

Hearing 102-202300228

Decision

Ministry of Home Affairs

Sharon Roulstone
Ombudsman

30 November 2023

Summary

The applicant made a request to the Ministry of Home Affairs (Ministry) under the Freedom of Information Act (2021 Revision) (FOIA) for records relating to certain salary increases in the Cayman Islands Fire Service (CIFS).

The Ministry provided the applicant with guidance from the Portfolio of the Civil Service (PoCS), but claimed that the other responsive records were exempt because their disclosure would inhibit the free and frank exchange of views and prejudice the effective conduct of public affairs, and they consisted of third-party personal information.

In the circumstances of this case, the Ombudsman found that the names, salaries and other information that would allow the identification of the individuals who received an increase was exempt because its disclosure would prejudice the conduct of public affairs. However, the disclosure of the remaining parts of the records, including the names and other information of the civil servants actioning the salary increases, as well as the information that demonstrates the process used to apply for, and obtain, permission to action the salary increases, should be disclosed.

The Ombudsman ordered the Ministry to disclose the unexempted parts within 30 days.

Statutes considered¹

Freedom of Information Act (2021 Revision) (FOIA)

Freedom of Information (General) Regulation (2021 Revision) (FOI Regulations)

¹ In this decision, all references to sections are to sections of the Freedom of Information Act (2021 Revision), and all references to regulations are to the Freedom of Information (General) Regulations (2021 Revision), unless otherwise specified.

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A. INTRODUCTION

- [1] On 25 January 2023 the applicant made a request under the FOIA to the Ministry for the following:
- 1. Provide a copy of all correspondence and recommendations that were submitted to the Ministry of Home Affairs supporting a salary increase for a selected number of the Cayman Islands Fire Department senior management team members? Members include these officers but not limited to, [Officer A], [Officer B], [Officer C], [Officer D], [Officer E], [Officer F], etc.*
 - 2. Also, provide a copy of the law which supports a salary increase for those officers outside of a promotional process?*
 - 3. Based on what performance criterias [sic] were those officers awarded a salary increase?*
 - 4. Copies of all correspondence submitted to the Deputy Governor to support a salary increase for those officers.*
 - 5. Copies of all other correspondences that did not support or recommended the increase for all of the Department's senior team.*
- [2] Due to organizational changes in the Ministry, when the request was received the Information Manager (IM) no longer had responsibility for FOI requests regarding CIFS and there was a delay in the new IM's response to this request. On 10 March the request was acknowledged, and the new IM apologized for not responding within the statutory timeframe.
- [3] On 14 March 2023 the IM informed the applicant that the request was being treated as a request for an internal review, given the delays incurred.
- [4] A week later the IM granted access to the Guidance on Pay Allocation within Salary Grades of the Portfolio of the Civil Service's (PoCS), on behalf of the Acting Chief Officer (CO). The IM also denied access to the other responsive records pursuant to section 23(1), having taken into consideration the impact of the Data Protection Act (2021 Revision) (DPA) as required under section 23(5).
- [5] The applicant made an appeal to the Ombudsman on 17 April 2023. We opened the appeal file on 24 April 2023 and started our investigation.

- [6] On 7 June the Ministry continued to rely on the exemption in section 23(1), but also added the exemption in section 20(1)(b) relating to free and frank deliberations, as well as the exemption in section 20(1)(d) relating to the effective conduct of public affairs. Section 20(1)(b) was being applied to protect the decision-making process on salary increases. Section 20(1)(d) was relied on because it was claimed that disclosure would prejudice the Ministry's ability to perform necessary functions such as personnel and performance management.
- [7] This matter could not be resolved informally, and the case progressed to a formal hearing process before the Ombudsman.

B. CONSIDERATION OF ISSUES

General issues

- [8] Section 43(2) states:

(2) In any appeal under section 42, the burden of proof shall be on the public or private body to show that it acted in accordance with its obligations under this Act.

