



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

# ORDER M-768

Appeal M\_9500166

Townships of Belmont and Methuen



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## NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Townships of Belmont and Methuen (the Townships) for access to the General Accounts for the month of January 1995. The Townships disclosed the General Accounts journal with some information blacked out. The requester wrote back to the Townships asking for an explanation for the deletions. In response, the Townships indicated that it had denied access to the information which had been blacked out on the basis of the following exemption:

- invasion of privacy - section 14(1)

The appellant then appealed the Townships' decision to deny access to portions of the record.

This office sent a Notice of Inquiry to the appellant and the Townships. The notice was also sent to each of the three individuals whose name had been severed from the records (the affected persons). All of these parties submitted representations.

## 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 records to determine whether they contain personal information and, if so, to whom the personal information relates.

Six of the seven entries contain the name of an individual and represent payments made to these individuals. I find that the entries with respect to these named individuals constitute their personal information.

The Townships have indicated that, despite the fact that there is no name associated with the seventh entry, it reflects contributions to a particular pension fund. The Townships also state that there is only one employee in the Townships on whose behalf they make contributions to this fund.

In my view, it is reasonable to expect that this employee is identifiable. Accordingly, I find that this entry also constitutes the personal information of the individual to whom it relates.

None of the information in the records 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. One of these circumstances is found in section 14(1)(f), which reads:

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.

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) reads:

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

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

The words “[d]espite subsection (3)” do not limit the application of section 14(4) to those types of information identified in section 14(3), rather they identify types of information that the legislature clearly intended to fall within the exception contained in section 14(1)(f). Generally speaking, if a record contains information of the type described in section 14(4), the exception to the section 14 exemption contained in section 14(1)(f) will apply (Order M-23).

Since the individual to whom the entry regarding the pension fund contribution relates is an officer/employee of the Townships, section 14(4)(a) is relevant. Therefore, the disclosure of the classification, salary range and benefits, or employment responsibilities of this individual does not constitute an unjustified invasion of his personal privacy.

In Order M-23, Commissioner Tom Wright considered the meaning of the word “benefits” as it appears in section 14(4)(a) of the Act. He stated:

Since the “benefits” that are available to officers or employees of an institution are paid from the “public purse”, either directly or indirectly, I believe that it is consistent with the intent of section 14(4)(a) and the purposes of the Act that “benefits” be given a fairly expansive interpretation. In my opinion, the word “benefits” as it is used in section 14(4)(a), means entitlements that an officer or employee receives as a result of being employed by the institution. Generally speaking, these entitlements will be in addition to a base salary. They will include insurance-related benefits such as live, health, hospital, dental and disability coverage. They will also include sick leave, vacation, leaves of absence, termination allowance, death and **pension benefits**. [Emphasis added]

I have carefully considered the evidence before me and, in my view, the personal information in the entry regarding the pension fund contribution relates to a benefit of an employee of the Townships accruing from his/her employment with the Townships.

The Townships submit that disclosure of the pension fund contribution amount would enable the appellant to calculate the employee's exact salary within a few dollars. The Townships provided no information to support this assertion, however, so I contacted the service carrier. The service carrier informed me that it is not possible to accurately calculate the exact salary within a few dollars from one pension contribution, as the pension contribution amount is influenced by a number of factors, including leaves of absence, overtime, lump sum payments and breaks in pensionable service. The service carrier indicates that a salary range could be approximated from the pension contribution amount but, without the details of these other variables or knowledge of their effect on the contribution amount, the exact salary could not. Accordingly, I am satisfied that section 14(4)(a) applies, and disclosure of the persona information in this entry does not constitute an unjustified invasion of personal privacy. Accordingly, the exception under section 14(1)(f) applies, and the information should be disclosed to the appellant.

The six other entries relate to amounts paid to the three individuals who were hired by the Townships for a brief period of time to perform a specific job. In order to determine whether section 14(4)(b) of the Act applies, I must determine the nature of the employment relationship between the Townships and the three affected persons. In doing so, I must decide whether these individuals were hired as employees of the Townships.

I have not been provided with a written contract between the Townships and these individuals to assist in making this determination. However, information provided by the Townships confirms that these individuals worked part-time and were hired for a specific job, they worked in the municipal office using office equipment owned by the Townships and were under direct control and supervision of either the Clerk, Deputy Clerk or Tax-Clerk Secretary.

In Order M-373, Assistant Commissioner Irwin Glasberg considered the term employee in the context of section 14(4)(b) of the Act. He quoted with approval the definitions of employee and independent contractor contained in Black's Law Dictionary (Sixth Edition) and held that:

The question of whether an individual may be characterized as an employee or an independent contractor has been the subject of many decisions made by the courts and various administrative tribunals. Among the factors which are judged to be significant in making this determination are the following:

- (1) The level of control and supervision exercised by the employer with respect to (a) how the work is performed, (b) where the work is performed, (c) the hours of work and (d) what is produced.
- (2) The ownership and provision of the equipment used for the job.
- (3) The economic dependence of the worker on the employer.
- (4) Whether the worker is entitled to undertake alternative work while engaged by the employer.

- (5) Whether the worker is obliged to follow the employer's organizational policies.
- (6) Whether the worker bears any risk of loss by entering into the agreement.
- (7) Whether the work which the individual performs is a necessary and integral component of the employer's operations.

I adopt the approach taken by Assistant Commissioner Glasberg and have used the considerations listed above to determine whether the individuals named in the record are employees.

I have carefully reflected on these considerations. Given the degree of control and supervision exercised by the Townships over these individuals, the fact that the Townships owned the equipment used for the job and the lack of risk of loss for each individual, I conclude that the relationship of each of the individuals to the Townships was that of an employee. Accordingly, I find that section 14(4)(b) does not apply, and I must turn to sections 14(2) and (3) of the Act for guidance in determining whether disclosure of the information contained in the records would be an unjustified invasion of personal privacy of the affected persons.

Each of the affected persons objects to the disclosure of their personal information, but none refers to a section of the Act as a basis for their objection. The appellant relies on the fact that similar information was disclosed to him by the Townships in response to a previous request, and indicates that he is pursuing access in order to become informed as to how his tax dollars are being used by the Townships. The Townships submit that disclosure of the information is presumed to be an unjustified invasion of privacy pursuant to section 14(3)(f) of the Act, which reads:

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

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

In my view, the information contained in the parts of the record which relate to the three affected persons satisfies the requirements of a presumed unjustified invasion of privacy of the named individuals under section 14(3)(f) of the Act. As I have found that section 14(4) does not apply and the appellant has not raised the application of section 16 of the Act (the "public interest override"), I find that this information is properly exempt under section 14(1) of the Act.

## **ORDER:**

1. I uphold the decision of the Townships not to disclose the information in the entries which relate to the affected persons.

2. I order the Townships to disclose to the appellant the information in the entry which relates to the pension fund contribution by **June 10, 1996**, but not earlier than **June 5, 1996**.
3. In order to verify compliance with this order, I reserve the right to require the Townships to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_ May 6, 1996  
Holly Big Canoe  
Inquiry Officer

### **POSTSCRIPT:**

In this appeal, the person who made the decision to deny access to the records was also a person whose personal information was found to be contained in the records. As this appeal involved the application of a mandatory exemption, it was not necessary for me to determine whether there was an actual conflict of interest present in this particular appeal. However, I recommend that a delegation of the head's powers under the Act contemplate the possibility of conflict of interest scenarios, whether real or perceived, and provide for alternate decision-makers in those instances.