



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-5

Appeal M-910113

Town of Listowel



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O R D E R

BACKGROUND:

On March 28, 1991, the Town of Listowel (the "institution") received a request for: "specific salaries and wages paid to employees of the Town of Listowel." The institution denied access to the records claiming that disclosure of the records would constitute an unjustified invasion of personal privacy, as outlined in section 14(3)(f) of the Municipal Freedom of Information and Protection of Privacy Act, 1989 (the "Act").

The institution released salary ranges of municipal staff pursuant to section 14(4)(a) of the Act. The appellant was content with a \$2,000 range for salaries of the majority of municipal employees, but indicated that a range of \$10,000 for senior management positions was unacceptable and, pursuant to section 39 of the Act, appealed this part of the institution's decision.

Notice of the appeal was sent to the appellant and the institution. The records were obtained and examined by the Appeals Officer. The Appeals Officer contacted the three senior management employees affected by the appellant's request. All agreed that their salaries could be disclosed within a range of \$5,000. The appellant contended that this narrower range was also unsatisfactory. As settlement was not achieved, the matter proceeded to an inquiry.

A Notice of Inquiry was sent to the appellant, the institution, and the three senior management employees affected by the appellant's request (the "affected persons"). Enclosed with the Notice of Inquiry was a report prepared by the Appeals Officer, the purpose of which is to assist the parties in making their representations to this office concerning the subject matter of the appeal. Representations were received from the institution, the appellant, and one of the affected persons.

Section 42 of the Act provides that the burden of proof that a record, or part of a record, falls within one of the specified exemptions in the Act lies with the head of the institution. The head has cited section 14 as being applicable in this case; that is, the head claims that disclosure of the records containing the information requested would constitute an unjustified invasion of personal privacy. The information in the records at issue is the exact salary figures of three specific senior management positions within the institution, but not the names of those holding the positions. There is one incumbent in each position.

ISSUES:

The key issues arising in this appeal are as follows:

- A. Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether disclosure of the personal information would constitute an unjustified invasion of the personal privacy of the individuals to whom the information relates.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.

"Personal information" is defined in section 2(1) of the Act as "recorded information about an identifiable individual ... "

Clearly, an individual's salary is information "about" the individual. Further, as the appellant concedes in her representations, the

individuals can be readily identified by the position each occupies and therefore, in the circumstances, the salary information for a particular position is about an "identifiable" individual. In my view, the information contained in the records at issue falls within the definition of personal information contained in section 2(1).

ISSUE B: If the answer to Issue A is yes, whether disclosure of the personal information would constitute an unjustified invasion of the personal privacy of the individuals to whom the information relates.

Section 14(1) of the Act prohibits the disclosure of personal information except in certain circumstances. Section 14(1)(f) states the following:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of another individual's personal privacy. Section 14(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy. In particular, section 14(3)(f) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial
- [IPC Order M-5/December 11, 1991]

history or activities, or
creditworthiness; [emphasis added]

It is my view that, in the circumstances of this appeal, disclosure of the salary for a specific position for which there is one incumbent would "describe an individual's ... income" as set out in section 14(3)(f), and would, therefore, constitute a presumed unjustified invasion of personal privacy.

Once it has been determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been satisfied, I must consider whether any other provisions of the Act come into play to rebut the presumption. Section 14(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3). In particular, section 14(4)(a) provides the following:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution.

In this appeal, it is clear that section 14(4)(a) does not apply, as the release of records containing salary figures relating to specific positions would not disclose a "salary range". This section, therefore, does not rebut the presumed unjustified invasion of personal privacy.

I note that section 14 is similar in wording to section 21 of the provincial Freedom of Information and Protection of Privacy Act, 1987. Orders which have been issued concerning section 21 of the provincial Act may therefore provide guidance in interpreting and applying section 14 of the municipal Act.

In Order 20, dated October 7, 1988, former Commissioner Sidney B. Linden considered the rebuttal of a presumed unjustified invasion of personal privacy under section 21 of the provincial Act. Commissioner Linden stated that, "... a combination of the circumstances set out in subsection 21(2) might be so compelling as to outweigh a presumption under subsection 21(3). However, in my view such a case would be extremely unusual."