- [9] The Ministry did not present any arguments in support of the exemption in section 20(1)(b), which relates to the inhibition of the free and frank exchange of views for the purposes of deliberation. Instead, it has subsumed similar arguments in its reasoning for the exemption in section 20(1)(d), which relates to prejudice to the effective conduct of public affairs. Given this approach by the Ministry, I consider the exemption in section 20(1)(b) abandoned, and I will consider the arguments relating to sections 20(1)(b) and (d) together.
- [10] The Ministry has not specified which records, or part thereof, are claimed to be exempt under which of the two exemptions it has argued (sections 20(1)(d)) and 23(1)). I will therefore assume that the Ministry intends to apply both exemptions to all parts of the responsive records. This intent is also confirmed in the Ministry's submission.
- [11] The standard of proof I am required to apply is the civil standard of proof (the balance of probabilities), which means that a matter is "more likely than not" to have occurred.
- ### **The responsive records**
- [12] In addition to the guidance from the PoCS, which has already been disclosed, the responsive records document the administrative process relating to salary increases, which includes the details relating to the increases. The records consist of emails and attachments dated between October 2022 and January 2023.
- [13] The Ministry has also provided me with an email chain that consists of its internal communications regarding the handling of the FOI request, dated between January and March 2023. This is not a responsive record, and I will not consider it further.

a) **Are the responsive records exempt under section 20(1)(d) because their disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs?**

[14] Section 20(1)(d) states:

20. (1) A record is exempt from disclosure if —

...

(d) its disclosure would otherwise prejudice, or would be likely to prejudice, the effective conduct of public affairs.

[15] Section 26 states:

Granting access to exempt information

26. (1) Notwithstanding that a matter falls within sections 18, 20(1)(b) and (d), 21, 22, 23 and 24, access shall be granted if such access would nevertheless be in the public interest.

(2) Public interest shall be defined in regulations made under this Act.

(3) Notwithstanding that a record or part thereof is exempt from disclosure, access shall be granted to personal information if disclosure would be required under the Data Protection Act, 2017 [Law 33 of 2017].

[16] Section 12(1) states:

Partial access

12. (1) Where an application is made to a public authority for access to a record which contains exempt matter, the authority shall grant access to a copy of the record with the exempt matter deleted therefrom.

The position of the Ministry

[17] The Ministry claims that disclosure “could lead to the loss of frankness and candour and inhibit the ability of these persons to express themselves openly, honestly and completely.” It also states that “Public servants may ... be less likely to initiate and engage in discussions if they are aware the justification and details of salary increases could be subject to public scrutiny.”

[18] The Ministry states that disclosure could “disrupt the vital HR function to recognize, reward, or make fair salary allowances”, and this could affect staff morale, make the government a less attractive employer, and “undermine the integrity of the [CIFS] by eroding the public perception of trust”.

[19] It also claims that disclosure of salary information “can generate animosity and resentment if colleagues make less than their peers. This could lead to workplace distractions that detract from the tasks and functions of the service.”

The position of the applicant

[20] The applicant does not address the exemptions directly. He argues that the salary increases were “contrary to the CIG Pay Policy and the remaining officers were not considered.” As well, he claims that “This kind of practice appears to be unethical and now puts the other individuals at a disadvantage and victims of workplace discrimination.”

[21] The applicant also claims to know the names and salaries of three individuals who he says were given a salary increase. He claims that “the remaining officers were not considered”, and the increases were “contrary to the CIG Pay Policy”. The applicant calls this alleged approach “unethical” and believes that it places “other individuals at a disadvantage” and renders them “victims of workplace discrimination”.

[22] It is important to note that the applicant’s request was not for the amounts of the salaries or increases, but for the “correspondence and recommendations... supporting a salary increase” for six named individuals and possibly others, as well as for the “law which supports a salary increase... [the] performance criteria, correspondence [with] the Deputy Governor... [and] correspondence that did not support or recommend the increase...”.

