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Date: 28 April 2009

Dear Member

**CABINET SCRUTINY COMMITTEE - WEDNESDAY, 29 APRIL 2009**

I am now able to enclose, for consideration at this meeting of the Cabinet Scrutiny Committee, the following reports that were unavailable when the agenda was printed.

**Agenda No    Item**

**1.      Salary Packages for Chief Officer Group (Pages 1 - 6)**

Ms A Beer, Director of Personnel and Development, will attend the meeting from 10.30 am to 11.15 am to answer Members' questions on this item.

Yours sincerely



**Peter Sass**  
**Head of Democratic Services & Local Leadership**

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**Item C1**

By: Peter Sass - Head of Democratic Services and Local Leadership

To: Cabinet Scrutiny Committee – 29 April 2009

Subject: Addendum Report – Salary Packages for the Chief Officer Group

Classification: Unrestricted

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Summary: This addendum report provides further information with regard to the salary packages for the Chief Officer Group and the Chief Executive as well as advice from the Monitoring Officer in relation to the Data Protection Act.

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**Introduction**

1. At its meeting on 8 April 2009, the Cabinet Scrutiny Committee requested that:
  - a. Information regarding the Chief Officers' salary be supplied as a matter of urgency;
  - b. Ms Beer be asked to explain the discrepancies between a) those figures which had been supplied to the TaxPayers' Alliance and the Information Commissioner, and which had appeared in the national press, and b) those which appeared in the County Council Annual Statement of Accounts;
  - c. This issue be placed on the next Cabinet Scrutiny agenda.
2. Attached at Appendix A are two schedules, one showing the make up of the Chief Executive's pay and the second showing the make up of the Chief Officer pay.
3. Attached at Appendix B is advice from the Monitoring Officer on the Data Protection Act 1998 and how this relates to an individual officer's remuneration.

**Recommendation**

4. That the Cabinet Scrutiny Committee notes the information supplied in relation to the salary packages for the Chief Officers' Group.

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Background Information: *Nil*

Appendix A

Make up of Chief Executive Pay

	Name	Fixed Pay	Performance Related Pay	% Award	Other Allowances	Total
2008/09	Gilroy P	212,300	To be determined	15%	11916*	250,081
2007/08	Gilroy P	207,100	31,065	14%		231,378
2006/07	Gilroy P	202,958	28,420	15%		222,199
2005/06	Gilroy P	192,574	29,625			

\* Relates to sale of untaken annual leave

## Make up of Chief Officer Pay Excluding Chief Executive

	Basic Pay Range	Performance Pay Range	% Range	Average %	Other Allowance Range	Total FTE
<b>2008/09</b>	£135,000 - £171,600	To be determined			£0	6.26
<b>2007/08</b>	£117,122 - £167,400	£15,548 - £25,110	12 - 15%	13.87%	£0	6.6
<b>2006/07</b>	£117,150 - £164,150	£11,722 - £20,088	10 - 13%	11.46%	£0	7
<b>2005/06</b>	£142,245 - £149,950	£7,330 - £21,990	5 - 15%	10.77%	£0	5

### Foot Note

Two members of COG claimed no expenses for 2008/09.

Mileage rate is paid at Lease Car figure

Senior Officer Medical Insurance and Lease Car costs are all paid at full cost by the employee

No claims are received for professional qualifications or membership

### **Advice from the Monitoring Officer**

An individual officer's remuneration is personal data as defined by the DPA 1998. Whether it's a Member of the council or a member of the public requesting the information, personal data must be treated in accordance with the data protection principles.

Under section 40(2) of the Freedom of Information Act, personal information is exempt from disclosure if it would breach the First Data Protection Principle, which means considering whether it is unfair or unlawful to release the information and balancing the necessary public interest in disclosure against the interests of the individual under the first principle.

The First Principle talks about the obligation to process personal information "fairly and lawfully", which is satisfied if one of the conditions in Schedule 2 of the Data Protection Act (DPA) is satisfied, the relevant ones being condition 1 (consent) and 6 (legitimate interests). Unless all the individual officers consent to the disclosure, consideration must be given to condition 6 of Schedule 2 of the DPA, which says:

"The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject"

In Corporate Officer of the House of Commons v Information Commissioner & Ors (EA/2007/0060), upheld on appeal by the High Court, the court recommended that public authorities should approach the request for personal information as a three-part test:

1. there must be a legitimate public interest in disclosure;
2. the disclosure must be necessary to meet that public interest; and
3. the disclosure must not cause unwarranted harm to the interests of the individual.

Usually, there is a legitimate interest in releasing official information and there are the transparency, accountability and the expenditure of public money arguments one could make in favour of disclosure. On the other hand, the local authority is also entitled to consider whether releasing the information is necessary to achieve those aims, or is there another less intrusive way to address the request, for example by anonymising the information.

Notwithstanding those considerations, if the disclosure is an unwarranted interference with the individual's privacy, then the public is not entitled to the personal data. In weighing whether disclosing details of the officers' remuneration is unwarranted you can take into account:

- (i) that the information relates more to the officer's private life (personal finances) than their work;

- (ii) seniority of their position;
- (iii) the distress it may cause the individual officers (but not if it only causes embarrassment or public criticism);
- (iv) the individuals' view;
- (v) expectations of the individual officers.

Even if the outcome of the above is that the disclosure is necessary for the purposes of the legitimate interests of the Committee, it must additionally be a fair and lawful disclosure. It will be fair if the Condition 6 is satisfied, but it may not be lawful if releasing the information is a breach of confidentiality or breach of the confidentiality provisions of the officers' employment contract.

Section 40 is an absolute exemption, but any refusal notice must say why releasing the information is an unwarranted interference of an individual's privacy.

Monitoring Officer  
Kent County Council  
April 2009