



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-23

Appeal M-910255

Town of Gravenhurst



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ORDER

BACKGROUND:

The Town of Gravenhurst (the institution) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

- (1) Any and all resolutions or by-laws of the Town Council relating to negotiations with [named individual] in respect of the position of Chief Administrative Officer and Clerk for the Town of Gravenhurst;
- (2) Any and all by-laws or resolutions respecting the employment or appointment of [named individual] to any such position, and the terms and conditions thereof;
- (3) A copy of any written agreement, memorandum of understanding or other document setting out the terms of employment by [named individual] in respect of any above such position;
- (4) The terms and conditions of any agreement or arrangement for employment or appointment relating to [named individual].

The institution provided the requester with a copy of Town of Gravenhurst Resolution No. 69 dated March 11, 1991, and Town of Gravenhurst By-law No. 91-59 passed April 8, 1991. In Resolution No. 69, the Council of the institution grants the Hiring Committee the authority to "hire a Chief Administrative Officer and Clerk by employment contract under terms and conditions suitable to both parties." By-law No. 91-59 establishes that a named individual is appointed as both Chief Administrative Officer and Clerk for the institution and that "this appointment shall be effective commencing Monday, May 6th, 1991 under the terms and conditions of agreement entered into between the parties dated April 8th, 1991".

The institution denied access to the written agreement entered into between the institution and the Chief Administrative Officer and Clerk (the CAO/Clerk) pursuant to section 14 of the Act. This is the record which is the subject of the appeal.

As settlement of the appeal was not effected, the appeal proceeded to inquiry. Notice that an inquiry was being conducted to review the head's decision was sent to the institution, the appellant and the CAO/Clerk. Enclosed with each notice was an Appeals Officer's Report, intended to assist the parties in making representations about the subject matter of the appeal. Representations were received from the institution, the appellant and the CAO/Clerk.

ISSUES/DISCUSSION:

The issues arising in this appeal are:

- A. Whether the information contained in the 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.

SUBMISSIONS/CONCLUSIONS:

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

The term "personal information" is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual ...". In my view, only the information contained in clauses 1, 2, and 4-16 of the record fit within the definition of "personal information". The date of the agreement, parties, recitals, clauses 3 and 17-22, and the execution of the record are not recorded information about an identifiable individual, and therefore do not qualify as personal information. If anything, this information may be considered to be about the agreement.

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 of the Act provides a general rule of non-disclosure of the personal information to any person other than the individual to whom the personal information relates. Section 14(1) provides some exceptions to this general rule of non-disclosure, one of which, section 14(1)(f), reads:

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.

Section 14(4) of the Act identifies particular types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. Section 14(4) reads:

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; or
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

In my view, section 14(4) is a clear indication by the legislature that the disclosure of the identified types of information is in the public interest. It is my opinion that the words "[d]espite subsection (3)" do not limit the application of section 14(4) to those types of information identified in section 14(3), rather they identify types of information that the legislature clearly intended to fall within the exception contained in section 14(1)(f). Generally speaking, if a record contains information of the type described in section 14(4), the exception to the section 14 exemption contained in section 14(1)(f) will apply.

In his representations the appellant submits that section 14(4)(b) applies to the record when he states:

The Act clearly mandates disclosure of this particular document, where, in section 14(4)(b) it declares that "a disclosure does not constitute an unjustified invasion of personal privacy if it ... discloses financial or other details of a contract for personal services between an individual and an institution". This is precisely the document which is being sought in this case ...

The institution submits that section 14(4)(b) is not relevant, because the record is a contract of employment, not a contract for services. The institution claims that the record contains all the indicia of a contract of employment, specifically the employer's power of selection of the employee, the payment of wages, the employer's right to control the work method, and the employee's dissociation from any profit or loss.

The appointment and statutory duties of a Chief Administrative Officer and Clerk are established in sections 72 and 73 under Part VI of the Municipal Act which Part VI is entitled "Officers of Municipal Corporations". Accordingly, for the purposes of the Municipal Act, the CAO/Clerk is an officer of the institution. Section 207.46(a) of the Municipal Act defines "employee" as "any salaried officer ... in the employ of the municipality ...". Since the CAO/Clerk is a salaried officer of the institution, for the purposes of the Municipal Act he is considered to be an employee.

In the circumstances, I am of the view that the record is not a contract for personal services. In coming to this conclusion, I have considered the nature of the position as described above, the responsibilities, the nature and terms of the contract entered into between the parties, and the fact that the Resolution granting the Hiring Committee the authority to hire a CAO/Clerk sets out that the authority is to hire such an individual "by employment contract". I am satisfied that the record is a contract of employment, not a contract for personal services, between the CAO/Clerk and the institution, and therefore section 14(4)(b) of the Act has no application.