[23] In his reply submission for this hearing the applicant confirms that position, as follows:

Based on this additional information which has already been obtained, I am willing to accept the Ministry's justification under the FOI Law in relation to the disclosure of the individual's finances.

Legal definitions

[24] According to the UK Information Tribunal in **Hogan and Oxford City Council v Information Commissioner**,² demonstrating prejudice involves two steps: the prejudice must be “real, actual or of substance” and there must be a causal link between the disclosure and the prejudice.

[25] For the prejudice to be “real, actual and of substance”, the disclosure must at least be capable of harming the interest in some way, i.e. be capable of having a damaging or detrimental effect on the effective conduct of the specified public affairs. The prejudice must be more than trivial or insignificant, but does not have to be particularly severe or unavoidable. According to guidance from the UK’s Information Commissioner:

There may be a situation where disclosure could cause harm... but the authority can mitigate the effect of the disclosure, perhaps by issuing other communications to put the disclosure in

² Information Tribunal (UK), *Hogan and Oxford City Council v Information Commissioner*, EA/2005/0026 and 0030, 17 October 2006, paras 28-36.

*context. In such a case... the exemption may not be engaged, or we may still accept that the exemption is engaged but then consider the effect of these mitigating actions as a factor in the public interest test.*³

[26] In regard to the causal link between the potential disclosure and the prejudice claimed:

*There must be more than a mere assertion or belief that disclosure would lead to prejudice. There must be a logical connection between the disclosure and the prejudice in order to engage the exemption.*⁴

[27] The meaning of the similarly worded exemption in the UK's Freedom of Information Act, 2000, was expressed by the UK's Information Tribunal in **McIntyre v Information Commissioner and the Ministry of Defence**:

*... this category of exemption is intended to apply to those cases where it would be necessary in the interests of good government to withhold information, but which are not covered by another specific exemption, and where the disclosure would prejudice the public authority's ability to offer an effective public service or to meet its wider objectives or purposes due to the disruption caused by the disclosure or the diversion of resources in managing the impact of disclosure.*⁵

[28] The term "would prejudice" means that the likelihood of prejudice to the interest set out in the exemption is "more probable than not", and "would be likely to" means there is a "real and significant risk of prejudice" for the exemption to be engaged.⁶

Blanket approach to exemptions

[29] It is possible that a record may entirely be exempt, or that the exempted information is so extensive that disclosure of the remaining, unredacted information would be meaningless. However, the Ministry appears not to have considered whether the exemptions they claim apply to the responsive records in their entirety, or whether they might apply only to certain parts of the records. Such consideration is required pursuant to section 12(1), as quoted above. This is important, particularly since the request was not for the salaries, but rather for evidence of the process that was followed in applying for and awarding the salary increases, a point the Ministry seems to have missed.

[30] As my predecessors pointed out in previous hearing decisions:

³ Information Commissioner's Office (UK), *The Prejudice Test: Freedom of Information Act*, Version 1.1, 5 March 2013, para 19.

⁴ Information Commissioner's Office (UK), *The Prejudice Test*, op. cit., para 21.

⁵ Information Tribunal (UK), *McIntyre v Information Commissioner and Ministry of Defence*, 11 February 2008, EA/2007/0068, para 25.

⁶ Information Tribunal (UK), *McIntyre*, op cit., para 40.

... the blanket exemption of an entire category of records is rarely appropriate, particularly in the light of section 12(1) which demands that exemptions under the FOI Law are applied in a proportionate manner, by providing that access may only be denied to such part or parts of a record that are actually exempt, and that responsive records must be redacted accordingly.⁷

- [31] In this regard, the need to interpret exemptions narrowly has also been discussed repeatedly, as follows:

It is a commonly accepted principle of statutory interpretation that exemptions in the Act should be interpreted narrowly given the purpose and intent of the Act. This principle has been expressed by the UK Information Tribunal, as follows:

... we consider we should generally adopt a narrow interpretation of “exclusions” from the Act unless it is clear that Parliament intended otherwise. This is the view the [First Tier Tribunal] and higher courts have largely taken of the exemptions.⁸

