

## Request for information on public service chief executive pay and remuneration

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| <b>Legislation</b>    | Official Information Act 1982, s 9(2)(a) |
| <b>Agency</b>         | State Services Commission                |
| <b>Ombudsman</b>      | Peter Boshier                            |
| <b>Case number(s)</b> | 484618                                   |
| <b>Date</b>           | August 2019                              |

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*Request for information on chief executive pay and remuneration—s 9(2)(a) did not provide good reason to withhold total chief executive pay—disclosure recommended by the Chief Ombudsman—s 9(2)(a) did provide good reason to withhold individual components of pay because it would provide insight into the individuals’ performance, and unfairly intrude on the private and confidential nature of the employee/employer relationship—however, the public interest required release of aggregate information on performance-related pay—SSC agreed to release aggregate information*

### Background

1. The requester sought a detailed break-down of public service chief executive pay for the years in question, including information on their base salary, performance pay and any allowances or other payments.
2. SSC had proactively published information that explained how chief executive remuneration was set, as well as the process and criteria for assessing their performance. It also published information on chief executive pay in its annual Senior Pay Reports, which detailed the total annual remuneration for each individual chief executive in \$10,000 bands.
3. SSC declined to provide any more granular information on privacy grounds (section 9(2)(a) of the OIA). The requester complained to the Ombudsman.

4. For the years in question, chief executive remuneration was made up of the following components:
  - a. base salary and superannuation;
  - b. performance related pay (consisting of a 10 percent 'Earn Back' component and up to 15 percent 'Performance Pay'<sup>1</sup>). Several chief executives received one-off discretionary payments for good performance outside of the formal performance-related pay process; and
  - c. other payments (consisting of additional leave, end of term payments, higher duties allowances, or living allowances).

## Investigation

5. Section 9(2)(a) of the OIA applies where withholding the information is necessary to *'protect the privacy of natural persons.'*

### Total chief executive pay

6. Successive Ombudsmen have held the view that the total remuneration of chief executives or other heads of public sector organisations should be released, affording a greater weight to accountability than to privacy.<sup>2</sup>
7. The Chief Ombudsman noted that the Local Government Act 2002 requires councils to disclose the total remuneration of the chief executive in their annual report, and considered that the public service should be no less transparent than their local government counterparts.
8. In this case, there was a low privacy interest in the total annual remuneration for each chief executive. There is a strong public interest in transparency and accountability when it comes to remuneration for public service leaders, which outweighs the low privacy interest in the information.
9. The Chief Ombudsman formed the opinion that section 9(2)(a) did not provide good reason to withhold information on individual chief executives' total annual remuneration.

### Other components of chief executive pay

10. In general, the Chief Ombudsman considered there is a high privacy interest in the results of any employee's performance assessment. The release of information on the performance-related components of individual chief executives' remuneration would

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<sup>1</sup> Performance Pay was removed by the Government in August 2018.

<sup>2</sup> Ombudsman Quarterly Review—September 2003.

provide considerable insight into assessments of their performance, and would unfairly intrude on the private and confidential nature of the employee/employer relationship.

11. Similarly, the release of certain granular information about individual chief executives' remuneration including their base salary or superannuation would have readily enabled assumptions to be made about the performance-related components of their remuneration.
12. While there is a strong public interest in receiving meaningful information about chief executive pay, this needs to be carefully balanced against the harm in releasing information.
13. The Chief Ombudsman considered that the public interest did not outweigh the high privacy interest at play, and that section 9(2)(a) provided good reason to withhold information on the individual components that made up individual chief executives' annual remuneration.
14. However, the Chief Ombudsman considered there did need to be a level of transparency about the amount of performance-based remuneration, in order to promote public confidence. This was particularly important given the State Services Commissioner's decision to remove performance pay in 2018.
15. While SSC had published a reasonably fulsome account of the process for assessing chief executive remuneration, the Chief Ombudsman considered there was a strong public interest in the release of further information about the expenditure of government funds, in order to promote transparency and accountability.
16. The Chief Ombudsman considered SSC should release aggregated information on performance-related pay (Earn Back, Performance Pay and one-off discretionary payments), in a manner that did not reveal performance assessment information for individual chief executives. He also considered that SSC should release further information which explained what the possible components of chief executive remuneration were for the years in question.

## Outcome

17. Before forming his opinion, the Chief Ombudsman consulted with the Privacy Commissioner in accordance with section 29B of OIA, to ascertain his views on the merits of refusing the request in reliance on section 9(2)(a). The Privacy Commissioner agreed that there was a low privacy interest in chief executives' total remuneration, but a higher privacy interest in individual components of this remuneration.
18. In light of the above, the Chief Ombudsman formed the opinion that section 9(2)(a) did not provide good reason to withhold individual chief executives' total remuneration, and recommended SSC release this information.

19. However, provided SSC released further aggregated information on performance-related pay, the Chief Ombudsman formed the opinion that section 9(2)(a) did provide good reason to withhold information on the individual components that made up chief executive total remuneration.
20. SSC accepted the Chief Ombudsman's recommendation to release the total remuneration, and agreed to release aggregated information on performance-related pay. SSC advised it would also release the same information for chief executives of tertiary education institutions, district health boards and other statutory Crown entities, as they are also included in its annual Senior Pay Reports.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*