



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-373**

**Appeal M-9400178**

**York Regional Police Services Board**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester, who is a member of a police association, asked the York Regional Police Services Board (the Board) for access to a copy of a contract entered into between the Board and its former Chief of Police. The requester was particularly interested in obtaining the commencement and termination dates of the agreement, the salary and benefits payable under the contract and any reports provided by the former Chief to the Board.

The Board agreed to release the entire text of the agreement, dated July 8, 1992, with the exception of the salary figure paid to the former Chief. The Board's decision to withhold this information was made under section 14(1) of the Act (invasion of privacy) with particular reference to the presumption against disclosure of personal information found in section 14(3)(f) of the Act (information relating to an individual's income).

A Notice of Inquiry was provided to the parties to the appeal including the former Chief of Police. Representations were received from the appellant and the Board only.

## **DISCUSSION:**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. Based on this definition, I find that the salary of the former Chief qualifies as his personal information for the purposes of the Act. In addition, the agreement does not contain any personal information relating to the appellant.

Section 14(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than the individual to whom the information relates. There are a number of exceptions to this rule, one of which is found in section 14(1)(f) of the Act. This section provides that a government institution must refuse to release the personal information of other individuals except if the disclosure does not constitute an unjustified invasion of personal privacy. Sections 14(2), (3) and (4) of the Act provide guidance in determining this issue.

Section 14(4)(b) of the Act identifies a situation where the disclosure of personal information would **not** amount to an unjustified invasion of personal privacy. This provision specifies that, despite the application of section 14(3), a disclosure of personal information 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.

Based on the wording of this provision, the first step in my analysis will be to determine whether the agreement entered into between the Board and the former Chief constitutes a contract for personal services or a contract of employment. To state the matter a bit differently, I must decide whether the former Chief was engaged as an independent contractor or as an employee of the police force. The answers to these questions will depend on a careful analysis of the key terms of the agreement, which I will now summarize.

The preamble to this agreement states that the purpose of the document is "to provide for the orderly

transition from employment to retirement from employment" of the former Chief. The agreement then stipulates that the former Chief must resign as Chief of Police on a prescribed date. The document goes on to specify that the former Chief will remain a member of the police force for a period of 18 months from that date after which his retirement will be accepted.

The document next stipulates that, over the life of the agreement, the former Chief is to withdraw from the workplace and provide consulting services to the Board on an "as-needed basis". The agreement also precludes the former Chief from engaging in any form of gainful employment during the 18 month period except with the permission of the Board.

The agreement then states that the former Chief will be paid a specific salary (subject to the normal statutory deductions), along with most of the usual employment benefits until his retirement date. In particular, the former Chief will continue to participate in the Board's pension plan.

In its representations, the Board submits that the agreement constitutes a contract of employment. It points out, in this respect, that the former Chief was permitted to retain his police equipment (with the exception of his revolver) and continued to be subject to the rules made by the Board under s.31(6) of the Police Services Act for the effective management of the police force. The Board also points out that the former Chief, by virtue of the contractual prohibition against seeking secondary employment, was entirely dependent on the Board for his income during the term of the agreement.

The appellant, on the other hand, contends that the former Chief was paid as a consultant and not retained as an employee. The appellant also suggests that the contract entered into between the parties is, in reality, "a disguised retirement package which should have been clearly defined as such".

With the important provisions of the agreement and the positions of the parties having been set out, I must now determine whether the former Chief was engaged as an employee or as an independent contractor. These terms are both defined in Black's Law Dictionary (Sixth Ed.). In this publication, employee is accorded the following meaning:

A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed ... One who works for an employer; a person working for salary or wages ...

The term independent contractor is then defined as:

Generally, one who, in exercise of an independent employment, contracts to do a piece of work according to his own methods and is subject to his employer's control only as to end  
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product or final result of his work ... One who renders service in the course of self employment or occupation, and who follows employer's desires only as to results of work, and not as to means whereby it is to be accomplished ...