And,

I am content to proceed on the basis that... exemptions should be interpreted narrowly.⁹

Discussion

- [32] The responsive records consist of applications for salary increases to the Ministry and the Moratorium Team at the PoCS, and their responses. The records include information about specific individuals (civil servants), their experience and skills, and their current and proposed increased salaries, and implicitly document the process that was followed. The records also contain information about the civil servants who actioned the salary increases.
- [33] The process of formulating, applying for, considering and reaching a decision in relation to specific salary increases must take place in a free and frank atmosphere, since it is important that all arguments are heard without concerns that such discussions would be made public. This protects the decision-making process and provides necessary space to consider various arguments and options.
- [34] There is also a real and significant risk that disclosure of the redacted information would create animosity and resentment amongst colleagues or others, and undermine the Ministry’s ability to conduct its HR responsibilities adequately and fairly.

⁷ Information Commissioner, *ICO Hearing 50-01315 Decision, Cayman Islands Airports Authority*, 23 February 2016, para 39.

⁸ First Tier Tribunal (UK), *Brendan Montague v Information Commissioner and HM Treasury*, EA/2013/0074, 13 November 2013, para 51.

⁹ Upper Tribunal (Administrative Appeals Chamber), *DEFRA v Information Commissioner and Simon Birkett*, GIA/1694/2010; and *Home Office v Information Commissioner*, GIA/2098/2010, para 26; quoted in: Ombudsman, *Hearing 83-202000817 Decision, Cabinet Office*, 8 February 2021, para 17.

[35] I want to point out that this approach is only justifiable if the process that is followed itself is fair and accountable. There can be no expectation of a “free space” for deliberation, or justification for fear of prejudice, in some circumstances, for instance:

- if there are good reasons to suspect that a decision was made in an unaccountable manner;
- if a decision was subject to any controversy or credible allegations;
- if there were insufficient safeguards against corruption;
- if the salary increases fell outside the approved salary grade for the position; or,
- if the increases were awarded by the individuals to themselves.¹⁰

This list is not exhaustive, and other factors may also come into play.

[36] The decision at hand does not raise any of the suspicions above. There is no reason to suspect that the decision to increase the specified salaries was taken unfairly or unaccountably, without appropriate explanation and oversight, or contrary to the PoCS Guidance. Therefore, I do not agree with the applicant’s allegation that the procedures followed in this instance were unethical or inappropriate, as alleged.

[37] I note that while the administrative and ethical principles of the PoCS Guidance were adhered to, and the process was accountable, the detailed procedures that were followed are not addressed in that Guidance, or in any other guidance that was provided to the applicant or to me. The PoCS Guidance appears to have been written over 15 years ago, and does not, for instance, anticipate the moratorium on salary increases.

[38] **Therefore, in the circumstances of this appeal, it is correct to exempt parts of the records pursuant to the exemption in section 20(1)(d), to the extent that they would, or would be likely to, prejudice the conduct of the HR functions concerned or cause animosity or resentment in the CIFS. This includes the names of the individuals who received an increase, the current and anticipated salaries, and any information that would render those individuals identifiable.**

[39] For clarity, I do not find that the disclosure of the remaining parts of the records (i.e. those parts not already found to be exempt) would, or would be likely to prejudice the effective conduct of public affairs. This is because the remaining parts of the records only demonstrate the process that was followed to increase certain salaries, and it is not “more probable than not” that prejudice would be caused by the disclosure of those parts, and there is no “real and significant risk of prejudice”.

[40] For further clarity, the exemption does not apply to the names, functions, etc. of the public servants at the CIFS, the Ministry and the PoCs, who requested, considered, emailed, approved, etc. the salary increases. Their involvement in the salary increase process was in their official capacity, and

¹⁰ Information Commissioner (UK), *Requests for personal data about public authority employees, Version 2.2*, 24 November 2020, p. 17.

the disclosure of their identity and position would not, or would not be likely to, prejudice the conduct of public affairs.

