



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

ORDER M-854

Appeal M_9600150

Township of Foley



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NATURE OF THE APPEAL:

The Township of Foley (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the annual remuneration and expenses paid to each member of the Township Council in each of the years 1992, 1993, 1994 and 1995. The requester is a former councillor and the information requested includes the remuneration and expenses paid to the requester during that period.

The Township notified the five councillors currently on the council and a former councillor, pursuant to the notification requirements in section 21 of the Act. The five councillors responded, indicating their objection to the disclosure of the information requested. The former councillor did not respond. The Township then denied access to the information. The requester appealed the decision to deny access.

In its decision letter, the Township did not claim any exemptions under the Act. In a subsequent letter to this office, the Township indicated that it was relying on section 15(a) to withhold access to the portion of the record that contains the appellant's own information. The Township also stated that it was claiming section 14(1) of the Act with respect to the remaining information.

During mediation, the Township advised that the former councillor had consented to disclosure of his information to the appellant. The Township provided this information to the appellant and therefore, it is no longer at issue in this appeal.

This office sent a Notice of Inquiry to the appellant, the five councillors (the affected persons) and the Township. In addition to the application of the exemptions claimed by the Township, the parties were also asked to comment on an issue raised by the appellant, namely, whether there was a conflict of interest in the decision-making process of the Township. Representations were received from the appellant and the Township.

In its representations, the Township stated that it was prepared to disclose the appellant's own information to him. Accordingly, this information is no longer at issue and I need not consider the possible application of section 15(a) in this appeal. I will therefore order the Township to disclose this information to the appellant in the order provisions below. The Township also indicated that it is willing to provide a range of the wages and expenses paid to the councillors. The appellant is not prepared to accept this.

Accordingly, the information that remains at issue is set out on one page and consists of the annual remuneration and expenses paid to five councillors in each of the years 1992, 1993, 1994 and 1995.

PRELIMINARY MATTER:

CONFLICT OF INTEREST

The appellant claims that there is a conflict of interest in the decision-making process of the Township regarding access to the record. The appellant believes that the decision to deny access under the Act was made by the councillors to whom the information relates.

An individual with a personal or special interest in the records should not be the person who decides the issue of disclosure. In determining whether there is a conflict of interest, we must look at (a) whether the decision-maker had a personal or special interest in the records, and (b) whether a well-informed person, considering all of the circumstances, could reasonably perceive a conflict of interest on the part of the decision-maker.

The Township submits that decisions pertaining to requests made under the Act are made by the Acting Clerk and Treasurer of the Township, who has been designated head by the council, for the purposes of the Act.

In this case, the Treasurer and Acting Clerk of the Township notified each councillor of the appellant's request, pursuant to the mandatory requirement in section 21 of the Act (i.e. notification of affected persons). The councillors (as affected persons) all objected to disclosure of the information requested. Based on this, the Treasurer/Acting Clerk decided to refuse to allow access to the information as the disclosure would constitute an unjustified invasion of privacy.

The decision on access in response to the request was made by the Treasurer/Acting Clerk of the Township. In my view, the decision-maker in this case had no special or personal interest in the records and a well-informed person, considering all of the circumstances, could not reasonably perceive a conflict of interest on the part of the decision-maker.

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 record which contains both the remuneration and the expense amounts paid to each councillor.

Previous orders of the Commissioner have found that information about costs and expenses incurred by employees during the course of their employment does not qualify as personal information (Orders M-262 and M-333). In my view, this finding applies equally in the circumstances of this appeal in that the expenses claimed by and paid to the councillors result directly from their work on the Township council. I find therefore, that the amounts paid to the councillors for expenses incurred cannot be characterized as personal information. No other exemption has been claimed for this information, and the Township should disclose it to the appellant.

The remaining information at issue is the exact amount of the remuneration paid to the five councillors. I find that this constitutes the personal information of these individuals.

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 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.

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 which are relevant in the case.

The Township submits that disclosure of the information would be a presumed unjustified invasion of personal privacy under section 14(3)(f) (describes an individual's finances, income...).

The appellant submits that the remuneration paid to the councillors is a "temporary and insignificant part of one's total financial portfolio" and therefore cannot be construed as wages or salary. The appellant submits that the information requested is public information and that elected municipal officials are accountable to the electorate. In this regard, the appellant has raised the application of section 14(2)(a) (public scrutiny) and 14(2)(e) (unfair exposure to pecuniary or other harm).

With his representations, the appellant has provided a copy of the Township's By-Law No. 95_15, enacted on May 25, 1993, which sets out the rate of remuneration payable to the Reeve and the council members, based on the number and type of meetings attended. The appellant states that under the Municipal Act, the Treasurer is required to report to council each year. The appellant submits that this is done on or before February 28th of each year and the report contains the amount of remuneration and expenses paid to each councillor.

The Township agrees with the appellant in that the information is incorporated and forms part of the Treasurer's report, which is submitted to council each year. The Township states however, that this report is not available to the public and requests for it are processed as requests under the Act.

I have reviewed the record together with the representations of the parties. In my view, the remuneration received by each of the five councillors amounts to income and thus falls within the presumption in section 14(3)(f). Accordingly, I find that disclosure of the remuneration received by the five councillors would constitute a presumed unjustified invasion of personal privacy pursuant to section 14(3)(f).

Even if I were to find that sections 14(2)(a) and (e) applied in the circumstances of this appeal, the Division Court's decision in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993) 13 O.R. 767 held that factors in section 14(2) cannot be used to rebut the presumptions in section 14(3). Accordingly, these considerations cannot be used to apply to the information to which I have found section 14(3)(f) applies.

I find also that the limitations and exceptions set out in section 14(4) do not apply in the circumstances of this case.

The appellant has raised the possible application of section 16 of the Act. There are two requirements contained in section 16 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.

It is important to note that section 14 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

In considering the information and the arguments put forth by the appellant, I am not satisfied that there exists a **compelling** public interest in disclosure of the personal information which would **clearly** outweigh the purpose of the section 14 exemption. Accordingly, I find that section 16 of the Act does not apply.

In summary, I have found that the expenses paid to the councillors in each of the years 1992 to 1995 do not qualify as personal information and should be disclosed to the appellant. I have found that the remuneration paid to the councillors constitutes personal information and is exempt from disclosure under section 14(3)(f). As noted previously, the Township is prepared to provide a range of the wages paid to the councillors. If the appellant wishes to obtain this information, he should contact the Township directly.

ORDER:

1. I uphold the Township's decision to deny access to the remuneration paid to the five councillors between the years 1992 and 1995.
2. I order the Township to disclose to the appellant the remaining parts of the record (the remuneration paid to the appellant and all the expenses paid) by sending a copy of the record to the appellant by **December 6, 1996** but not before **December 2, 1996**.
3. To verify compliance with the terms of 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: _____
Mumtaz Jiwan
Inquiry Officer

_____ November 1, 1996