



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

ORDER M-224

Appeal M-9200464

The Corporation of the Township of Cavan



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ORDER

BACKGROUND:

The Corporation of the Township of Cavan (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

1. All invoices submitted within the last 15 months, by [a named sole proprietorship] (including invoices for salaries, overtime, expenses, contract work);
2. All Township payments made to [a named sole proprietorship] (including payments for salary, overtime, expenses, taxes, benefits, or contract work); and
3. Any By-Law relating to or hiring [a named sole proprietorship].

In its decision letter to the requester, the Township denied access to all of the records responsive to the request without specifying which exemption(s) under the Act it was claiming. In a subsequent decision letter, the Township indicated that it was claiming the exemption provided by section 7(1) of the Act with respect to all of the responsive records and section 14(3) of the Act with respect to the employment contract between the Township and the named sole proprietorship.

During the course of mediation, the Township and the appellant were able to agree on the time period for which responsive records would apply. The Township also agreed to create a record entitled "Payments to [a named sole proprietorship]" and to treat this document as if it had existed on the date that the request was received. This record, which more specifically responds to the appellant's request, indicates the particulars of the dollar amounts paid to the named sole proprietorship. The Town then took the position that this record was also exempt from disclosure under section 7(1) of the Act.

As it was not possible to completely resolve this appeal through mediation, notice that an inquiry was being conducted to review the decision of the Township was sent to the Township, the appellant and the principal of the named sole proprietorship (the affected person). Representations were received from all three parties to the appeal.

RECORDS AT ISSUE:

The records at issue, and the exemptions claimed for each, are:

1. Invoices from [the named sole proprietorship] to the Township covering the period of November 1991-November 1992. Section 7(1) of the Act.
2. A list of payments to [the named sole proprietorship] by the Township covering the period of November 1991-November 1992. Section 7(1) of the Act.

3. The job description for the position of Chief Administrative Officer of the Township. Section 7(1) of the Act.
4. By-Law No: 91-60. Section 7(1) of the Act.
5. The "Agreement" between the Township and [the named sole proprietorship]. Sections 7(1) and 14(3) of the Act.

ISSUES:

The issues to be addressed in this appeal are the following:

- A. Whether the discretionary exemption provided by section 7(1) of the Act applies to Records 1 to 5.
- B. Whether any of the information contained in Record 5 qualifies as "personal information" as defined in section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the mandatory exemption provided by section 14(1) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the discretionary exemption provided by section 7(1) of the Act applies to Records 1 to 5.

Section 7(1) of the Act states as follows:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

In order to satisfy the requirements of section 7(1), the Township must establish that disclosure of the records at issue would reveal advice or recommendations of an officer or an employee or a consultant retained by the Township.

The appellant and the affected person did not provide any representations concerning the application of this section to the records. In its representations, the Township merely stated the following regarding the

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application of section 7(1):

... It would appear that any records involving [the named sole proprietorship] would fall into this category in accordance with the discretionary exemption provided by Section 7 (1).

In the absence of more complete representations from the parties resisting disclosure concerning the application of this exemption, it is difficult for me to determine on what basis the exemption provided by section 7(1) has been claimed. In my view, Records 1 to 5 do not contain advice or recommendations of a public servant to the Township. None of the records contain a "suggested course of action" from an employee to the Township. Accordingly, the disclosure of Records 1 to 5 would not reveal advice or recommendations of a public servant and the exemption provided by section 7(1) of the Act does not apply.

ISSUE B: Whether any of the information contained in Record 5 qualifies as "personal information" as defined in section 2(1) of the Act.

In his representations, the affected person states the following:

...

My compensation is made on a regular monthly payment to [a named sole proprietorship] which is a registered sole proprietorship that consists of myself alone.

The request for information that is [the] subject of this appeal has to do with the terms of my engagement and the Township's payment for my personal services under a personal services agreement.

...

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

"personal information" means recorded information about an **identifiable individual**,
[emphasis added]

...

The question of whether information about a sole proprietorship can be considered personal information has been canvassed in previous orders issued by the Commissioner's office. In Order 16, former Commissioner Sidney B. Linden made the following general statement:

The use of the term 'individual' in the Act makes it clear that the protection provided with respect to the privacy of personal information relates only to natural persons. Had the

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legislature intended 'identifiable individual' to include a sole proprietorship, partnership, unincorporated association or corporation, it could and would have used the appropriate language to make this clear.

I am not satisfied that the information contained in Record 5 relates to an "identifiable individual", as is required by the definition of "personal information" contained in section 2(1) of the Act. By the admission of the affected person, the information concerns the details of a personal services contract between a sole proprietorship and the Township and does not involve an "identifiable individual".

As I have found that the information contained in Record 5 is not "personal information" within the meaning of the Act, it is not necessary for me to address Issue C.

ORDER:

1. I order the Township to disclose to the appellant Records 1-5 in their entirety within thirty-five days following the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with the provisions of this order, I order the Township to provide me with a copy of the records which it has disclosed to the appellant pursuant to Provision 1, only upon request.

Original signed by: _____
 Donald Hale
 Inquiry Officer

_____ November 24, 1993