



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-419**

## **Appeal M-9400228**

### **The Corporation of the Village of Winchester**



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 appellant has requested records relating to the employment and release agreements between the Corporation of the Village of Winchester (the Village) and its former Chief Administrative Officer (the former CAO). Two records were identified as being responsive to all parts of the request and were disclosed to the appellant with severances. Only the information contained in the withheld portions of "Schedule A" to the release agreement is at issue in this appeal. This information relates to: legal and re-employment expenses; disability, life and health insurance; an RRSP contribution; use of a cellular phone; and the number of months salary payable on release.

The Village relies on the following exemption in denying access to the record:

- invasion of privacy - section 14(1)

A Notice of Inquiry was provided to the Village, the appellant and the former CAO. Representations were received from the appellant and the former CAO.

## **PRELIMINARY MATTER:**

The former CAO submits that the record is protected from disclosure under the discretionary exemption found in section 6(1)(b) of the Act (closed meeting).

As a general rule, the responsibility rests with an institution to determine which, if any, discretionary exemptions should apply to a particular record. The Commissioner's office, however, has an inherent obligation to uphold the integrity of Ontario's access and privacy scheme. In discharging this responsibility, there may be rare occasions when the Commissioner or his delegate decides that it is necessary to consider the application of a discretionary exemption not originally raised by an institution during the course of an appeal. This result would occur, for example, where the release of a record would seriously jeopardize the rights of a third party.

In my view, this appeal does not represent a situation where a discretionary exemption not originally raised by the Village should be considered. Section 14 of the Act is specifically designed to protect personal privacy, and consideration of this section will adequately address the privacy rights of the former CAO. Accordingly, I am not prepared to consider section 6(1)(b) in the circumstances of this appeal.

## **DISCUSSION:**

### **INVASION OF PRIVACY**

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual. I have reviewed the information at issue and I find that it falls within the definition of "personal information". The personal information relates to entitlements of the former CAO, an individual other than 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 personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions 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.

As the entitlements reflected in the agreements were not received by the former CAO as a result of being employed (rather they were negotiated in exchange for acceptance of the agreement), these entitlements do not constitute "benefits" within the meaning of section 14(4)(a) of the Act (Orders M-173, M-204 and M-278).

The former CAO submits that the record relates to his employment history (section 14(3)(d)) and refers to his personal financial activities (section 14(3)(f)). Therefore, the former CAO submits that the disclosure of the severed information would represent a presumed unjustified invasion of personal privacy.

The information severed from the release agreement does not pertain to the employment history of the former CAO for the purposes of section 14(3)(d) of the Act.

The entitlements described in the severances cannot be said to describe the individual's "finances, income, net worth, financial history or financial activities" for the purposes of section 14(3)(f). Rather, these entitlements represent one time payments to be conferred immediately or over a defined period of time that arise directly from the acceptance by the employee of a release package (Order M-173).

The former CAO also submits that a number of factors under section 14(2) which favour non-disclosure of the information in the record are relevant in the circumstances of this appeal. He indicates:

- the information is highly sensitive - section 14(2)(f)
- it has been supplied in confidence - section 14(2)(h)
- disclosure of the information may unfairly damage his reputation - section 14(2)(i)

The appellant suggests that disclosure of the information is desirable for the purpose of subjecting the activities of the Village Council to public scrutiny (section 14(2)(a)).

In interpreting section 14(2), all the relevant circumstances of the case must be considered, not only the factors enumerated in the section. Previous orders issued by the Commissioner's office have also identified another circumstance which should be considered in balancing access and privacy interests under section 14(2) of the Act. This consideration is that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution" (Order M-173).

Having reviewed the evidence before me, I have made the following findings:

- (1) The information in the agreement was negotiated and not "supplied" as required by the section 14(2)(h) provision, and this provision, consequently, does not apply to the information (Order M-173).
- (2) In view of the provision in the release agreement referring to any public announcements regarding the termination of his employment, I find that the former CAO had an expectation that the contents of the agreement would not be publicized, and that this is another factor which is relevant in determining whether section 14(1) applies (Order M-173).
- (3) Disclosure of the information contained in the document could not reasonably be expected to produce the excessive personal distress required for section 14(2)(f) to apply.
- (4) The evidence provided is not sufficient to convince me that section 14(2)(i) is a relevant consideration in the circumstances of this appeal.
- (5) The departure of this senior municipal officer was the cause of considerable interest which extended beyond the community he served, and the contents of agreements entered into between institutions and senior municipal employees represent the sort of records for which a high degree of public scrutiny is warranted (Order M-173). On this basis, I find that section 14(2)(a) of the Act is a relevant consideration.
- (6) The release agreement involves a large amount of public funds, involves a senior municipal employee with a high profile within the community, and the current recessionary climate places an unparalleled obligation on officials at all levels of government to ensure that tax dollars are spent wisely. Based on an evaluation of these factors, I have concluded that the public confidence consideration is applicable in this appeal.

After balancing the competing interests of public scrutiny, public confidence in the integrity of an institution and the expectation of confidentiality held by the employee, I find that the considerations which favour disclosure of the information outweigh those which would protect the privacy interests of the former CAO.

Therefore, notwithstanding the fact that the name of the former CAO has been disclosed in the release agreement, I find that, in the particular circumstances of this case, disclosure of the personal information would not result in an unjustified invasion of personal privacy.

**ORDER:**

1. I order the Village to disclose to the appellant the severed parts of the record 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.

2. In order to verify compliance with this order, I reserve the right to require the Village to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ November 7, 1994