



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

ORDER M-710

Appeal M_9500414

The Corporation of the Township of Howick



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NATURE OF THE APPEAL:

The Ministry of Housing (the Ministry) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to all records relating to three loan applications made under the Ontario Home Renewal Program (OHRP) by two elected officials of the Corporation of the Township of Howick (the Township). The requester is the former Township Clerk who alleges that an elected official misrepresented his/her family income on an OHRP application form and that another elected official stated on the OHRP application form that he/she had never received an OHRP loan, knowing that this was not the case.

Pursuant to section 25(2) of the Freedom of Information and Protection of Privacy Act, the Ministry transferred the request to the Township as it appeared that the Township had a greater interest in the records requested.

The Township located a number of records which were responsive to the request and granted access to copies of the minutes of Township Council meetings at which the loans were approved. The Township denied access to the remaining responsive records, claiming the application of section 14 of the Municipal Freedom of Information and Protection of Privacy Act (the Act).

The requester appealed the Township's decision and raised the application of section 16 of the Act as he feels there exists a public interest in the disclosure of the records. A Notice of Inquiry was provided by the Appeals Officer to the Township, the appellant, the elected officials and their spouses who are the subjects of the appellant's allegations (the affected persons). Representations were received from all of the parties.

The responsive records consist of correspondence between the Township and its solicitor, various land registration documents, six loan application forms, inspection reports, repair estimates and invoices, income tax returns, insurance policies, sheriff's certificates and correspondence between the loan applicants and their bank, all of which relate to the OHRP loans.

DISCUSSION:

PERSONAL INFORMATION

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 records at issue and find that they contain the personal information of the elected officials, as well as their spouses. The appellant's name appears in several of the records where he has executed documents in his capacity as Township Clerk. As such, I find that this information cannot be characterized as the appellant's personal information as his name appears only in connection with his professional duties as Clerk.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the 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 parties to this appeal have agreed, and I concur, that the presumptions contained in sections 14(3)(e) (tax return information) and (f) (financial information) apply to all of the personal information contained in the records. The appellant submits that the considerations listed in sections 14(2)(a) (public scrutiny of an institution) and 14(2)(d) (fair determination of rights) are factors which weigh in favour of the disclosure of the personal information which is contained in the records, regardless of the application of the presumption.

As previously noted, the only way in which a presumption under section 14(3) of the Act can be overcome is where the information falls within section 14(4) of the Act or where the public interest override in section 16 is found to apply. Regardless of the applicability of factors listed in section 14(2), they are not sufficient to override the application of the section 14(3) presumptions. In this appeal, the information at issue does not fall within section 14(4).

As I have found that the presumptions in sections 14(3)(e) and (f) apply, the records are exempt from disclosure under section 14(1). I will now proceed to address the arguments of the appellant concerning the applicability of section 16.

PUBLIC INTEREST IN DISCLOSURE

Section 16 of the Act states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (my emphasis)

In Order P-984, Inquiry Officer Holly Big Canoe examined the component parts of section 23 of the provincial Act, which is the equivalent of section 16 of the Act. She held that:

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called "public interest override": there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

The appellant submits that because the loan applicants are public officials, their conduct must be subject to a higher standard than that expected of members of the public. He argues that there exists a compelling public interest that public officials be honest and that the public is entitled to information which may tend to demonstrate dishonesty. Further, the appellant submits that it is in the public interest that elected officials do not "secretly enrich themselves at the expense of the public".

The Township and the affected persons submit that there does not exist any public interest in the disclosure of the requested records. The Township argues that the "appellant seems to be the only member of the public who has an interest in these documents" and that "release of this information will do nothing to serve the ratepayers of Howick Township. It will only benefit the private agenda of the appellant, who is currently suing the Township for wrongful dismissal".

I disagree with the position taken by the affected persons and the Township. I find that the appellant has raised a public concern which goes beyond his personal situation. In defining what constitutes a "compelling" public interest, Inquiry Officer Big Canoe added:

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the Act's central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

The appellant has raised serious allegations of improper conduct on the part of the elected officials. It is beyond the mandate of this office to consider or comment on whether the records on their face demonstrate conclusively that the allegations made by the appellant are substantiated. However, it is my responsibility to determine whether the disclosure of the information contained in the records may serve the purpose of informing the public about the propriety of the activities of its elected representatives.

The appellant's former position of Township Clerk placed him in a unique position in which he was made privy to a great deal of information about the business of the Township. For this reason, I find that his allegations are credible. In the circumstances of this appeal, I find that there exists a compelling public interest in the disclosure of certain records, regardless of whether or not the allegations made by the appellant are confirmed. The first requirement of section 16 has been satisfied.

The second requirement to be met when determining if section 16 applies is whether this compelling public interest **clearly** outweighs the **purpose** of the exemption. In Order P-984, Inquiry Officer Big Canoe addressed this requirement as follows:

Once a compelling public interest is established, it must be balanced against the purpose of the exemption which has been found to apply. Section 23 recognizes that each of the exemptions listed therein, while serving to protect valid interests,

must yield on occasion to the public interest in access to government information. Important considerations in this balance are the principle of severability and the extent to which withholding the information is consistent with the purpose of the exemption.

Again, I adopt the language expressed by Inquiry Officer Big Canoe in relation to the second requirement. The appellant has raised concerns about the accuracy of the information contained in the loan application forms. The other documents at issue in this appeal were attached to the applications by way of supporting evidence or were created following the approval of the loan and do not, in my view, speak to the issue of the propriety of the loan applications per se.

I find that there exists a compelling public interest only in the disclosure of the information in Records E15 and F2 as this information alone relates to the matters called into question by the appellant's allegations. I find that in this case, the public interest in the disclosure of this information is sufficiently compelling so as to clearly outweigh the purpose of the privacy protection provisions in the exemption.

I find that the disclosure of the remaining records, including the loan application form from 1977, would not assist the public in evaluating the propriety of the activities of the elected officials. In my view, the public interest in the disclosure of the remaining records is not sufficiently compelling that it clearly outweighs the purpose for the section 14(1) exemption. As a result, I find that section 16 applies only to two of the loan application forms, Records E15 and F2, which were submitted by the two elected officials.

ORDER:

1. I order the Township to disclose to the appellant Records E15 and F2 by **March 21, 1996** but not earlier than **March 18, 1996**.
2. I uphold the Ministry's decision to deny access to the remaining records.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Township to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Donald Hale
Inquiry Officer

February 15, 1996