



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

ORDER M-129

Appeal M-9200371

Regional Municipality of Hamilton-Wentworth



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

ORDER

BACKGROUND:

The Regional Municipality of Hamilton-Wentworth (the Region) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) which reads as follows:

I would like to see the records which reveal which Regional Councillors submitted payroll authorization to participate in the one week unpaid leave for Regional Council members.

I'd also like to see any documents which include the dates that such authorization was given to the payroll department.

I'd like any available documents which reveal which Councillors are taking the leave and when they authorized their pay reduction to begin their participation in the leave.

The Region informed the requester that since the request might affect the interests of third parties, namely, Regional Councillors, all Regional Councillors were being given notice of the request and the opportunity to make representations concerning disclosure of the requested records, pursuant to section 21(1)(b) of the Act.

In response to the notice, certain councillors indicated that they objected to disclosure of the records. After receiving the councillors' responses, the Region decided to disclose the records. One councillor (the appellant) appealed this decision.

An Appeals Officer was assigned to the appeal and contacted the appellant, the Region and the original requester. The requester confirmed that the information requested related specifically to the identification of the Regional Councillors involved in the voluntary unpaid leave program.

Mediation of the appeal was unsuccessful, and notice that an inquiry was being conducted to review the Region's decision was sent to the Region, the appellant, and the requester. Written representations were received from the Region and the appellant.

The record consists of a one-page form entitled "Voluntary Unpaid Leave". It was completed by the appellant and contains the appellant's name, employee number and department. The form describes four options for participation in the voluntary unpaid leave program; includes the pay period when the amount of the unpaid leave was to be deducted, and is signed and dated. Finally, a handwritten note made by a member of the Human Resources Department also appears on the form. In my opinion, the appellant's employee number and the handwritten note are not responsive to the request and, therefore, fall outside the scope of this appeal.

ISSUES:

The appellant and the Region both submit that the information contained in the record is the personal information of the appellant. Having reviewed the record, I agree. Therefore, the sole issue in this appeal is whether the mandatory exemption provided by section 14 of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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,

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 constitute an unjustified invasion of personal privacy of the individual to whom the information relates. Section 14(3) identifies the types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

The Region and the appellant submit that section 14(3)(f) of the Act applies to the record. This section reads:

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;

Although the record does contain some information which indirectly relates to the appellant's finances or income, in my view, the information is not sufficiently detailed to attract the application of the presumption contained in section 14(3)(f). Accordingly, I find that the requirements for a presumed unjustified invasion of personal privacy have not been met.

Section 14(2) provides a list of circumstances for the Region to consider in determining whether a disclosure of personal information would constitute an unjustified invasion of personal privacy. The appellant and the Region have provided me with comprehensive representations supporting their respective positions

regarding the application of section 14(2).

In reviewing the Region's representations, it appears that the Region's rationale for deciding to disclose the record was to permit the identity of the councillors who participated in the voluntary unpaid leave program to be publicly known. The appellant's submissions, although addressing the issue of the disclosure of the identity of the councillors who participated, relate more directly to concerns regarding the disclosure of information contained in the record which relates to the specific pay deduction option chosen, and the pay period when the deduction would be made.

The Region submits that section 14(2)(a) of the Act is a relevant consideration. The appellant submits that the factors found in sections 14(2)(e), (f), (g), (h) and (i) apply to support the position that the release of the personal information would constitute an unjustified invasion of personal privacy. 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;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

In the circumstances, I am satisfied that section 14(2)(a) applies. In my opinion, disclosure of information regarding which councillors participated in the voluntary unpaid leave program is desirable for the purpose of submitting the activities of the institution to public scrutiny, and it is telling that the Region itself has taken

this position.

With respect to the appellant's submission that sections 14(2)(e), (g) and (i) are relevant circumstances, I have carefully considered the record and the appellant's representations, and it is my view that these sections do not apply.

