



HM TREASURY

Financial Reporting Advisory Board Paper

IMPLICATIONS OF INFORMATION COMMISSIONER'S DECISION REGARDING SALARY AND PENSION DISCLOSURES

Issue:	Amending the FreM for 2006-07 to reflect the decision of the Information Commissioner that prior consent is no longer needed for the disclosure of salary and pension information for named individuals.
Impact on guidance:	The proposed text in Annex A relates to the FreM for 2006-07.
IAS/IFRS adaptation?	No.
IPSAS compliant?	N/A
Impact on budgetary regime?	None
Recommendation:	The FRAB is invited to approve the proposed wording for the FreM for 2006-07
Timing:	The amendments will affect 2006-07.

DETAIL

Background

1. Based on legal opinion obtained by the Cabinet Office at the time of the initial introduction of the requirement to disclose salary and pension information for named individuals, the FReM (and the RAM before it) noted that the individuals affected would need to give their consent to the information being disclosed - see FReM 7.2.25. This was to avoid offending the provisions of the Data Protection Act regarding the disclosure of personal information.

2. However, a recent decision by the Information Commissioner http://www.ico.gov.uk/cms/DocumentUploads/Decision_Notice_FS50093734.pdf has clarified that prior consent is **not** required. The decision was based on a case brought against a Health Trust in Northern Ireland under the Freedom of Information Act, but is also relevant in England and Wales, although not in Scotland. In brief, the Trust argued that it was not required to disclose information

under the Freedom of Information Act about an individual's salary and pension as the individual had withheld consent and the information was not given in the accounts.

3. The Commissioner held that although the data is "personal data" under the Data Protection Act 1998 ("DPA"), it is not exempt information under section 40(2) of the Freedom of Information Act 2000 as none of the data protection principles would be breached by its release. As a result, entities are entitled to publish details of salary and pension entitlements of staff without their prior consent.

4. However, there is an exception – an individual would need to give consent if publication would prejudice his/her rights, freedoms or legitimate interests (as this would lead to the 6th condition in Sch 2 to the DPA not being met, and therefore a breach of the 1st Data protection principle), or where publication would cause or be likely to cause substantial damage or substantial distress to the individual or another and that damage or distress would be unwarranted (section 10 of the DPA).

5. But it would be for the individual to make the case and the presumption is that salary and pension information will be published. However, we already have agreed that disclosures need not be made where national security is involved or in cases where an individual's personal safety may be in danger, and the amendments to the FreM will continue to allow non-disclosure in these circumstances.

6. As a result of this decision, references in the FreM to the need to obtain prior consent can be omitted, and (except in the circumstances noted above) employees will have to argue the case for non-disclosure.

7. The Cabinet Office is planning to issue an Employers Pension Notice early in 2007 to clarify the implications of the Information Commissioner's decision, but we are proposing amendments to the FReM now in order to give departments and other bodies time to consider any potential changes to their recording and accounting systems.

Impact on disclosures in resource and other accounts

8. The effects on disclosures should be minimal as relatively few individuals currently withhold consent to disclose information.

IAS/IFRS compliance

9. Disclosure of information about salary and pension disclosures is required by IAS 19 – resource and other accounts are required to prepare a Remuneration Report which gives the necessary information.

IPSAS compliance

10. Not applicable, as there is no IPSAS on the subject.

Proposed text for the shadow Government Financial Reporting Manual

11. See Annex A for the proposed amendments to FreM for 2006-07.

Impact on the budgetary regime

12. There is on impact on the budgetary regime.

Summary and recommendation

13. This paper proposes amendments to the FreM for 2006-07 to reflect the implications of a decision by the Information Commissioner that employers may disclose information about an individual's salary and pension entitlements without obtaining the prior consent of the individual. The FRAB is invited to approve the amendments.

Financial Policy Reporting Team
21 September 2006

PROPOSED AMENDMENTS TO THE GOVERNMENT FINANCIAL REPORTING MANUAL FOR 2006-07

TRACKED CHANGE VERSION

(a) Proposed amendments to Paragraph 7.2.25

7.2.25 The Remuneration Report shall include information under the following headings to the extent that they are relevant. Following a decision by the Information Commissioner in June 2006 ([http://www.ico.gov.uk/cms/DocumentUploads/Decision Notice FS50093734.pdf](http://www.ico.gov.uk/cms/DocumentUploads/Decision%20Notice%20FS50093734.pdf)), employers in England, Wales and Northern Ireland are ~~it is no longer required necessary for employers to obtain the consent of named individuals before disclosing information on their salary and pension entitlements.~~ The decision does not apply in Scotland, and employers in Scotland will continue to need to obtain prior consent.

7.2.26 Non-disclosure would, however, be acceptable if publication:

- would prejudice the rights, freedoms or legitimate interests of the individual; or
- would cause or be likely to cause substantial damage or substantial distress to the individual or another, and that damage or distress would be unwarranted.

7.2.27 Examples of the latter include ~~, but employers may wish to withhold the information on the grounds of national security or where an individual may be at risk if his or her name is disclosed. Where the information related to named individuals their prior consent to disclosure is required but, subject to this being obtained, there is a presumption that information about named individuals will be given in all circumstances, except on grounds of national security or where it conflicts with existing legislation. In other cases, it would be for the staff member to make a case for non-disclosure which will need to be considered by the employer on a case-by-case basis. Where non-disclosure is agreed, in the latter case,~~ the fact that certain disclosures have been omitted should be disclosed.

7.2.28 In addition to the headings listed below, Schedule 7A requires information to be given about long-term incentive schemes (as defined in paragraph 10(5) of Schedule 7A). It seems unlikely that entities to which this Manual applies will have such schemes and they are not considered further. The aspects of the Remuneration Report which are subject to audit are indicated as such.

a. ...

Drafting note: paragraph numbers will need to be amended

(b) Proposed amendments to Paragraph 7.2.27

~~Subject to the need to obtain their prior consent, there is a presumption that information about named individuals will be given in all circumstances, except on grounds of national security or where it conflicts with existing legislation. In the latter case, the fact that certain disclosures have been omitted should be disclosed.~~

Drafting note: this paragraph duplicates some of the wording of 7.2.25 and can be omitted

“CLEAN” VERSION

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(http://www.ico.gov.uk/upload/documents/decisionnotices/2006/decision_notice_fs50093734.pdf), employers in England, Wales and Northern Ireland are no longer required to obtain the consent of named individuals before disclosing information on their salary and pension entitlements. The decision does not apply in Scotland, and employers in Scotland will continue to need to obtain prior consent.

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