Section 14(2) of the municipal Act, which is similar to section 21(2) of the provincial Act, states, in part, as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- ...
- (f) the personal information is highly sensitive;
- ...

The appellant states in her representations that section 14(2) (a) is applicable in this appeal. She argues that municipal employees are paid by the public. She states that, in her experience, "ratepayers consider it their right as employers, to know what their public employees are being paid" in order to judge "whether or not their elected representatives are holding the line on expenses."

The institution submits that such disclosure would not provide any greater public scrutiny of the municipality than that which already

exists. In addition, it states that the information requested is highly sensitive, arguing that setting annual salaries is a "difficult and emotional task" for Council and staff.

The appellant submits that other circumstances should be considered as relevant in this appeal. She states that the Town is experiencing an economic decline and that other salaries do not compare favourably with salaries of municipal employees. She also points out that, in past years, specific salaries of all public employees have been available.

The institution contends that, while historically it appointed municipal officers and fixed officers' specific salaries by by-law (rendering the information public), the current Council has determined that, in keeping within the newly established requirements of the Act, it will appoint officers by by-law and establish salary ranges by motion or resolution of the municipal Council. It adds that:

We are not precluding access to information that is not personal information ... The records have been made available and were in fact dealt with in an open Council meeting. While the format of the information has changed, the appellant has been provided with the information to the best of our ability.

The Act has introduced a new approach to be taken by institutions when dealing with disclosure of information under their custody or control. The Act attempts to balance the right of access to information with the right of the individual to have his or her privacy protected.

As previously noted, section 14 of this Act is nearly identical in wording to section 21 of the provincial Freedom of Information and Protection of Privacy Act, 1987. Therefore, orders which have been issued concerning section 21 may provide guidance in applying and interpreting section 14 of the municipal Act.

The same issues as are in issue in this appeal were dealt with by Commissioner Linden in Order 61, dated May 26, 1989, and by the undersigned in Order 183, dated July 4, 1990. In Order 61, the appellant was seeking access to the specific salaries for certain positions, each held by one incumbent, at a named hospital. At page 12 of Order 61, supra, Commissioner Linden stated:

In drafting the personal information exemption provided by section 21 of the Act, the legislature weighed the competing interests of access and privacy and determined that, as a general rule, individual salary figures of public servants should be protected from disclosure, while salary ranges for positions held by these individuals should be accessible to the public. [Emphasis added.]

I have considered the representations of the appellant and of the institution. In my view, the provisions of section 14(2) as they relate to the circumstances of this appeal and the appellant's

contentions are insufficient to rebut the presumption contained in section 14(3). I am of the opinion that disclosure of the exact salaries for particular stated positions would constitute a presumed unjustified invasion of personal privacy under section 14(3) (f) of the Act. This presumption has not been rebutted by sections 14(4) or (2). As section 14(1) is a mandatory exemption, the information requested must be withheld from disclosure.

Finally, the appellant has argued that section 50(2) is applicable in this appeal. This section provides that:

This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by statute, custom or practice immediately before this Act comes into force. [Emphasis added.]

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As I have found that the information at issue in this appeal is personal information, section 50(2) is not applicable.

ORDER:

I uphold the decision of the head.

POSTSCRIPT:

Although I am satisfied that the decision I have reached is in accordance with the provisions of the Act I am concerned about the way in which the decision may be applied by other institutions. In my view, the fact that the Act contains a specific exception which provides for the disclosure of the salary ranges of individuals who are officers or employees of an institution suggests that the legislature recognized the need for the public to have access to some information about the salary of individuals who are paid from public funds.

However, the Act strikes the balance between the right of access to information and an individual's right to privacy of their own personal information at the disclosure of salary ranges and not specific salaries. In my opinion, in reaching this balance, the legislature implicitly recognized that institutions need to be reasonable when establishing salary ranges. Ranges which are too broad may raise unwarranted suspicions in the eyes of the public and will not achieve the purposes of section 14(4) (a). This is a point which I feel institutions should keep in mind when applying the provisions of section 14.

Original signed by:
Tom Wright
Commissioner

Date December 11, 1991