of law about which it was arguable that the tribunal had erred. The first was the fundamental issue of the meaning of "information" in FOIA when that is applied to documents that rely or may rely on specific form and content to have validity. The second was the relationship between section 1 of FOIA, giving a right to any person to seek information, and section 11 concerning the discharge by a public authority of the duty created by section 1.

12 That reflected what I saw as being the central concerns in the grounds of appeal for the appellant. Those grounds of appeal also raised points about the actual terms of the request by Mr Leapman. I will deal with those separately and briefly as I consider them to be of limited importance in a case such as this. As judges have commented in other cases – and as indeed I have seen in other cases - arguments about the precise form of a request are of passing importance in this jurisdiction. The requester, or someone else, can always make another request that does not repeat the error, limitation or other defect in a specific request. If I were to find that Mr Leapman should have worded his request in some other

way, then it might reasonably be expected that he would do precisely that. His absence, of course, means that I could not put this to him, but I anticipate that I will not be wildly wrong in guessing his probable reply.

13 Again, I did not hear this from him but his request has the air of being a test of the system rather than a specific search for specific information. I deal with it below as such, and therefore do not pause any longer over the precise terminology of the request. Rather, I accept it as being what the First-tier Tribunal found it to be on an interpretation of ordinary English language. That is a question of fact. This was that (at paragraph [27] of the First-tier Tribunal decision) "what Mr Leapman was requesting when he first approached IPSA was copies of the three invoices." This is important when one turns to the argument about information. I take the request as being a request for **all** the information on the individual receipts other than that properly redacted, not some of it.

14 The central ground of appeal by IPSA is that as a matter of law and fact IPSA did provide all the recorded information requested save for certain minor errors that IPSA was happy to correct. This was because the duty to comply with Mr Leapman's request was a duty under section 11 of FOIA. IPSA had complied with its duty under section 11 and had therefore fulfilled its obligation. That was done by providing the transcribed information. The form in or on which the information sought by Mr Leapman did not itself constitute "recorded information". Further, "the layout, style, font, calligraphy, design, medium, stationery, ink colour etc" of the invoices did not constitute "recorded information".

15 The full argument for IPSA, as submitted to me by Mr Coppel QC, were helpfully presented as raising three issues:

(a) the form in and by which the requested information was recorded did not itself constitute recorded information;
(b) the requester did not express a preference to be provided with a copy of the information answering the terms of his request;
(c) in determining whether a particular means of communication was reasonably practicable, IPSA was entitled to take into account the cumulative cost of consistently treating like requests.

16 The consistent response of the Commissioner, including the submissions by Mr Hopkins before me, was to stand by the original decision of the Commissioner, as affirmed by the First-tier Tribunal. Each of the grounds of appeal was therefore resisted.

17 I have already indicated briefly that I see little point in spending time on ground (b) as this is hypothetical in the sense that it is second guessing something that the missing party to the appeal could have clarified and in any event raises no issue of principle. Further, any error in this case could easily be sidestepped and still present the issues noted at (a) and (c) above. I therefore turn to the other two issues.

Recorded information

18 Section 1 of FOIA provides:

> 1.—(1) Any person making a request for information to a public authority is entitled —
> (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
> (b) if that is the case, to have that information communicated to him.
> (2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.
> (3) Where a public authority—

> (a) reasonably requires further information in order to identify and locate the information requested, and
> (b) has informed the applicant of that requirement,
> the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.
> (4) The information—
> (a) in respect of which the applicant is to be informed under subsection (1)(a), or
> (b) which is to be communicated under subsection (1)(b),
> is the information in question held at the time when the request is received, except that account may be taken of any amendment or deletion made between that time and the time when the information is to be communicated under subsection (1)(b), being an amendment or deletion that would have been made regardless of the receipt of the request.
> (5) A public authority is to be taken to have complied with subsection (1)(a) in relation to any information if it has communicated the information to the applicant in accordance with subsection (1)(b).
> (6) In this Act, the duty of a public authority to comply with subsection (1)(a) is referred to as "the duty to confirm or deny".

19 It is trite law to point out that this is a request for information not a request for records or documents. Information is defined by section 84, the interpretation section, as meaning "information recorded in any form".

