



**Information and Privacy  
Commissioner/Ontario**  
**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-7**

**Appeal M-910072**

**City of North York**



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## **ORDER**

### **BACKGROUND:**

On February 7, 1991, the City of North York (the "institution") received a request for access to the application of the successful applicant for the appointment of a citizen member to the institution's Board of Health.

On March 4, 1991, the institution advised the requester that access was denied to the requested record pursuant to sections 2(1)(b), 14(1)(f) and 14(3)(d) of the Municipal Freedom of Information and Protection of Privacy Act (the "Act"). The requester appealed this decision and notice of the appeal was sent to the institution and the appellant.

The record at issue consists of the successful applicant's single page application for an appointment to a Board or Committee and his two-page resume. During the course of mediation, the Appeals Officer contacted the successful applicant (the "affected person") and inquired as to whether he would consent to release his resume to the appellant. Consent was not obtained and settlement of the appeal could not be effected.

Notice that an inquiry was being conducted to review the head's decision was sent to the institution, the appellant and the affected person. An Appeals Officer's Report, which is intended to assist the parties in making any representations concerning the subject matter of the appeal, accompanied the Notice of Inquiry. Written representations were received from the institution and the appellant.

### **ISSUES:**

The issues arising in this appeal are as follows:

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

- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.
- C. If the answer to Issues A and B is yes, whether there is a compelling public interest in the disclosure of the record or parts of the record which clearly outweighs the purpose of the section 14 exemption.

**SUBMISSIONS/CONCLUSIONS:**

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

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual, including,

...

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

[emphasis added]

In my view, the information contained in the requested record is clearly personal information of the affected person within the meaning of subparagraphs (b) and (d) of the definition of personal information.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.**

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(f) of the Act reads as follows:

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 the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The institution specifically relied on the application of section 14(3)(d) to raise the presumption that disclosure of the record at issue would constitute an unjustified invasion of personal privacy. Section 14(3)(d) reads as follows:

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

- (d) relates to employment or educational history;

Having reviewed the requested record, I am of the view that the personal information in the application and resume of the affected person relates to the affected person's employment and educational history. Accordingly, the requirements for a presumed unjustified invasion of personal privacy under section 14(3)(d) have been satisfied.

Once it is determined that the requirements for a presumed unjustified invasion of personal privacy under section 14(3) have been established, I must consider whether any other provisions

of the Act come into play to rebut this presumption. Section 14(4) outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3).

In his letter of appeal, the appellant contends that section 14(4)(a) operates to rebut the presumption contained in section 14(3)(d). Section 14(4)(a) states:

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 my view, the record does not contain any information as it pertains to section 14(4)(a). Consequently, this section does not operate to rebut the presumed unjustified invasion of personal privacy under section 14(3).

I note that sections 14(2) and (3) are similar in wording to sections 21(2) and (3) of the provincial Freedom of Information and Protection of Privacy Act. Orders concerning those parts of section 21 issued under the provincial Act may therefore provide guidance in interpreting and applying the corresponding parts of section 14 of the municipal Act.

In Order 20, dated October 7, 1988, former Commissioner Sidney B. 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."

The appellant submits that sections 14(2)(a), (b), and (d) are relevant, and combine to rebut the presumption contained in section 14(3)(d). These sections read 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;
- (b) access to the personal information may promote public health and safety;
- ...
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

Having reviewed the criteria set out in section 14(2), and noting that the appellant, other than referring to three subsections of section 14(2), has not made any representations to support the application of this section, I find that no combination of the factors mentioned therein exists to outweigh the presumed invasion of personal privacy provided by section 14(3)(d).

**ISSUE C: If the answer to Issues A and B is yes, whether there is a compelling public interest in the disclosure of the record or parts of the record which clearly outweighs the purpose of the section 14 exemption.**

In his letter of appeal the appellant raised a public interest argument which gives rise to consideration of section 16 of the Act. Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

With respect to his contention that there is a compelling public interest in disclosure of the record, the appellant states in his representations that he or any individual represents a public interest and that his interest is compelling. However, he does not indicate why his interest is compelling but holds that the contrary must be proven to negate this assertion.

While the burden of proof as to whether an exemption applies falls on the institution, the Act is silent as to who bears the onus of proof in respect of section 16. Where the application of section 16 to a record has been raised by an appellant, it is my view that the burden of proof cannot rest wholly on the appellant, where he or she has not had the benefit of reviewing the requested record before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom, if ever, be met by the appellant.

Accordingly, I have reviewed the record with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption found in section 14. In the circumstances of this appeal, I am not satisfied that there is a compelling public interest in disclosure of the personal information in the requested record which clearly outweighs the purpose of protection of personal privacy under section 14 of the Act.

**ORDER:**

I uphold the decision of the head.

**POSTSCRIPT:**

I am satisfied that the decision I have reached is in accordance with the requirements of the Act. However, I feel that the appellant's original request raises an issue which is beyond his own specific concerns - the right of the public to independently assess the qualifications of persons who are appointed as members of public boards and commissions.

Persons who are appointed to boards and commissions are filling a public role on behalf of other members of the community. In my opinion, members of the community are entitled to some information about the persons who will be representing their interests. As well, I feel that persons who are appointed to public positions should have a correspondingly reduced expectation of privacy.

Accordingly, I encourage institutions, in keeping with the spirit of the Act, to prepare a brief biography of appointees to public positions on boards and commissions, and to make these biographies available to interested members of the community. A model for such a biography will be included in the upcoming edition of this office's newsletter, "IPC Perspectives". Also, I recommend that if an institution prepares such a biography, that all appointees be notified in writing that a biography will be prepared and made publicly available, upon request.

Original signed by:  
Tom Wright  
Commissioner

February 19, 1992  
Date