Public interest test

[41] Since I have found that the exemption in section 20(1)(d) applies to parts of the responsive records, and the DPA does not require disclosure, I must consider whether disclosure would nonetheless be required in the public interest, pursuant to section 26(1).

[42] A public interest test involves weighing up the public interest arguments for and against disclosure to determine whether, in all the circumstances of the case, the public interest in maintaining an exemption outweighs the public interest in disclosing the requested information.

[43] Public interest can include a wide range of values and principles relating to the public good or what is in the best interests of society. It is something that is of serious concern and benefit to the general public, not just something of interest to an individual. It serves the interests of the public at large, although it does not necessarily relate to the entire population. However, public interest is not the same as “something the public is interested in”. It is what is in the interest of the public good or society at large.¹¹

[44] Regulation 2 defines the public interest as follows:

“public interest” means but is not limited to things that may or tend to —

- (a) promote greater public understanding of the processes or decisions of public authorities;*
- (b) provide reasons for decisions taken by Government;*
- (c) promote the accountability of and within Government;*
- (d) promote accountability for public expenditure or the more effective use of public funds;*
- (e) facilitate public participation in decision making by the Government;*
- (f) improve the quality of services provided by Government and the responsiveness of Government to the needs of the public or of any section of the public.*
- (g) deter or reveal wrongdoing or maladministration;*
- (h) reveal information relating to the health and safety of the public, or the quality of the environment or heritage sites, or measures to protect any of those matters; or*
- (i) reveal untrue, incomplete or misleading information or acts of a public authority.*

[45] The Ministry considers various factors in favour of, and against, disclosure in the public interest, as follows:

- A. Factors in favour of disclosure:
 - a. Disclosure could reveal the reasons for decisions;
 - b. Scrutiny of decision making processes;

¹¹ Information Commissioner’s Office (UK), *The Public Interest Test: Freedom of Information Act, Version 2.1*, 19 July 2016.

- c. *The need for the public to be better informed about the reason for increases in salary;*
- d. *Scrutiny of government activity.*
- **B. Factors against disclosure:**
 - a. *That it is not standard practice to publish specific salaries for individuals within the civil service;*
 - b. *The reasonable expectations of individuals whose personal information the Public Authority holds, taking into account their expectations both at the time the information was collected and at the time of the request;*
 - c. *Whether the information has been or remains in the public domain;*
 - d. *Whether there may be a legitimate expectation that the records would remain confidential, considering the fact that such records were previously restricted from public access.*
 - e. *The possible consequences of disclosure considering the nature of the record concerned.*
 - f. *Whether the individuals would likely object to the release of that information.*

[46] Based on these factors, the Ministry concludes that the public interest in disclosure does not outweigh the public interest in withholding the records.

[47] The applicant has not explicitly addressed the public interest, but he raises the point that disclosure “sheds light on how this recommendation was put forward and approved by the [CFO] and ultimately [the] Ministry/Deputy Governor.”

[48] Any exemption represents a public interest in its own right, and disclosure of the exempted parts would have a prejudicial effect on the conduct of the CIFS’s and the Ministry’s HR functions, as discussed above. As well, the disclosure of information about another person (i.e. the names, the current and anticipated salaries, and any information that would render those individuals identifiable) generally does not rank as a significant personal interest factor, and attracts no more than a minimal weighting.¹²

[49] **Consequently, the public interest in withholding the exempted parts outweighs the public interest in disclosure, and the redacted parts remain withheld.**

Section 26(3) - Data protection

[50] Since the responsive records are partially exempted, I must also consider whether disclosure of the exempted parts is required by the DPA, pursuant to section 26(3), quoted above.

[51] Section 2 of the DPA defines personal data as:

¹² Upper Tribunal (UK), *Maurizi v Information Commissioner and the Crown Prosecution Service* [2019] UKUT 262 (AAC), paras 202-203.