20 As I was reminded in argument, I considered section 1 and the definition of "information" in considerable detail in my recent decision in *NI v Information Commissioner* [2013] UKUT 0188 (AAC). In particular, at paragraphs [12] to [30] I examined, after argument, the FOIA as it applies in England and Wales alongside both the Scottish equivalent and the parallel rules that apply to environmental information. And I looked in particular at the useful decision of the Court of Session in the Extra Division decision in *Glasgow City Council v Scottish Information Commissioner* [2009] CSIH 73, [2009] SC 125, which decision I adopted and followed, so far as it applied to FOIA, at paragraphs [41] to [43]. I see no point in repeating that analysis here and adopt what I said in the *NI* case, including accepting and following the *Glasgow* decision, insofar as it is relevant here. However, the dispute in both those cases was about the format in which information was to be produced. In *NI* it was about whether it should be in electronic or in paper form. There was no sustained dispute about the content of the information. To that extent that analysis does not help here.

21 The factual focus of this appeal is on the information recorded in an invoice or receipt. Applying the ordinary use of the English language to the term information in this context, I take that to be a reference to all aspects of the invoice that informed the viewer when looking at the invoice. I was shown, as closed evidence, specific receipts but the general point can be considered without reference to any specific invoice or receipt. Invoices and receipts in specific formats are required for all the many millions of transactions that take place daily that involve value added tax. And their issue is standard practice where the tax is not involved but a price is paid or to be paid for some goods or services.

22 It is to me also trite to note that the wording on a typical receipt or invoice is only part of what a recipient sees when looking at it. Typically there will be verbal and numerical content to be read and understood, but there will also be visual content to be seen, rather than read, but which may also require to be understood for the recipient to have appreciated the whole of the experience, if I may term it that, communicated by the receipt or invoice. The difference between IPSA and the Commissioner seems to me to involve the difference between both seeing and reading the whole experience presented by an invoice and receiving a verbal account of it. Is the difference "recorded information"?

23 The point is clearer if other examples are used. How, for example, would a public authority respond to a request to produce all the information it held about a particular piece of land when the main item held is a detailed plan? For example, the plans held by the Land Registry must contain information that cannot be entirely reduced to words. Indeed, I note in passing that the information requested by Mr Dransfield in the case of *Information Commissioner v Devon CC and Dransfield* [2012] UKUT 440 (AA), cited to me for other reasons, was a request for specific drawings. How should a public authority respond to that, or to a request to produce all the photographic evidence it held of a particular building? Again, I cannot see how a response to that request could be entirely made in words only. But I can see no sustainable argument that such a plan, drawing or series of photographs does not constitute "recorded" information. Indeed, as noted above, IPSA itself accepts that information in general is not confined to information that can be recorded by words or numbers. So where is the line to be drawn as a matter of law?

24 Returning to the focus of this appeal, the Commissioner approached the issue as follows (with specific details of specific invoices omitted):

> **"Characters – letters, figures or symbols**
> 27. As outlined above, IPSA has disclosed the majority of the wording and figures included within the documents. The complainant does not dispute this. However, there are omissions. This appears to be due to human error in transcribing the information rather than any intention to withhold the information. For example, in [one invoice] one of the headings for part of the receipt is omitted, whilst this section of the receipt is blank, the heading itself is recorded information which has not been disclosed to the complainant. In [another invoice] there is another instance of this and the tag line included in the company letterhead has not been disclosed.
> 28. The Commissioner considers that the wording that was omitted from the transcripts is recorded information which should have been disclosed to the complainant. IPSA is required to disclose this information.
>
> **Logos and Letterheads**
> 29. The transcripts provided to the complainant included the names of the companies that had issued the receipts/invoices for the goods or services they had provided. However, the transcripts did not include the relevant company logo and/or letterhead included on each receipt/invoice.
> 30. IPSA has argued that elements of the receipts/invoices, such as the design of the logo, are merely presentational and do not convey any additional information. The Commissioner does not agree that these elements of the documents are purely presentational – he considers that the logo and/or letterhead of a company on an invoice/receipt are recorded information which informs the observer of the legitimacy of the document. He notes that these elements are often specifically designed to give a company a unique identity. For example, if a number of receipts/invoices were submitted in support of expenses claims for goods and/or services provided by the same company an observer would be able to determine whether the letterhead and/or logo on the documents was consistent. If a subsequent claim was made which included an entirely different letterhead and/or logo for the same company, questions might be raised about the legitimacy of the later claim. As the complainant has argued, this information cannot be derived from the transcribed information as, regardless of any differences in the logo and/or letterhead, this element of the transcripts would be the same.
> 31. The Commissioner has considered whether the information, such as the logo and/or letterhead is 'recorded information' contained within the document or whether, in the scenario outlined above, the further information is derived from an

interpretation of the document by the observer ie that the design of the logo/letterhead are not 'recorded information' but allow the observer to draw their own conclusions. He is in no doubt that the logo and/or letterhead are 'recorded information' and it is from this 'recorded information' that, in some cases, the observer can make their own informed conclusions based on comparisons of the 'recorded information' in different documents.

