

Request for the salary details of specific employees

Legislation	Local Government Official Information and Meetings Act 1987, s 7(2)(a)
Agency	Christchurch City Council
Ombudsman	Peter Boshier
Case number(s)	440549, 442773, 446949, 441850
Date	June 2018

Summary

The Christchurch City Council refused four requests for the salary details of specific employees under section 7(2)(a) of the Local Government Official Information and Meetings Act 1987 (LGOIMA), to protect the privacy of natural persons.

The Chief Ombudsman formed the opinion that although section 7(2)(a) applied, there was a countervailing public interest in accountability for the value the Council determined for the carrying out of each particular role. Ultimately, the Chief Ombudsman recommended that the Council release the salary range for each of the roles.

In his report, the Chief Ombudsman set out the general principles in respect of salary information, developed by successive Ombudsmen.

Background

1. The Council refused four separate requests for the salary details of specific employees under section 7(2)(a) of LGOIMA, as it considered that withholding the information was necessary to protect the employees' privacy. The requesters each complained about the Council's decision.

Investigation

Section 7(2)(a) – Privacy

2. Section 7(2)(a) of LGOIMA will apply where withholding official information is necessary to *'protect the privacy of natural persons.'*
3. When salary information is requested in relation to identified individuals, section 7(2)(a) of LGOIMA will typically apply. However, it is important to distinguish between the specific remuneration of an individual person; and the remuneration rate or range for a specified role, irrespective of the incumbent. Asking how much a particular individual is remunerated clearly engages that person's privacy. Conversely, asking how much the Council pays to have a particular role undertaken primarily engages the Council's accountability for determining the value it places on that role being carried out.
4. Unless the individual concerned consents to disclosure, there will usually be a strong privacy interest in information about the remuneration of an individual person, and section 7(2)(a) will typically apply. On the other hand, there will normally be a low privacy interest in information about the remuneration rate or range for a specified role, irrespective of who may be employed in that role.
5. Applying the above principles to the present review, the Chief Ombudsman noted that the requests targeted the salaries of specific individuals employed by the Council. Following consultations with those individuals, the Chief Ombudsman recognised the strong privacy interest in their salary information, and that section 7(2)(a) applied.

Public Interest

6. In cases where section 7(2)(a) does apply, the next step is to assess under section 7(1) whether there are any considerations in the public interest favouring disclosure of the information, that outweigh the privacy interest in withholding it.
7. In his report, the Chief Ombudsman set out the following principles in respect of salary information, developed by successive Ombudsmen:
 - a. When the information requested relates to the Council's expenditure, there will inevitably be a public interest in the availability of that information to promote transparency and accountability. This is because promoting the transparent conduct of public affairs encourages good administration and financial management. This in turn helps to foster effective accountability: if the Council and its employees can be held responsible for their actions, then they are more likely to operate appropriately. For these reasons, the public interest in accountability extends to the value that the Council determines for the carrying out of a particular

role. As the High Court recognised in *Wyatt Co (New Zealand) Ltd v Queenstown-Lakes District Council*:¹

It is fundamental to [LGOIMA] that the public are to be given worthwhile information about how the public's money and affairs are being used and conducted, subject only to the statutory restraints and exceptions.

- b. For the purposes of section 7(1) of LGOIMA, transparency and accountability are considerations that render it desirable, in the public interest, to make worthwhile salary information available when requested. The weight of these considerations, and whether they outweigh the identified privacy interest, must be assessed in the circumstances of each particular case. The following factors are often relevant to that assessment:
- i. The higher the role's salary, the more public money that is spent. This increases the weight of the public interest considerations favouring release of worthwhile salary information. Statutory reporting requirements can provide a reasonable indication that the size of the salary has reached a level where there is a legitimate public interest favouring release of the information in exact or banded form.
 - ii. As the role's level of responsibility increases, the more it is able to affect the Council's administrative and financial decision-making, and in turn the public. This increases the weight of the public interest considerations favouring release of worthwhile salary information. Relevant indicators as to the level of responsibility can include responsibility for financial expenditure and decision-making; and managing other staff, budgets and the outputs of the organisation.
 - iii. On a similar theme, a public facing role is authorised to provide information to the public on behalf of the Council. Principal or chief advisors are examples of such roles, and the public may rely on the representations that those roles make. This increases the weight of the public interest considerations favouring release of worthwhile salary information.
 - iv. Finally, there may be certain irregular factors that can be relevant in a particular case. These include whether there are any allegations of wrongdoing; or non-adherence to policy in establishing or recruiting for a particular role; or if the incumbent is paid above the salary range that has been determined for that role. If one of these factors is present, it will likely increase the weight of the public interest considerations favouring release of worthwhile salary information.

¹ *Wyatt Co (New Zealand) Ltd v Queenstown-Lakes District Council* [1991] 2 NZLR 180 at 190.

- c. In cases where the public interest does outweigh the privacy interest, the salary information should be disclosed in a form that does not unnecessarily interfere with the individual's privacy. Generally, the role's salary range should be released to address the accountability interest in the value that the Council has determined for the carrying out of a particular role. A salary range is simply the minimum and maximum amounts that the Council has determined should be paid for a role, irrespective of the incumbent. There is a low privacy interest in this information.
 - d. At other times where the public interest outweighs the privacy interest, and in order to provide worthwhile information that adequately addresses the weight of the public interest considerations, it may be necessary to provide more detailed information than disclosure of the salary range would provide. In those cases, it may be appropriate to release the information in the form of a salary band. A salary band will provide a more precise indication of the value that the Council has determined for the carrying out of a particular role.
8. Turning to the public interest assessment in this case, the Chief Ombudsman considered that a public interest in transparency and accountability arose in this case.
 9. In response to the Council's comments, the Chief Ombudsman acknowledged that information published in the Council's annual report identifies the number of employees remunerated within certain salary bands.
 10. However, the Chief Ombudsman observed that although this information might address the transparency interest in the Council's remuneration expenditure, it does not provide the detail required to address the accountability interest in the value that the Council has determined for the carrying out of each particular role.
 11. Furthermore, assessing each role in light of the factors set out above, the Chief Ombudsman noted that the roles entailed factors that increased the weight of the public interest considerations favouring release of worthwhile salary information in relation to each of them.

Outcome

12. In light of the above, the Chief Ombudsman formed the final opinion that the public interest in accountability outweighed the privacy interest in each request.²
13. The Chief Ombudsman considered that the disclosure of the salary range for each role would adequately address the public interest in the circumstances of these particular

² Before forming his opinion, the Chief Ombudsman consulted with the Privacy Commissioner in accordance with section 29A of LGOIMA, to ascertain his views on the merits of refusing the request in reliance on section 7(2)(a). The Privacy Commissioner agreed with the views expressed, and approach taken, by the Chief Ombudsman.

requests, and recommended the Council disclose the salary range for each of the roles that the specific employees carried out.³

³ As one of the requests referred to the *'total cost'* of two specific employees, the Chief Ombudsman recommended that the Council disclose a single combined salary range for the two roles they carried out, accompanied with an appropriate explanation.