The question of whether an individual may be characterized as an employee or an independent contractor has been the subject of many decisions made by the courts and various administrative tribunals. Among the factors which are judged to be significant in making this determination are the following:

- (1) The level of control and supervision exercised by the employer with respect to (a) how the work is performed, (b) where the work is performed, (c) the hours of work and (d) what is produced.
- (2) The ownership and provision of the equipment used for the job.
- (3) The economic dependence of the worker on the employer.
- (4) Whether the worker is entitled to undertake alternative work while engaged by the employer.
- (5) Whether the worker is obliged to follow the employer's organizational policies.
- (6) Whether the worker bears any risk of loss by entering into the agreement.
- (7) Whether the work which the individual performs is a necessary and integral component of the employer's operations.

At the outset, I should state that the employment arrangement in the present case is a difficult one to characterize. While there are several contractual terms which favour a finding that the former Chief was engaged as an employee, there are others which point to an independent contractor relationship. I will now list the considerations which support the two competing positions.

In my view, the factors which favour a finding that the former Chief was hired as an employee are the following:

- (1) The former Chief was paid a salary under the contract from which income tax, C.P.P. and U.I.C. deductions were made.
- (2) The former Chief continued to receive most of his previous employment benefits (e.g. contributions to the OMERS pension plan) - although he was not entitled to earn either vacation credits or sick leave benefits.
- (3) The former Chief was precluded from working for any other employer during the  
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term of the agreement and was, thus, economically dependent on the Board during this period.

- (4) The former Chief continued to retain his uniform and identification badges (though not his revolver) during this period - although it is not clear how the use of this equipment assisted him to perform his consulting work.
- (5) The former Chief remained a member of the police force and was subject to the rules made by the Board under the Police Services Act.

The terms of the agreement which support the conclusion that the former Chief was engaged as an independent contractor are the following:

- (1) The contract specifies that the purpose of the agreement is to provide for the orderly transition of the former Chief **from employment** to retirement from employment.
- (2) The former Chief is described in the agreement as a provider of consulting services.
- (3) The agreement stipulates that the former Chief shall withdraw from the workplace and provide services on an "as needed" basis. There is, thus, no contractual requirement that he work a minimum number of hours or on specific days during the week.
- (4) Although requested to do so, the Board was unable to provide the Commissioner's office with any information about the former Chief's specific responsibilities during this 18-month period.
- (5) On the date that the former Chief was required to withdraw from the workplace, the Board appointed a new Chief of Police.

I have carefully reflected on the competing considerations raised by this case. Although this document is outwardly structured as an employment contract, I find that, on an objective basis, the only considerations which support the conclusion that the former Chief is an employee are the method by which this individual was remunerated, the fact that he was allowed to retain some police equipment for his consulting work and his economic dependence on the Board during the term of the agreement.

In my view, however, the fact that the former Chief was required to withdraw from the workplace, that there were no fixed hours of work and that he had no specific employment responsibilities strongly point to the conclusion that the Board did not exercise control or supervision over the manner in which he undertook

his consulting work. I also find, based on the evidence before me, that the work which the former Chief performed during the 18-month period was not a necessary and integral component of his employer's operations.

Following a review of the terms of the agreement and after applying the tests which the courts have used to resolve cases such as these, I have reached the conclusion that the relationship of the former Chief to the Board is that of an independent contractor and not an employee. It follows that the agreement through which the former Chief was engaged represents a contract for personal services.

The result, based on the wording of section 14(4)(b) of the Act, is that the disclosure of the salary figure found in the agreement would **not** constitute an unjustified invasion of the former Chief's personal privacy. This information should, therefore, be released to the appellant.

**ORDER:**

1. I order the Board to disclose those passages in the agreement which I have highlighted in yellow on the copy of the record which I have provided to the Board's Freedom of Information and Privacy Co-ordinator 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.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Board to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Irwin Glasberg  
Assistant Commissioner

\_\_\_\_\_ August 11, 1994