



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

ORDER M-378

Appeal M-9400034

The Corporation of the Townships of Belmont and Methuen



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Corporation of the Townships of Belmont and Methuen (the Townships) received a request for access to their general accounts for a specified month. Partial access to the responsive records including the dates, cheque numbers and amounts of seven cheque entries was granted.

The Townships denied access to the balance of the information on these cheque entries, including the names of the payees, description of payment, account name and/or number listed on the Townships' ledger. The Townships rely on the following exemption:

- invasion of privacy - section 14

A Notice of Inquiry was provided to the Townships, the appellant and an employee of the Townships (the affected person). Representations were received from the Townships and the affected person.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an **identifiable** individual.

Two of the seven entries contain the names of individual employees and represent payment of salary. I find that the entries with respect to these named employees (the employee entries) constitute their personal information.

The remaining five entries (the account entries) do not contain an individual employee's name. However, it has been established in a number of previous orders that, even where personal identifiers are removed from a record, if there is a reasonable expectation that an individual can be identified from the remaining information, such information qualifies under section 2(1) as personal information.

The Townships have indicated that, despite the fact that there is no name associated with the account entries, these entries all reflect contributions to a particular pension fund. The Townships also state that there is only one employee in the Townships on whose behalf they make contributions to this fund.

In my view, it is reasonable to expect that this employee may be identified by the disclosure of the information contained in the record. Accordingly, I find that these entries also constitute the personal information of the individual to whom it relates.

None of the personal information in the records relates to the appellant.

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.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of the personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

The Townships submit that the personal information relates to employment history (section 14(3)(d)) and describes an individual's income and financial activities (section 14(3)(f)). I have reviewed the personal information in all the entries. In my view, it does not qualify as employment history and section 14(3)(d) does not apply.

The Townships claim that the personal information in the employee entries represents specific salaries paid to employees. Therefore, they state that disclosure is presumed to constitute an unjustified invasion of these individuals' personal privacy under section 14(3)(f). I agree. I find that the considerations in section 14(4) do not apply to the personal information in the employee entries and the appellant has not raised the application of section 16.

I will now examine the account entries. As I have previously indicated, the personal information in the account entries represents contributions to a pension fund made on behalf of an employee.

The Townships state that disclosure of the personal information in the account entries could reveal the individual's financial activities. In my view, an employee's pension contributions deducted as a result of his/her employment do not fall within the presumption provided by section 14(3)(f) of the Act.

The Townships and the affected person also submit that disclosure of the personal information in the account entries would reveal information which could indirectly reveal that individual's income. While I acknowledge the representations of the Townships and the affected person, it does not change the intrinsic character of the information at issue. In my view, the presumption in section 14(3)(f) of the Act does not apply in the circumstances of this appeal.

In my view, the information in the account entries relates to a benefit of an employee and is characterized as such. Previous orders of the Commissioner's office have considered the intent of the Legislature with respect to the type of information described in section 14(4). In Order M-23, Commissioner Tom Wright commented that "... section 14(4) is a clear indication by the legislature that the disclosure of the identified types of information is in the public interest." In the same order, Commissioner Wright also defined the term "benefits" as found in section 14(4)(a) to include pension benefits. I adopt Commissioner Wright's comments above for the purposes of this appeal.

In Order M-173, Assistant Commissioner Irwin Glasberg examined the issue of entitlements which included pension contributions. Assistant Commissioner Glasberg found that because the benefits received had been negotiated as part of early retirement packages and not as a result of being employed by the institution, the personal information did not fall within the ambit of section 14(4)(a) of the Act and that the exemption

provided by section 14(3)(f) applied to protect the information from disclosure. In the present case, the individual on whose behalf the pension contributions are being made is an employee of the Townships and the benefit (pension contributions paid by employer and/or employee) is not part of a negotiated termination package.

I have carefully considered the evidence before me and, in my view, the personal information in the account entries relates to a benefit of an employee of the Townships accruing from his/her employment with the Townships. I find that disclosure of the personal information in the account entries does not constitute an unjustified invasion of personal privacy and the exception under section 14(1)(f) of the Act applies.

In conclusion, I have made the following findings:

- (1) that the personal information in the employee entries and the account entries does not qualify as "employment history" and, therefore, section 14(3)(d) does not apply;
- (2) that the personal information in the employee entries clearly falls within the presumption provided by section 14(3)(f) of the Act;
- (3) that the personal information described in (2) above does not fall within the ambit of section 14(4)(a). The appellant has also not submitted that section 16 of the Act applies;
- (4) therefore, the information in the employee entries should not be disclosed;
- (5) that section 14(3)(f) does not apply to the information in the account entries;
- (6) that the information in the account entries qualifies as a benefit of an employee of the Townships under section 14(4)(a) and that disclosure does not constitute an unjustified invasion of personal privacy and the exception in section 14(1)(f) applies.

ORDER:

1. I uphold the decision of the Townships not to disclose the information in the employee entries.
2. I order the Townships to disclose to the appellant the information in the account entries within thirty-five (35) days following the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Townships to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ August 25, 1994