32. For the reasons outlined above, the Commissioner considers that the logos and letterheads contained within the three receipts/invoices are 'recorded information'. IPSA is required to disclose this information.

Handwriting/Manuscript Comments

33. IPSA has argued that the transcripts it provided to the complainant included the handwritten notes/manuscript comments in a printed form.

34. The Commissioner considers that the style and appearance of handwriting is recorded information over and above the words used. For example, what a person's signature looks like on a letter will be information over and above their name.

35. The wording on [one invoice] states: 'Paid 17.06.10 [what appears to be the name of individual that made the note]'. IPSA's transcript of the receipt included the wording 'Paid 17.06.10' in the form of printed text. However, it omitted what appears to be the name of the person that either paid the invoice or at least recorded that it was paid, which is handwritten under the date. The Commissioner considers that this is recorded information contained within [that] invoice which IPSA is required to disclose to the complainant.

36. The Commissioner also considers that the visual style of the individual's handwriting that made the manuscript note is recorded information over and above the words used. IPSA is required to disclose this information.

Layout, style and/or design of a document

37. IPSA provided the complainant with transcripts, rather than copies of the documents containing the recorded information. Therefore, the complainant did not receive any information as to the layout, style and/or design of the receipts/invoices.

38. As outlined above in relation to logos and letterheads, the Commissioner considers that the way in which information is recorded in a document and/or its appearance is recorded information for the purposes of the FOIA.

39. In this case, the recorded information contained within the receipts/invoices can inform the observer about the legitimacy of the expenses claims. As the complainant has argued, a comparative analysis of copies of receipts/invoices submitted to IPSA would allow the observer to draw their own conclusions about the legitimacy of expenses claims. The layout, style and/or design of a receipt is important in this analysis as, if a company uses a standard template for invoices/receipts and a receipt has been submitted that differs in layout, style and/or design, it would allow an observer to draw conclusions about the legitimacy of the claim and raise their concerns (whether these were legitimate concerns or not).

40. The Commissioner considers that the layout, style and/or design of the three receipts/invoices is recorded information for the purposes of the FOIA. IPSA is required to disclose this information."

25 At paragraph [20] of its decision the First-tier Tribunal accepted this fourfold analysis and at paragraph [21] it rejected the IPSA argument that the second, third and fourth classes were merely presentational. It further noted not only that IPSA itself insisted on seeing the original documents but also that its witness acknowledged in evidence that sight of a receipt might be more informative.

26 I find the careful analysis by the Commissioner as set out above to be a most persuasive presentation of the problem. It is perhaps at its sharpest in connection with logos and letterheads. The whole of trademark law exists to protect precise presentations of words and images for the benefit of a person seeking to protect a trademark. The intended effect in most cases is a unique mixture of visual information and verbal information that conveys a specific identity, even if the visual information is confined to the colour or font of specific wording. I cannot see how full information about a receipt or invoice that contains trademarks can be conveyed if the trademark material is not reproduced in the trademarked form so confirming (or not confirming) that unique identity. And equally I accept the argument that the presence of that trademarked material in a document is information recorded in the document. In my view that must be a matter of law, not fact.

27 It may be that other aspects of the Commissioner's analysis depend on the facts of a particular case. But I do not accept, as IPSA argues, that as a matter of law they cannot be regarded as part of the recorded information. I put it that way because the whole thrust of the IPSA argument was a generalised argument. It was being applied to all invoices and receipts, not to specific items. Take the example of a handwritten comment on an invoice. An invoice might be presented on which someone has written "rubbish" or, less controversially, "paid in part only – rest not owing". The way in which those words are written and their location on the invoice may convey additional information to the words themselves, for example that they are plainly written by the same person who wrote the invoice as against some other person such as the person claiming repayment of the sum paid or a later person auditing the invoice. It cannot be said that no information is conveyed by location or handwriting in such a case. And if so, it is recorded information.