“personal data” means data relating to a living individual who can be identified and includes data such as —

(a) the living individual’s location data, online identifier or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the living individual;

(b) an expression of opinion about the living individual; or

(c) any indication of the intentions of the data controller or any other person in respect of the living individual;

[52] The exempted information in question is personal data as defined by the DPA, since it is “data relating to living individuals who can be identified”.

[53] In accordance with the sixth data protection principle in schedule 1 of the DPA, personal data must be processed in accordance with the rights of data subjects. Section 8 of the DPA grants a fundamental right to access one’s own personal data. However, the request is not for the applicant’s own personal data, and therefore disclosure is not required under the DPA.

[54] **Consequently, access to the exempted parts of the responsive records (i.e. the names, the current and anticipated salaries, and any information that would render those individuals identifiable) is not required under the DPA, as per section 26(3), and the exemption therefore remains engaged.**

b) Are the records exempt under section 23(1) because their disclosure would involve the unreasonable disclosure of personal information of any individual, whether living or dead?

Legal definitions

[55] Section 23 states:

23. (1) Subject to the remaining provisions of this section, a record is exempt if its disclosure would involve the unreasonable disclosure of personal information of any individual, whether living or dead.

(2) Subsection (1) shall not apply in any case where the application for access is made by the person to whose affairs the record relates.

(3) Records relating to personal information shall be exempt without limitation as to time.

(4) The extent to which third party rights are to be protected shall be set out in regulations made under this Act.

(5) Where the Data Protection Act, 2017 [Law 33 of 2017] does not permit disclosure or publication of a record or part of a record, that record or part of the record shall be exempt from disclosure under subsection (1), and section 26(1) shall not apply.

[56] Regulation 2 defines “personal information” as:

...information (including information forming part of a database) or an opinion, whether true or not, about an individual, whether living or dead, whose identity is apparent, or can reasonably be ascertained, from the information or opinion, and includes the particulars set out in Schedule 1; ...

[57] Paragraph 1 of schedule 1 of the Regulations gives further examples of personal information, as follows:

1. *The scope of “personal information”, as defined in regulation 2, includes —*

- (a) the individual’s name, home address and home telephone number;*
- (b) the individual’s race, national or ethnic origin, colour, and religious or political beliefs or associations;*
- (c) the individual’s age, sex, marital status, family status and sexual orientation;*
- (d) an identifying number, symbol or other particular assigned to the individual;*
- (e) the individual’s fingerprints, other biometric information, blood-type, genetic information and inheritable characteristics;*
- (f) information about the individual’s health and health care history, including information about a physical or mental disability;*
- (g) information about the individual’s educational background;*
- (h) information about the individual’s financial records;*
- (i) information about the individual’s employment history;*
- (j) information about an individual gathered in the course of assessments related to the individual’s skills, aptitudes and capabilities, including psychometric testing conducted for employment purposes;*
- (k) information about the individual’s criminal history, including criminal records where a pardon has been given;*
- (l) another person’s expression of opinion about the individual; and*
- (m) the individual’s personal views or opinions, except if those views or opinions are about someone else.*

[58] Paragraph 2(a) of schedule 1 of the Regulations states:

2. *The scope of “personal information”, as defined in regulation 2, does not include —*

- (a) where the individual occupies or has occupied a position in a public authority —*
 - (i) the name and official contact details of the individual;*
 - (ii) information relating to the position, or its functions;*

- (iii) *the general terms upon, and subject to which, the individual would occupy that position; or*
- (iv) *anything written or recorded in any form by the individual, in the course of and for the purpose of, the performance of the functions of the position;*

Discussion

[59] Since I have found that the “names, the current and anticipated salaries, and any information that would render those individuals identifiable”, are exempt under section 20(1)(d), there is no need to consider whether the exemption in section 23(1) also applies to those parts of the responsive records.

[60] The only remaining parts of the responsive records that are not already exempt, and that are capable of being considered “personal information” under the FOIA are the “names, functions, contact details, etc. of the public servants at the CIFS, the Ministry and the PoCs, who requested, considered, emailed and approved the salary increases”.

