



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-35**

## **Appeal M-910064**

### **The Corporation of the Township of Osprey**



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# ORDER

## BACKGROUND:

The Corporation of the Township of Osprey (the township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the number of hours each employee worked during the month of January, 1991. The township denied access to the records pursuant to section 14 of the Act, and the requester appealed the township's decision. The Appeals Officer contacted the appellant to clarify the request. The appellant indicated that she was interested in the number of hours worked by three office staff members (the affected persons).

The record at issue consists of one page entitled General Payroll which contains the actual number of hours worked by staff from December 30, 1990 to January 11, 1991, and from January 14, 1991 to January 25, 1991, as well as parts of two pages created by the township indicating the actual number of hours worked by two of the affected persons from January 28, 1991 to February 1, 1991. One affected person, who was employed on an annual salary, is not listed on the payroll records, and the township has indicated that there is no other record available concerning her attendance or absence.

Two of the affected persons referred to in the record were contacted and declined to consent to disclosure.

As a settlement could not be effected, the matter proceeded to inquiry. The appellant, the township and the affected persons were given notice of the inquiry. Representations were received from the township, the appellant and two of the affected persons.

## ISSUES:

The issues arising in this appeal are:

- 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 the mandatory exemption provided by section 14 of the Act applies to the requested records.

## 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.**

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,

The township claims that subparagraph (b) applies. Although I do not agree that the information at issue relates to the employment **history** of the individuals, I am of the view that it is recorded information about identifiable individuals and, therefore, the information falls within 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 to the requested records.**

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

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

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 the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(3)(d) and (f) state:

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;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

With regard to section 14(3)(d), the information in the record relates to the employment of the affected persons. However, in my view, actual hours worked by an individual is not the type of information which was intended to fall within the meaning of the words "employment history" and, therefore, the presumption does not apply.

Turning to section 14(3)(f), the actual number of hours worked by an employee does not, in my view, meet the requirements of this section. However, the township has set the exact hourly wage of each employee by a by-law, thereby making the exact hourly wage of each of its employees public knowledge. As such, as the institution submits, the appellant "by simple calculation may determine the particulars of ... monthly income of each individual." In these particular circumstances, disclosure of the actual hours worked in one month by the affected persons would constitute disclosure of their actual income and, therefore, it falls within the scope of section 14(3)(f). Accordingly, disclosure of the information is presumed to be an unjustified invasion of the personal privacy of the affected persons.

Section 14(4) of the Act outlines a number of circumstances which, if they exist, could operate to rebut a presumption under section 14(3). In my opinion, the records do not contain any information that pertains to section 14(4), and therefore that section does not operate to rebut the presumed unjustified invasion of privacy under section 14(3)(f).

As section 14 is similar in wording to section 21 of the provincial Freedom of Information and Protection of Privacy Act (the provincial Act), orders issued under section 21 of the provincial Act give guidance in the interpretation and application of section 14 of the municipal Act. In Order 20, 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) and 14(2)(d) are relevant considerations. These sections read:

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;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

In support of the application of section 14(2)(a), the appellant submits that, prior to January 1, 1991, monthly pay totals of the office staff were available to council members to enable them to scrutinize spending on behalf of the taxpayers and ensure "reasonable staff efficiency and productivity in serving the public" and that this practice was discontinued on January 1, 1991. In my view, in order for section 14(2)(a) to be a relevant consideration, there must be a public demand for scrutiny of the activities of the township, not one

person's view or opinion that scrutiny is necessary. No such public demand has been shown in this case and, I find that section 14(2)(a) is not a relevant consideration in the circumstances of this appeal.

In support of section 14(2)(d), the appellant claims that the township's refusal to disclose the information has prevented elected officials from being able to fully discharge their responsibility to scrutinize spending. The appellant submits that the right to information which would enable councillors to perform their duty has been infringed upon. In my view, this is not the type of "right" which is contemplated by section 14(2)(d), and I find that it is not a relevant consideration in the circumstances of this appeal.

I have also considered the other criteria outlined in section 14(2) and, in my opinion, none of them are relevant to this appeal. Accordingly, the presumption has not been rebutted, and disclosure of the actual number of hours worked by the affected persons for the month of January, 1991, would constitute an unjustified invasion of their personal privacy.

**ORDER:**

I uphold the township's decision.

Original signed by: \_\_\_\_\_  
Tom Wright  
Commissioner

\_\_\_\_\_  
September 4, 1992