



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

ORDER M-665

Appeal M_9500282

Township of Roxborough



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/Télé: 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 Township of Roxborough (the Township) received a request for a copy of a detailed statement of the severance payments paid by the Township to two of its former employees.

Pursuant to section 21 of the Act, the Township notified the two employees of the request, and invited their comments on disclosure of this information. In response to the notice, one of the former employees consented to disclosure of the information pertaining to her. The other former employee indicated his objection to disclosure of the records on the basis that disclosure would constitute an unjustified invasion of his personal privacy (section 14(1) of the Act).

The Township decided to grant access, and advised the requesters and the former employees to that effect. The Township's letter to the former employees advised that, unless an appeal was filed by a specified date, the records would be disclosed. After receiving this letter from the Township, the former employee who initially objected to disclosure (now the appellant) filed an appeal with the Commissioner's office.

A Notice of Inquiry was sent to the requesters, the appellant and the Township. In response to the notice, the Township and the appellant submitted representations.

The records at issue consist of three paragraphs pertaining to the appellant contained in a Special Audit and Accounting Report for the year ended December 31, 1994 (the Report), and a two page severance agreement (the Agreement) between the Township and the appellant.

The sole issue to be determined in this appeal is whether disclosure of the records at issue constitute an unjustified invasion of the appellant's personal privacy.

PRELIMINARY MATTER:

In his letter of appeal, the appellant indicates that the Township's decision is flawed in that it did not provide him with 20 days in which to respond to the notification under section 21 of the Act. The Township's letter to the appellant was dated March 14, 1995, and he was asked to respond by March 31, 1995 (17 days from the date of the letter). The appellant indicates that he did not receive the Township's notice until March 21.

I note that March 31 fell on a Friday. Under section 21, the appellant, technically, would have had until Monday, April 3 to respond. In accordance with the principles of administrative fairness, a party affected by a decision of the head must be given a reasonable length of time to be informed, to consider and to respond to the issues which affect him. The Legislature has decided that a maximum of 20 days is sufficient to meet these obligations. In my view, in the circumstances of this appeal, it is not necessary for me to consider whether the Township has breached its duty of administrative fairness in failing to adhere to the procedural requirements of the Act, for the following reasons.

The appellant did respond to the Township on March 29 (15 days into the notice period). Further, he does not indicate that he was unable to respond properly to the notice as a result of the shortened time.

Moreover, since this is a decision which is ultimately to be determined on appeal by the Commissioner's office, any defect in the Township's notice period is, in my view, cured by the procedures established by this office. The appellant has been provided, through the appeals process, with full opportunity to explain his concerns and have his objections considered before a decision is made concerning the application of section 21 to the records pertaining to him.

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 find that all of the information at issue constitutes the personal information of the appellant. The last two paragraphs of the Report also contain references to the other former employee. Since she has consented to the disclosure of the information in the records pertaining to her, I will only consider disclosure of this information as it 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. Specifically, section 14(1)(f) of the Act reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates 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 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 can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

If none of the presumptions in section 14(3) apply, the Township must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

In his letter of appeal and representations, the appellant suggests that the following presumptions and factors, which weigh in favour of privacy protection, apply to the information at issue:

- the information describes the appellant's finances (section 14(3)(f))
- the appellant will be exposed unfairly to pecuniary harm (section 14(2)(e))

- the information was provided in confidence (section 14(2)(h))
- disclosure may unfairly damage the reputation of the appellant (section 14(2)(i)).

The Township submits that disclosure of the information is desirable for the purpose of subjecting the activities of the Township 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. The Township alludes to another circumstance which should be considered in balancing access and privacy interests under section 14(2) of the Act. This consideration, which has been raised in previous orders of the Commissioner's office, is that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution" (Order M-173).

Finally, the Township argues that the records disclose financial or other details of a contract for personal services between the Township and the appellant, and that the exception to the exemption in section 14(4)(b) applies in the circumstances of this appeal.

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

- (1) With two exceptions, the entitlements described in the records 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, and result directly from the acceptance by the appellant of the Agreement (Order M-173).

Provision 4(b) of the Agreement refers to the specific salary to be paid to the appellant for a prescribed period of time. Part of the first sentence of Provision 5 of the Agreement, when read in conjunction with certain other parts of the records, would permit a person reviewing the documents to calculate the exact salary which the appellant earned when he left the Township. On this basis, the disclosure of this information in Provisions 4(b) and 5 would describe the appellant's income for the purposes of section 14(3)(f) of the Act, and its release would constitute a presumed unjustified invasion of personal privacy. I have highlighted this information in yellow on the copies of the records being sent to the Township's Freedom of Information and Privacy Co-ordinator with a copy of this order.

Section 14(4)(b) is not applicable to this information, or any other personal information at issue in this appeal, because the appellant was an employee of the Township, and was therefore not a party to a contract for personal services with the Township (Order M-173). Accordingly, I find that disclosure of the information which I have highlighted in yellow would constitute a presumed unjustified invasion of personal privacy and is properly exempt under section 14(1) of the Act.

- (2) With respect to the remaining information, the evidence provided is not sufficient to establish that section 14(2)(e) applies in the circumstances of this appeal.

- (3) 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).
- (4) One provision in the Agreement refers to a prohibition against any public announcements regarding the terms of the Agreement, I find that the appellant 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 the exemption in section 14(1) applies (Order M_173).
- (5) The evidence provided is not sufficient to establish that section 14(2)(i) applies to the remaining information in the circumstances of this appeal.
- (6) The departure of this senior municipal officer has created considerable interest in the community, 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 applies.
- (7) The 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 appellant, I find that the considerations which favour disclosure of the remaining information outweigh that which would protect the privacy interests of the appellant.

Accordingly, I find that disclosure of the personal information which has not been highlighted in yellow would not result in an unjustified invasion of personal privacy.

Neither the requesters nor the Township have argued that section 16 applies to override the exemption in section 14(3)(f) which I have found to apply to the information in the records which I have highlighted in yellow. Given the degree of disclosure I have already made, I find, in the circumstances of this appeal, that it does not apply.

ORDER:

1. I order the Township **not** to disclose to the requesters the portions of the records which are highlighted in yellow on the copies of the records provided to the Township with a copy of this order.
2. I uphold the Township’s decision to disclose to the requesters the remaining portions of the records, and I order the Township to disclose these portions of the records 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 Township to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ December 13, 1995