[61] The “names, functions, contact details, etc. of the public servants at the CIFS, the Ministry and the PoCs, who requested, considered, emailed and approved the salary increases” are excluded from the definition of “personal information” in paragraph 2(a) of schedule 1 of the Regulations, since they consist of the names and official contact details of individuals occupying a position in a public authority, as well as information relating to their positions or functions, and anything written or recorded in the course of, and for the purpose of, the performance of their positions.

[62] **Therefore, the “names, functions, etc. of the public servants at the CIFS, the Ministry and the PoCs, who requested, considered, emailed, approved, etc. the salary increases” do not meet the definition of “personal information” and are consequently not exempted under section 23.**

Section 23(5) - Data protection

[63] Since the exemption in section 23 does not apply, I am not required to conduct a public interest test under section 26. However, under section 23(5) I must consider whether the DPA “permits” disclosure.

[64] The data in the form of “names, functions, etc. of the public servants at the CIFS, the Ministry and the PoCs, who requested, considered, emailed, approved, etc. the salary increases” meets the definition of personal data in section 2 of the DPA, since it is “data relating to living individuals who can be identified”.

[65] The first data protection principle in schedule 1 of the DPA states:

First principle

1. Personal data shall be processed fairly. In addition, personal data may be processed only if

—

(a) in every case, at least one of the conditions set out in paragraphs 1 to 6 of Schedule 2 is met; ...

[66] The only relevant processing condition is the “legitimate interests” condition in the sixth paragraph in schedule 2 of the DPA. That condition states:

6. 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 if the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

[67] As explained above, the Ministry’s claims relate to the entirety of the responsive records, since it has not considered whether partial access might be granted.

[68] The Ministry recognizes that there is a minimal legitimate interest “in disclosing the records to ensure transparency and accountability in the use of public funds”. However, it concludes that in the context of the DPA, “the individuals’ right to privacy outweigh[s] the legitimate interest in disclosing their personal information.” This point of view is based on the information that is already available “to promote transparency, the general controls in place to ensure accountability and the nature of the information, as well as the Guidance on Pay Allocation within Salary Grades which was provided to the Applicant”.

[69] I disagree with this view in respect of the “names, functions, etc. of the public servants at the CIFS, the Ministry and the PoCs, who requested, considered, emailed, approved, etc. the salary increases” for the following reasons under the “legitimate interests” processing condition.

[70] The processing of the official contact information (in the form of disclosure) is necessary for the purposes of the legitimate interests pursued by the Ministry/CIFS (the data controllers) in applying the provisions of the FOI Act. In the circumstances of this appeal, the processing is not unwarranted by reason of prejudice to the rights and freedoms of the individuals concerned, who in their capacity as public servants acting in an official capacity do not have a reasonable expectation of privacy in relation to those types of data.

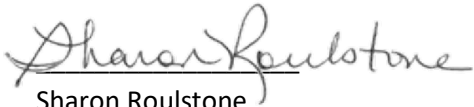
[71] **Consequently, the disclosure is permitted under the DPA, as per section 23(5).**

[72] **Therefore, the remaining parts of the records, i.e. those parts that have not been exempted pursuant to section 20(1)(d), are to be disclosed.**

C. FINDINGS AND DECISION

Under section 43(1) of the Freedom of Information Act, for the reasons outlined above, I make the following findings and decisions:

- a) The exemption in section 20(1)(d) is engaged in respect of the names of the individuals who received an increase, the current and increased salaries, and any information that would render those individuals identifiable.
- b) The remainder of the responsive records are not exempt from the general right to access in section 6.
- c) In accordance with the above findings, I require the Ministry to disclose the remainder of the responsive records within 30 calendar days.
- d) I will provide the Ministry with an annotated copy of the responsive records indicating the exempted parts.

A handwritten signature in cursive script that reads "Sharon Roulstone". The signature is written in black ink and is positioned above the printed name and title.

Sharon Roulstone
Ombudsman