Both parties have addressed the issue of whether the information contained in the record was provided in confidence (section 14(2)(h)). The appellant takes the position that the information provided to the Human Resources Department is understood to be of a private and confidential nature. The Region questions whether the information was provided in confidence. It states that the publicly-approved resolution relating to voluntary unpaid leave for Regional Councillors suggested that all members of council would be participating in the unpaid leave of absence. I am of the view that section 14(2)(h) is a relevant consideration but only as it relates to the pay period during which the appellant wanted the deduction to be taken.

The appellant also submits that the information contained in the record is highly sensitive (section 14(2)(f)). Although I accept that section 14(2)(f) has some relevance, in my view, the weight to be given to this factor when balancing the applicable factors under section 14(2) is reduced due to the nature of the information and the position of the appellant as a Regional Councillor.

The Region refers to a number of unlisted circumstances which it feels support the disclosure of the information. In Order 99, dated October 3, 1989, former Commissioner Sidney B. Linden discussed whether the list in section 21(2) of the provincial Freedom of Information and Protection of Privacy Act [corresponding to section 14(2) of the Act] was exhaustive. At pages 20-21 of that Order he stated:

The subsection lists some of the criteria to be considered; however, the list is not exhaustive. By using the word "including" in its opening paragraph, I believe it requires the head to consider the circumstances of a case that do not fall under one or more of the listed criteria.

The unlisted circumstances raised by the Region include the amount of public and media attention the question of which councillors participated in the voluntary unpaid leave program has attracted, and the fact that much of the information regarding which councillors participated in the program is already in the public domain. In this connection the Region has provided copies of numerous newspaper articles which report on the issue of councillors' participation in the voluntary leave program, and which identify, by name, the councillors who did not participate in the program.

In previous orders involving the provincial Freedom of Information and Protection of Privacy Act the following unlisted factor has been identified under the equivalent to section 14(2) of the Act - the disclosure of personal information could be desirable for the purpose of ensuring public confidence in the integrity of an institution (see Orders 99 and P-237). In the circumstances of this appeal, it is my view that this additional

unlisted factor is a relevant consideration. In my view, persons holding an elected position such as Regional Councillor are the "public face" of an institution such as the Region. Therefore, the actions of a Regional Councillor will reflect directly on the Region.

I also believe that the fact that the municipal treasurer is required by law, (section 247(1) of the Municipal Act), to submit an annual report to council which contains specific information regarding an individual councillor's remuneration and expenses, is a relevant consideration. Indeed, I see the existence of such a legal requirement as confirmation of the reality that elected officials must have a reduced expectation of privacy. In my view, it is tantamount to stating the obvious to say that by choosing to enter the public arena elected officials forego a degree of privacy they might otherwise reasonably expect to enjoy. There are several reasons for this, not the least of which is to facilitate and foster public accountability.

In balancing the factors which favour disclosure, both listed and unlisted, with those that favour the protection of personal privacy it is my view that disclosure of the record, except for the pay period in which the appellant wanted the deduction to be taken, would not constitute an unjustified invasion of personal privacy of the appellant.

In its representations the Region also referred to section 16 of the Act, the public interest override, to support its decision to disclose the entire record. Much of the Region's submission on the application of section 16 relates to the issue of which councillors participated in the voluntary unpaid leave program.

I have found that only the disclosure of information regarding the pay period in which the appellant wanted the deduction to be taken from his/her pay would constitute an unjustified invasion of personal privacy of the appellant. It is my view that section 16 of the Act does not apply to this information.

ORDER:

1. I order the Region to disclose the record to the requester, subject to the severance of the employee number of the appellant, the handwritten note, and the pay period when the appellant wanted the voluntary unpaid leave deducted from his/her pay. A highlighted copy of the record which identifies the portions of the record which should **not** be disclosed is attached to the copy of the order sent to the Region.
2. Subject to the severances referred to in Provision 1 above, I order the Region to disclose the record to the requester within thirty five (35) days of the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with this order, I order the Region to provide me with a copy of the portion of the record which is disclosed to the requester pursuant to Provision 1, **only** upon request.

Original signed by: _____ May 6, 1993
Tom Wright
Commissioner