

Public sector salaries: how and when to disclose

Freedom of Information Act 2000

When should salaries be disclosed?

The Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) provide rights of public access to information held by public authorities. This is part of a series of guidance notes produced to help public authorities understand their obligations and to promote good practice.

This guidance gives advice to public authorities on when they should reveal the salaries paid to staff. In particular, it explains the factors to consider when deciding whether exact salaries can be disclosed rather than salary scales.

Overview

There is no one rule which can be applied in every case. However, the following guidelines may be useful.

- Salary scales should usually be published as a matter of routine.
- Disclosure should only be to the extent necessary to fulfil a legitimate public interest. This may involve narrowing down advertised scales, for example to the nearest £5000. Only in exceptional circumstances is disclosure of exact pay likely to be justified.
- More senior staff who are responsible for major policy and financial initiatives can expect greater scrutiny of their pay than more junior employees. It will nearly always be unfair to disclose the exact salaries of junior employees.
- There could be factors that weigh in favour of greater disclosure, such as legitimate concerns about corruption or mismanagement, or situations in which senior staff set their own or others' pay.
- Specific individuals' concerns should be considered when determining whether the disclosure is justified.
- Commercial interests may also be relevant.

Routine disclosure

Public authorities publish certain information routinely in accordance with the Information Commissioner's model publication scheme. This should include significant financial information, including some details about staffing costs. For most authorities, this should include the organisation's salary scales or bands.

Some authorities may be required by law to include the remuneration of their most senior office-holders or employees in their public accounts.

Others may choose to publish this information voluntarily. These authorities should make sure that affected individuals are aware in advance that this will happen.

For further information about making this information routinely available, please visit our [Publication scheme](#) webpage.

Personal information

Information which is not released routinely can still be requested under the FOIA. Section 40(2) of the FOIA provides an exemption from disclosing information about identifiable individuals where it would breach the Data Protection Act 1998 (DPA). This does not mean that all personal data is exempt from release; an authority relying on this exemption will need to explain how the disclosure would contravene one of the data protection principles.

The purpose of the DPA is to protect people's private information and to ensure that it is handled properly. Personal information must only be released if there is a genuine reason to disclose and it would not involve unfairness to the individual. A public authority will generally have to satisfy itself that:

- the disclosure would not be unfair or outside the reasonable expectations of the individual;
- there is a legitimate public interest in disclosure, and the disclosure is only to the extent necessary to meet this public interest; **and**,
- the interest in disclosure outweighs any detriment to the individual's privacy or other rights and legitimate interests.

These three stages are explained below. For further detail on applying the exemption, see our guidance on [The exemption for personal information](#).

1. Reasonable expectations

Those who are paid from the public purse should expect some information about their salaries to be made public. However, salary information also relates to their personal financial circumstances and this deserves some protection. You should carefully consider a number of factors before deciding to release exact salaries.

A. Should the individual expect their role to be subject to public scrutiny? The level of salary itself is not the determining issue. Factors to consider include:

- how senior their role is, including their level of accountability and personal responsibility;
- whether they have a public profile or public-facing role; and,
- whether they are responsible for major policy decisions or expenditure of public funds.

These factors should be considered together; there is no hard-and-fast rule.

Example:

The Commissioner found that the exact salaries of specialist registrars employed by University Hospital Birmingham NHS Trust should not be disclosed. He found that as “employees who interact with the public” they “should expect some personal data about them to be released” but that they should expect less scrutiny than senior executives who are “responsible for policy decisions affecting the public and the expenditure of public funds”. (ICO decision notice [FS50092819](#), February 2007)

B. Should the individual reasonably expect that their salary could be released in response to an FOI request?

- The fact that an individual has not been warned that their salary could be disclosed under FOI will not necessarily be a bar to disclosure.
- You should take into account whether salaries for this type of post are generally made public.