28 My conclusion is that the Commissioner and the First-tier Tribunal are correct in law in refusing to accept the narrower view of "information recorded" put forward by IPSA, and that there is no error of law in the careful analysis set out above. Insofar as the content of the Commissioner's analysis is factual, it is of course not part of the scope of this appeal.

A section 11 duty?

29 Section 11 of FOIA (means by which communication to be made) provides:

> "11.—(1) Where, on making his request for information, the applicant expresses a preference for communication by any one or more of the following means, namely—
> (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
> (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
> (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant,
> the public authority shall so far as reasonably practicable give effect to that preference.
> (2) In determining for the purposes of this section whether it is reasonably practicable to communicate information by particular means, the public authority may have regard to all the circumstances, including the cost of doing so.
> (3) Where the public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination.
> (4) Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances."

30 That is to be read with section 12 (exemption where cost of compliance exceeds appropriate limit):

> "12.—(1) Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.
> (2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit.
> (3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases.
> (4) The Secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority—
> (a) by one person, or
> (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,
> the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them.
> (5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are to be estimated."

31 IPSA argued before the First-tier Tribunal that section 11(4) of FOIA gave IPSA a discretion in relation to the manner in which information was conveyed to a requester. It was also asserted that the digest or summary of information provided to the requester captured all the non-exempt information so far as reasonably practicable. This was resisted in argument before the First-tier Tribunal. The Commissioner took the view that section 11 was irrelevant to the case and could not be relied on by IPSA to enable it to limit the information that it was obliged to disclose. The tribunal "unhesitatingly concluded" (paragraph [18]) that its focus was on the information in the invoices. And at paragraph [25] it accepted the Commissioner's assertion that section 11 cannot operate to enable a public authority to limit the information it was obliged to disclose.

32 Mr Coppel QC submitted that the First-tier Tribunal was wrong in law in taking this approach in so far as its views on section 11 were part of its decision. I have indicated above that I have not approached this argument in a complaint-specific way. My concern is with the underlying issues of law. Having established them, it may be that it is arguable that the tribunal misapplied the law to the facts in the context of the particular complaint, but that is not central to the main argument. This is that it is not reasonably practicable for IPSA to allow Mr Leapman to see the original receipts or invoices or scanned or other copies of them. As I understood the argument, the relevance of this is that the duty on the public authority under FOIA is to be understood by reading section 1 as, in effect, subject to section 11.

33 It was argued that the evidence showed that it was not reasonably practicable for IPSA to comply with the request made by Mr Leapman. IPSA was entitled by reason of section 11(2) to take account of "all the circumstances, including the cost of doing so". Those circumstances included the size of the public authority and the problems of ensuring that it did not fail to exclude all personal information that should be excluded (such as, for example, the address of property to which the invoice disclosed certain goods were being supplied or at which certain services were being provided). The tribunal interpreted section 11(2) more narrowly but was wrong to do so.

34 More generally, Mr Coppel's submission was that the evidence given to the First-tier Tribunal was that IPSA's method of disclosing information was the safest and most practicable way of treading the line between giving the public details of individual expenses claims to which they are entitled and protecting the members of Parliament from unlawful disclosure of personal information "to which they are equally entitled". This reflected the requirements of the Data Protection Act 1998. No part of that argument was, however, based on any provision in the Parliamentary Standards Act 2009. I take from that silence that this argument has no specific basis in the wording of that legislation, but is merely a reflection of the way in which IPSA is currently run.

35 Mr Hopkins submitted that the IPSA argument was misconceived even if it was relevant (which was also disputed). In this case reasonableness was to be judged against the cost of scanning and redacting copies of the requested receipts. If IPSA found it problematic to respond to other FOIA requests, its remedy lay in section 14 (vexatious or repeated requests) not in section 11. This was, it was argued, illustrated by the *Dransfield* decision, to which I have already referred. If section 11(2) is relevant here, it should be read as the First-tier Tribunal suggested, that is by reference to the circumstances of the particular request and not by an unevidenced apprehension about other future possible requests.

