

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.

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