Example:

The Commissioner decided that BBC Northern Ireland did not have to release the fee paid to a presenter. The fee had been decided in confidential negotiations in accordance with the standard practice in the industry, and was therefore properly treated differently from the salary of a senior employee. (ICO decision notice [FS50067416](#), January 2008).

C. Would it be intrusive to release an exact salary, or to give the salary to within a smaller range than the advertised band?

Where a fairly narrow salary scale is included on job adverts or disclosed to candidates, releasing an exact salary may not lead to increased intrusion.

2. Legitimate public interests

There will always be some legitimate public interest in knowing how public money is spent, how public sector salaries compare with those in other areas, and how money is distributed between different levels of staff. However, in many cases, these interests will be met by the routine disclosure of salary scales.

There will be situations in which the advertised salary band is not sufficient to answer these legitimate questions. This could arise when:

- the advertised bands are very broad and staff may start at different points within the band;
- the mechanism for determining pay or salary progression within bands is not transparent; or,
- the pay scales do not disclose the full cost to the authority, for example, because there is a significant element of performance-related pay or other bonuses.

In such cases, it may be appropriate to consider releasing the approximate amount paid to an individual, for example, to the nearest £5,000.

Remember that you must still take into account the other fairness considerations such as reasonable expectation.

3. Unfair intrusion, harm or distress

Where there would be a legitimate value in disclosing the exact salary, you must also decide whether the benefits are proportionate to any potential harm, distress or intrusion to the individuals.

In some cases, releasing the exact salary would be significantly more intrusive than approximate salaries, for example because:

- the exact salary is individually negotiated rather than determined according to a known formula;
- the salary includes a certain amount of performance-related pay, and would reveal the outcome of the individual's performance review; or
- it could have a detrimental effect on relationships between colleagues.

You should also take into account specific objections from individuals about the effect on their private life, for example prejudice to their interests in ongoing financial or legal negotiations. You should only take into account **unwarranted** harm or distress; information which would expose wrongdoing should not be withheld on these grounds.

You should carefully balance the additional intrusion of releasing an exact salary against the additional value to the public. Where the additional intrusion would be unwarranted, you may still be able to release approximate salaries or salary scales.

Example:

The Commissioner determined that the BBC should disclose the salary band of the Controller of Continuing Drama, but not his exact salary, which was individually negotiated. He found that the legitimate public interest outweighed the intrusion of disclosing the salary band but not the additional intrusion of disclosing an exact salary. (ICO decision notice [FS50070465](#), March 2008)

Exceptional circumstances

Only in exceptional circumstances will disclosure of an exact salary be appropriate. Where there are additional public interest factors, this may mean that disclosure of the precise salary is necessary and may outweigh any detriment to the individual concerned. This could arise where:

- there are current controversies or credible allegations;
- there is a lack of safeguards against corruption;
- normal procedures have not been followed;
- the individual in question is paid significantly more than the usual salary for their post; or,
- the individual or individuals concerned have significant control over setting their own or others' salaries.

Example:

The Commissioner ruled that Corby Borough Council should disclose the exact total amount paid to an interim Head of Finance, following a critical report from the Audit Commission. The short-term post attracted a higher salary to compensate for a lack of employment rights, but the Chief Executive subsequently renewed the contract at the same rate with the addition of holiday and pension contributions. The Commissioner decided this justified "additional public scrutiny" (ICO decision notice [FS50062124](#), August 2005)

Other exemptions

Section 40(2) FOIA may not be the only relevant exemption. For example, FOIA section 43(2) provides an exemption where the disclosure "would or would be likely to prejudice the commercial interests of any person" including the public authority.

Advice on all the exemptions can be found on [our website](#).

More information

This guidance will be reviewed and considered in line with new decisions of the Information Commissioner, Tribunal and courts on freedom of information cases. It is a guide to our recommended approach in this area.

If you need any more information, please contact us.

Phone: 0303 123 1113

Website: www.ico.gov.uk