36 I understand that aspects of the *Dransfield* case are currently before the Court of Appeal. I approach it without being aware of any outcome at that level. As noted for other reasons, it was a request for drawings. But the whole focus of argument before the Upper Tribunal (at [2012] UKUT 440 (AAC)) was on the conclusion in the particular case that a request was vexatious and that section 14 applied. As Judge Wikeley noted in the Upper Tribunal, that case was something of a test case about section 14. The judge took trouble, that being so, to issue guidance about section 14 and its interaction with section 1. I see nothing in the decision that considered any relationship between either of those sections and section 11. I read the analysis as focussed specifically on the issues involved in handling vexatious complaints. I cannot see how those arguments can be opened up, without more, to be arguments about provision of information generally in a context where section 14 is not relevant. Those issues arise to be considered, in my view, under section 12. It is particularly significant that there is no consideration of section 12 in the *Dransfield* decision. I consider the decision to be of no assistance here.

37 More generally, I was reminded in argument of the remarks of Lord Hope of Craighead in *Common Services Agency v Information Commissioner* [2008] UKHL 47, [2008] 1 WLR 1550 at 1552. His remarks were about the Scottish FOIA but are plainly equally applicable south of the Border. The Act is to be construed as liberally as possible, but the qualifications are equally significant and its complex analytical framework must be taken into account.

38 How does that reflect back into a proper interpretation of section 1 and its relationship with section 11?

39 In my view the starting point is to read section 11 with sections 12 and 13. Section 12 expressly deals with a request where it is estimated that the cost of complying with the request exceeds "the appropriate limit". I was offered no argument about the operation of section 12, or about section 13 (which provides for fees where the limit in section 12 is exceeded) or about the regulations passed to implement those sections. I understand the appropriate limit currently to be £600. However, I am not concerned with the detail here. The general point is that the reference to cost in section 11(2) is to be read with the provisions of the following sections. They are request specific. I see nothing in them that crosses from consideration of a specific request to consideration of all requests, even less to the more speculative question of likely or possible requests. I similarly read section 11 to be request

specific. And I am comforted in that reading by the presence of section 14 immediately after those sections.

40 Read in that way, which I find consistent with the analytical scheme of the Act as a whole, section 11 does not provide any basis for a general limit on the duty on a public authority under section 1. It makes provision, along with the sections that immediately follow, to deal with individual requests that are excessively expensive or vexatious or repeated.

41 The other problems raised by IPSA are, I readily agree, important practical issues. It could plainly be a matter of considerable significance if a particular receipt evidenced the delivery of particular items to a particular address in a context that caused a potential security risk to anyone at that address. But the analytical structure of FOIA is that such problems must be dealt with by the provisions of that Act - in particular section 40 (personal information) and perhaps section 24 (national security) or other sections. The argument presented for IPSA appeared to be based on some special status being accorded to IPSA because of the sensitivity of its work. In the absence of any specific legislation in the enabling Act or elsewhere, I see nothing specific to the work or nature of IPSA that sets it apart from the general application of FOIA, with all its attendant difficulties, to any public authority.

Closed issues

42 I was supplied, as was the First-tier Tribunal, with copies of particular invoices as closed evidence. I was further supplied with an item of correspondence known to both IPSA and the Commissioner as further closed evidence at the hearing. Linked to those were closed submissions and closed argument. However, I see no necessity to deal in my reasons specifically with closed evidence or closed issues. I have taken the closed evidence fully into account in this decision. That includes examination of specific receipts by which the points put by both parties and by me were tested at the hearing. I do not therefore need to add any closed annex to this decision.

Conclusion

43 On the above analysis, the duty on IPSA is the section 1 duty. Its arguments about the problems of that specific authority in meeting its section 1 duty are not relevant save in so far as they fall within section 11 (read as request specific) or section 14 (which has not been put forward as relevant here) or some other specific provision applicable to individual requests (such as section 40 which, it is common ground between all parties, is to be applied here).

44 Applying that analysis to the decision of the First-tier Tribunal (which in reality is an affirmation of the decision of the Commissioner) I find no material error of law in the decision. The appeal must therefore be dismissed.

Direction

Unless the appellant gives notice of appeal within the time allowed for giving notice of appeal against this decision, or makes other application to me or another judge of the Upper Tribunal, IPSA is to supply to Mr Leapman the information requested as identified in paragraph 44 of the Commissioner's decision (that is, copies of the invoices with appropriate redactions) not more than 14 days after the expiry of that time.

David Williams
Upper Tribunal Judge
23 01 2014

[Signed on the original on the date stated]