



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

ORDER P-787

Appeal P-9400153

Halton District Health Council



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NATURE OF THE APPEAL:

This is an appeal under the Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to information held by the Halton District Health Council (the Council) relating to her removal from her position with the Council. The Council provided access to some of the information but withheld some notes and portions of the minutes of two Council meetings, relying upon the following exemption:

- invasion of privacy - section 21(1)

The requester appealed the Council's decision and claimed that further responsive records exist.

A Notice of Inquiry was provided to the Council, the appellant and 16 affected parties, including 15 Council members and a consultant who had provided some professional services for the Council. Since the appellant was seeking information about herself, the Council was asked to provide representations on the discretionary exemption provided by section 49(b) of the Act.

Representations were received from the Council, the appellant and eight affected parties. Two of the affected parties consented to the disclosure of the information contained in the records which relates to them.

The records remaining at issue are:

Record 2-1: handwritten notes of a telephone conversation between a Council member and the consultant;

Record 3-2: portions of minutes of a special Council meeting held on October 12, 1993, consisting of the location of the meeting, the names of those members who attended, those who were not present, those who moved and seconded several motions, the individual who counted the ballots and the signatory of the minutes; and

Record 3-5: portions of minutes of a Council meeting held on November 10, 1993, consisting of the names of those members who moved and seconded several motions, those who made certain comments at the meeting and those who sent correspondence to the Council (the contents of this correspondence is not described).

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual and includes the views or opinions of another person about the individual. Previous orders have found that information relating to an individual's business activities or employment is not personal information, nor are views and opinions expressed in an individual's business capacity (Orders M-

364 and P-427).

With respect to the handwritten notes (Record 2-1), I find that this record contains the personal information of the appellant only. The information relating to other named individuals concerns their business or employment capacity and, therefore, is not personal information. Thus neither section 21(1) nor 49(b) of the Act can apply. Record 2-1 should be disclosed to the appellant in its entirety.

The next matter which I must determine is if the information that has been withheld from Records 3-2 and 3-5 constitutes the personal information of the individuals named therein, namely the Council members. As far as Record 3-2 is concerned, I find that the address of the location at which the meeting was held is not information which relates to any individual.

The Council submits that its members are volunteers who serve without remuneration for community benefit. Council asserts that, because Council membership is neither its members' profession nor business, any views expressed by its members are personal in nature. Those affected parties who addressed this issue reiterated the voluntary nature of Council membership and their desire to speak freely at in camera Council meetings.

District Health Councils are classified by the Government of Ontario as operational agencies, that is agencies whose main function is to deliver goods and/or services necessary to implement approved government policies and programs. In the case of District Health Councils, their particular function is to advise on the planning and coordination of health services, to identify health needs in the district and to consider ways of meeting those needs according to provincial guidelines.

Members of the Council are appointed by the Lieutenant-Governor-in-Council. While some Ontario Government agency members receive remuneration, District Health Council members are compensated for their expenses only. The names of all members of Ontario government agencies, their tenure, position, remuneration and where they reside is published annually in a publication entitled "A Guide to Agencies, Boards & Commissions", a publication of the Ontario Government.

I do not accept the submissions of the Council and the affected parties who support the position that the voluntary nature of Council participation means that the information contained in the records is the personal information of the Council members. In my view, the payment or non-payment of a fee to Council members is not determinative of whether information related to these individuals can be considered to be "personal" or "employment" related. Rather one must consider the nature of the information at issue in the particular circumstances of each case, starting from the position that the Council is carrying out some of the business of Government.

Among other things, the Council conducts its business through Council and Executive meetings. It was two such meetings which resulted in the generation of the minutes contained in Records 3-2 and 3-5. In my view, the information recorded therein does not relate to the Council members in their personal capacities. Rather, it notes their presence at the meetings as Council members and reflects the direction in which the

meetings proceeded to conduct Council business. I am also of the view that the in camera nature of one of the meetings and a portion of the other does not alter the characterization of the information related to the Council members.

