

INTERNAL REVIEW OF FOI REQUEST Ref: DE/2014-0052 SPECIAL ADVISER'S PAY

On 18 March 2014 Mr Moore requested that he be given details of the salary paid to the Minister of Education's Special Adviser in the Department.

On 24 March 2014, Anne Smith DE responded to Mr Moore, stating that this information was subject to an exemption under Section 40(2) of the Freedom of Information Act. This was in line with advice received by DE from the Office of the First Minister and Deputy First Minister (OFMDFM).

On 25 March 2014, Mr Moore wrote to DE to request an Internal Review of DE's handling of his Freedom of Information request. In his email, Mr Moore drew attention to a recent decision of the First Tier Appeals Body (Appeal No: EA/2012/0250) "which ruled that for the class of person, this information should be released."

In undertaking this Internal Review, I have examined the various communications between DE and Mr Moore and I have studied the Decision Notice of the First Tier Tribunal Appeal No: EA/2012/0250.

There are a number of points of difference between the case on which the Decision Notice of the First Tier Tribunal Appeal No: EA/2012/0250 was based and the FOI request which is the focus of this Internal Review:

- a. In the First Tier Tribunal, the post held was at much more senior level in terms of status and salary [CEO for NHS Surrey] than the level at which the Minister's Special Adviser is working.
- b. The appellant in the case (Mr Dicker) claimed that the salary actually paid was in excess of the national guidelines on NHS salaries and claimed that it was in the public interest for that departure from national pay guidance to be revealed.
- c. In the Appeal No: EA/2012/0250 case, "the arrangements (including secondment and recharge from another public authority at one stage) are not as transparent as might be wished and it is not entirely clear from the information published....that the national pay guidance has been complied with".

I note that these points make the argument in the Decision Notice for the balance, in terms of public interest to be tipped in favour of release.

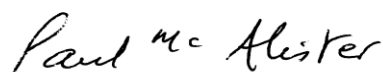
However, in the case under consideration in this Internal Review, the Special Adviser is not at such a senior level, the employment arrangements are straightforward (ie not involving secondments etc) and there is no suggestion that the Special Adviser is being paid significantly more than the usual salary for the postⁱ.

For this reason, I find that the public interest test supports the exact information being withheld and that therefore, in this case, the Department of Education acted appropriately.

If you have any queries about this letter, please contact my office. Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the Internal Review, you have the right to apply directly to the Information Commissioner for a review of our original decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF.



Paul McAlister
Internal Reviewer
9 April 2014

ⁱ In his published guidance ("When should salaries be disclosed" ICO February 2009) the Commissioner noted that salary exact disclosure was sometimes justified in exceptional circumstances, for example, "there are current controversies" and "the individual in question is paid significantly more than the usual salary for the post".