However, since I have found that the CAO/Clerk is an officer/employee of the institution, section 14(4)(a) does apply. Therefore, the disclosure of the classification, salary range and benefits, or employment responsibilities of the CAO/Clerk does not constitute an unjustified invasion of his personal privacy. To determine which information contained in the record falls within the categories of information found in section 14(4)(a), I will summarize the parts of the record which I have found under Issue A to contain the personal information of the CAO/Clerk as follows:

Employment

- 1 - General
- 2 - Term
- 4 - Employee's right to terminate
- 5 - Employer's right to terminate
- 6 - Respective rights to terminate in the future
- 7 - Renewal
- 8 - Exclusivity

Compensation

- 9 - Salary - indicating:
 - salary range classification
 - salary steps within the range
 - scheduled salary increases
 - possible additional increases
- 10 - Benefits
- 11-12 - Vacation
- 13 - Expenses
- 14-15 - Paid Leave for Professional Associations and Professional Development
- 16 - Moving and House sale expenses

I will now consider which of the above portions of the record include information which falls within the categories of information listed in section 14(4)(a).

Classification

It is my view that clause 1 of the record, which sets out the employment position, indicates the "classification" of the individual, and that the disclosure of this portion of the record does not constitute an unjustified invasion of personal privacy.

Salary Range

The salary of the CAO/Clerk is established in clause 9 of the record. The institution submits that the contract deals with the CAO/Clerk's specific income and salary, which is different than his salary range. The institution has provided a salary "chart" which it indicates is not "particularly confidential" and which, together with the information contained in clause 9 of the record, could be used to determine the exact amount of the CAO/Clerk's salary. The salary chart describes 18 salary ranges, with three to six steps each.

Clause 9 of the record establishes that the CAO/Clerk will be paid at specific steps within one of the ranges, describes scheduled salary increases and possible additional salary increases. In my view, the range within which the CAO/Clerk will be paid (without the specific steps, scheduled and additional salary increases) is a "salary range" for the purposes of section 14(4)(a), and its disclosure does not constitute an unjustified invasion of privacy.

Benefits

The institution takes the position that because clause 10 is entitled "Benefits", the information contained in that clause is the only information which comes within the meaning of the term "benefits" in section 14(4)(a). I do not agree.

Since the "benefits" that are available to officers or employees of an institution are paid from the "public purse", either directly or indirectly, I believe that it is consistent with the intent of section 14(4)(a) and the purposes of the Act that "benefits" be given a fairly expansive interpretation. In my opinion, the word "benefits" as it is used in section 14(4)(a), means entitlements that an officer or employee receives as a result of being employed by the institution. Generally speaking, these entitlements will be in addition to a base salary. They will include insurance-related benefits such as, life, health, hospital, dental and disability coverage. They will also include sick leave, vacation, leaves of absence, termination allowance, death and pension benefits. As well, a right to reimbursement from the institution for moving expenses will come within the meaning of "benefits". Therefore, clause 10, as well as clauses 7 and 11-16 of the record would fall within the meaning of "benefits". In my view, the disclosure of these clauses would not constitute an unjustified invasion of personal privacy.

Having found that the disclosure of clauses 1, 7, 10-16 and the salary range identified in clause 9 of the record would not constitute an unjustified invasion of personal privacy, I must now determine whether disclosure of clauses 2, 4, 5, 6, 8 and the salary steps, time periods and additional salary increases identified in clause 9 of the record would constitute an unjustified invasion of the personal privacy of the CAO/Clerk.

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(3) of the Act lists the types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(3)(f) reads as follows:

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

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

The remaining part of clause 9 of the record sets out the steps within the salary range at which the CAO/Clerk will be paid, together with scheduled and possible additional salary increases. Although the record itself does not specifically refer to the amount of the salary and salary increases, the specific steps are referable to specific salary amounts contained in the salary chart provided by the institution. In the circumstances, disclosure of the salary steps would constitute disclosure of the income of the CAO/Clerk and is therefore presumed to constitute an unjustified invasion of personal privacy.

Apart from the salary steps, in my view, the scheduled and possible additional increases contained in clause 9 and the information included in the remaining clauses do not fall within the types of information listed in section 14(3). After reviewing the factors set out in section 14(2), I am also of the view that the disclosure of this remaining information would not constitute an unjustified invasion of the personal privacy of the CAO/Clerk, nor does any combination of factors exist which would rebut the presumption contained in section 14(3)(f) which I have found applies to the salary steps in clause 9 of the record.

It is therefore my view that the disclosure of the record, with the exception of the salary steps in clause 9, would not constitute an unjustified invasion of personal privacy.

ORDER:

1. I order the institution to disclose the record, with the exception of the salary steps contained in clause 9 of the record, to the appellant.
2. I order that the institution not make the disclosure described in Provision 1 until thirty (30) days

following the date of the issuance of this order. This time delay is necessary to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the record is actually disclosed. Provided notice of an application for judicial review has not been served on the Information and Privacy Commissioner/Ontario and/or the institution within this thirty (30) day period, I order that the above portions of the record be disclosed within thirty-five (35) days of the date of this order.

3. The institution is further ordered to advise me in writing within five (5) days of the date on which disclosure was made. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
4. In order to verify compliance with the provisions of this order, I order the head to provide me with a copy of the portions of the record which are disclosed to the appellant pursuant to Provision 1, upon request only.

Original signed by:
Tom Wright
Commissioner

July 3, 1992