

## **FOIP Office- Public Service Compensation Disclosure Opinion**

### **Option 1: Salary Range, by Position**

*Disclose: Position title, salary range, number of positions, discretionary benefits.*

Releasing salary range and position title of all City employees, including number of positions and employment responsibilities, would be acceptable under FOIP. The legislation states, under subsection 17(2)(e), that it is “not an unreasonable invasion of a third party’s personal privacy if... the information is about the third party’s classification, salary range, discretionary benefits or employment responsibilities as an officer, employee or member of a public body, or as a member of the staff of a member of the Executive Council”.

It would not be unreasonable to release salary range by position with the name of the employee present in each instance, as no specific salary is provided. If posting employee names is intended, it is highly recommended to create a policy/procedure to protect employees who, for safety/legal reasons, may require additional privacy protection.

This Option, in many ways, involves the disclosure of information that is already publicly available. Position titles and salary ranges are present with any job posting, as is general information about discretionary benefits.

### **Option 2: Specific Salary, by Position**

*Disclose: Position title, specific salary, number of positions, discretionary benefits.*

Currently, the legislation states that the release of a “salary range” is not unreasonable, but does not reference specific salaries. However, there are a few Orders written by the ‘Office of the Information & Privacy Commissioner’ (OIPC) of Alberta which state that the release of specific salaries may be an “unreasonable disclosure” (Orders F2005-016; F2010-036).

It is important to note that The City of Calgary deciding to release personal information in response to a FOIP request is not the same as deciding to post personal information

proactively. Responding to a FOIP request under the FOIP Act is the legal mechanism by which The City can decide whether or not to disclose personal information in its custody and/or control. Outside of a FOIP request, given that the FOIP Act refers only to salary range and OIPC Orders have stated that release of specific salaries may be an “unreasonable disclosure”, there is currently no clear mechanism that allows for disclosure of specific salaries.

As the method of disclosure of specific salaries requires clarification, this Option is considered to be best done in a manner that does not tie directly to the specific employee. As such, names should not be included under this Option. It is important to note that, for some job roles, disclosing a position with a specific salary – even without a name – may lead to an individual being identifiable, and thereby attract the personal privacy provisions of FOIP.

It appears that the least risky way to disclose under this Option is to:

- (1) Have employees consent/sign a waiver stating they have no issue with this disclosure, as per subsection 40(1)(d) of the FOIP Act; or,
- (2) Pursuant to an enactment that may allow for disclosure, as per subsection 40(1)(f) of the FOIP Act. Having said that, the viability of a City-constructed enactment is questionable at present given that FOIP will supersede any legislation deemed to be in violation of the FOIP Act.

### **Option 3: Specific Salary, starting at \$100,000**

*Disclose: Position title, specific salary, discretionary benefits.*

It is the view of the FOIP Office that the disclosure of City employees’ personal information in this manner is untenable, under the current legislation; the \$100,000 base salary appears to be an arbitrary figure with which to make decisions regarding whether or not it is reasonable to release personal information. While choosing to post specific salaries using a baseline figure as a starting point may be an Option, finding a suitable figure would be a daunting task.

**RECOMMENDATIONS:**

(1) As per Corporate policy GN-022, a “Privacy Impact Assessment” (PIA) must be completed prior to moving ahead with this initiative, regardless of which Option is chosen.

(2) The FOIP Office supports disclosure of specific salary by position, as per Option 2, in principle. Disclosure in this manner has been evident in higher orders of government. Relevant pieces of the FOIP Act which support this:

Section 17(5):

*“In determining... whether a disclosure of personal information constitutes an unreasonable invasion of a third party’s privacy, the head of a public body must consider all the relevant circumstances, including whether...”*

Subsection 17(5)(a):

*“...the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny.”*

The FOIP Act concerns the public’s ‘right of access’ balanced with the individual’s ‘right to privacy’. On balance, the above Section may be considered of particular relevance as a factor in favour of disclosure for those positions higher-up the corporate ladder, as opposed to rank-and-file employees. However, it is yet to be determined at what level (if any) such disclosure would be deemed to be appropriate or “reasonable”.

(3) The FOIP Office likewise supports disclosure of salary range by position, as per Option 1. This option lacks the risks of Option 2, since it fits well with Section 17(2) of the FOIP Act, which clearly states that releasing salary range is not an “unreasonable” disclosure. The inclusion of employee names would likewise be acceptable under this option.

(4) Regarding “discretionary benefits”, there is less risk to privacy to follow the template of the Government of Alberta; group benefits into “cash” and “non-cash” benefits.

- (5) If The City elects to publish names, it is imperative that a policy/procedure be developed to ensure those employees who require additional protections, given their own personal/legal circumstances, are protected. This would be a rare circumstance.