



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

ORDER M-664

Appeals M_9500289 and M_9500290

Town of Midland



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 APPEALS:

The Town of Midland (the Town) received two requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the names of all temporary and part-time employees, including those hired for summer jobs, for the periods January 1, 1993 to January 1, 1994 and January 1, 1994 to November 18, 1994. The Town denied access to the information responsive to the requests, claiming the application of the following exemptions contained in the Act:

- danger to safety or health - section 13
- invasion of privacy - section 14(1)

The requester appealed the decision to deny access. A Notice of Inquiry was provided to the Town, the requester (now the appellant) and to 130 individuals (the affected persons) whose rights may be affected by the disclosure of the information contained in the records. During the mediation of these appeals the appellant confirmed that he was not seeking access to the addresses contained in the records. Representations were received from the Town, and from 40 of the affected persons.

The remaining information in each appeal consists of a list of names, along with, in some cases, start dates of each temporary and part-time employee of the Town hired between January 1, 1993 and November 18, 1994.

PRELIMINARY ISSUE:

SHOULD THE APPELLANT BE PRECLUDED FROM MAKING REQUESTS

The Town submits that I should consider the application of the principles set forth by Commissioner Tom Wright in Order M-618 to the circumstances of this appeal. It argues that the appellant has a long history of making multiple requests and filing a large number of appeals. The Town has submitted evidence in support of its argument that the appellant ought to be precluded from making further requests and appeals in the same fashion as the appellant who was the subject of Order M-618.

In Order M-618, Commissioner Wright set out four factors to be considered when determining whether an individual's use of the Acts constitute an "abuse of process". The Commissioner determined that an abuse of process occurs in situations where a requester has no genuine interest in the information for its own sake, but rather makes requests for the nuisance value it generates for the processes and resources both of the institution and this office. The factors to be considered when determining whether an abuse of process has occurred include the sheer volume of the requests made, the nature and scope of the requests, the rate at which the requests are made and the motivation of the requester, where it is possible to be determined. Commissioner Wright held that, in the unique circumstances of that case, the appellant's course of conduct led him to the conclusion that this individual's use of the Acts constituted an abuse of process.

I cannot agree that the conduct of the appellant in the present appeals constitutes an "abuse of process" as contemplated by Commissioner Wright in Order M-618. I have not been presented with sufficient evidence to demonstrate that the present appellant has entered into a course of conduct which is analogous to that of the appellant in Order M-618. Accordingly, I find that the actions of the appellant in the case before me cannot be characterized as an "abuse of process" and my consideration of the issues in these appeals will proceed.

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. I have reviewed the responsive records and find that they contain the personal information of each of the individuals who are listed. Further, I find that none of the personal information 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. The only exception to this prohibition against disclosure which could apply in these appeals is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Section 14(4) of the Act identifies particular types of information, the disclosure of which does not constitute an unjustified invasion of personal privacy. Section 14(4)(a) reads:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

If a record contains the type of information described in section 14(4), the exception to the section 14 exemption contained in section 14(1)(f) will apply.

In Order M-26, Commissioner Wright considered the application of section 14(4)(a) to a record very similar to that under consideration in these appeals, a list of names of individuals who were employed by a municipality as part-time or temporary staff. Commissioner Wright found that:

In my view, it is significant that the words "of an individual" appear in section 14(4)(a). These words precisely reflect the fact that section 14 is directed to personal information which, by definition, is information about an identifiable

individual. Therefore, in my opinion, section 14(4)(a) applies to the names of individuals who are or were employed by the institution. Accordingly, the disclosure of the names would not constitute an unjustified invasion of personal privacy.

I adopt the approach taken by Commissioner Wright in Order M-26 and find that the disclosure of the **names** of the individuals contained in the records would not constitute an unjustified invasion of personal privacy. The remaining information, the start dates, do not fall within the section 14(4)(a) exception and must, accordingly, be evaluated separately to determine if their disclosure would constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) 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.

The Town argues that the personal information in the responsive records falls under the presumption in section 14(3)(d). This section states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

relates to employment or educational history;

I have not been provided with any factors listed in section 14(2) weighing either in favour of or against the disclosure of the personal information contained in the records. As no considerations weighing in favour of disclosure have been raised by the appellant, I find that the mandatory exemption provided by section 14(1) applies to the start dates which are included in the records.

DANGER TO HEALTH AND SAFETY

The affected persons and the Town have raised the application of section 13 of the Act. This section states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The Town submits that the appellant is involuntarily held as a patient at the Oak Ridge facility, a maximum security institution for the criminally insane, and infers that the appellant is a dangerous individual who poses a threat to the safety or health of the persons named in the records. Each of the affected persons who responded to the Notice of Inquiry has expressed concern for their personal safety should the records containing their names be disclosed to the appellant.

I have not, however, been provided with any evidence to demonstrate that the disclosure of the names could **reasonably** be expected to seriously threaten the health or safety of any of the individuals named in the records. Nor have I been provided with any evidence that the appellant has threatened harm to these or any other individuals. Accordingly, I find that section 13 does not apply in the circumstances of these appeals.

ORDER:

1. I uphold the Town's decision to deny access to the start dates of the employees which are contained in the records.
2. I order the Town to disclose to the appellant the names of the employees listed on the records within thirty (30) days of the date of this order, but not earlier than the thirty-fifth (35th) day following the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Town to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

Donald Hale
Inquiry Officer

December 12, 1995

POSTSCRIPT:

Many of the affected persons who responded to the Notice of Inquiry in this matter have asked that this office consider granting them access to the name of the requester. A request for such information should be addressed to the Town of Midland and an appeal of the Town's decision may be filed with this office.