Accordingly, I conclude that Records 3-2 and 3-5 do not contain the personal information of any of the affected persons. Therefore, disclosure of these records could not result in an unjustified invasion of the personal privacy of these individuals. As the Council did not claim that any other exemptions apply to the information which it has withheld, Records 3-2 and 3-5 should be disclosed to the appellant in their entirety.

REASONABLENESS OF SEARCH

During mediation of this appeal, the appellant identified four additional types of responsive records which she believes should exist:

- (1) a signed performance appraisal (of the appellant);
- (2) additional records in the appellant's personnel file, including a completed performance evaluation;
- (3) handwritten notes of the Council Chair relating to meetings with the appellant and notes taken by the Chair at two meetings on April 1 and 20, 1993, as well as notes taken at the September 8, 1993 Executive Committee and October 12, 1993 Special Council meetings, and
- (4) notes or minutes of an in camera session of a particular meeting (referred to in a disclosed document).

The Act does not require the Council to prove with absolute certainty that the requested records do not exist. However, in order to properly discharge its obligations under the Act, the Council must provide sufficient evidence to show that it has made a reasonable effort to identify and locate records responsive to the request.

In the Notice of Inquiry, the Council was asked to provide, in affidavit form, details of the steps taken and searches carried out to locate further responsive records.

In its representations, the Council did not provide an affidavit. It did state that employees of the Council made a search for a signed performance appraisal and that the persons who did the appraisal were contacted. No signed performance appraisal was located.

A search was made for personnel file records and all materials that were found were provided to the appellant. The Council office is stated to be the only place where such records would be maintained. With respect to Items (1) and (2), I am satisfied that the Council's searches for a signed performance

appraisal and additional personnel records were reasonable.

The individual who was the Chair of the Council was contacted about notes taken at specified meetings. This individual advised that one of the meetings referred to by the appellant, that of April 1, 1993, did not take place. This individual further stated that notes of other meetings were deliberately not taken. No actual search was performed for notes of these meetings.

No search was made for notes or minutes of the in camera meeting specified by the appellant. The Council states that there was no business conducted at the in camera meeting referred to and that no minutes were taken at this meeting.

Finally, members of the Executive Committee of Council were canvassed about any notes they might have in their possession at the time of the original request.

On the basis of the information provided by the Council, I am not satisfied that the search for the Chair's notes or for the minutes of the in camera session were reasonable. It appears that, in fact, no search was conducted for these records. In my view, Council's assertion that no business was conducted does not necessarily mean that no minutes were taken. In fact, if, as it appears, this in camera session was part of a Council or Executive Committee meeting, there appears to have been no reason for Council to move in camera if there was no business to conduct.

ORDER:

1. I order the Council to disclose Record 2-1 and those portions of Records 3-2 and 3-5 which were withheld, to the appellant within thirty-five (35) days after the date of this order but not earlier than the thirtieth (30th) day after the date of this order.
2. I order the Council to conduct a search for the following records:
 - notes taken by the Chair at the September 8, 1993 Executive Council meeting, the Special Council meeting of October 12, 1993 and the Chair's April 20, 1993 meeting with the appellant, and
 - minutes of an in camera meeting referred to in Item 3.3 of Record 3-6.
3. I order the Council to advise the appellant, in writing, of the results of this search within thirty (30) days after the date of this order.
4. In the event that further records are located as a result of this search, I order the Council to provide

an access decision to the appellant, in the form contemplated by sections 26 and 29 of the Act, within thirty (30) days after the date of this order and without recourse to a time extension.

5. In order to verify compliance with Provision 1 of this order, I reserve the right to require the Council to provide me with a copy of the records which are disclosed to the appellant.
6. In order to verify compliance with Provisions 3 and 4 of this order, I order the Council to provide me with copies of the correspondence referred to in these provisions within thirty-five (35) days after the date of this order. These should be sent to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ October 25, 1994