



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

ORDER M-869

Appeal M_9600124

Townships of Belmont and Methuen



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:

On a monthly basis throughout the year of 1995, the appellant made a number of requests under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Townships of Belmont and Methuen (the Township) for access to the General Accounts. The Township disclosed the General Accounts journal to the appellant with some information blacked out. On February 16, 1996, the appellant wrote to the Township asking for an explanation for the deletions which had been made to these records. The Township responded to the appellant on March 10, 1996, and indicated that it had denied access to the information which had been blacked out on the basis of the following exemption under the Act:

- invasion of privacy - section 14(1).

The appellant appealed the Township's decision to deny access to portions of the record.

This office sent a Notice of Inquiry (the NOI) to the appellant and the Township. Only the Township provided representations in response to the NOI.

In its representations, the Township raised the timeliness of the appeal as an issue. It also raised for the first time the following discretionary exemptions:

- economic and other interests - sections 11(c) and (d)
- solicitor-client privilege - section 12.

I will address these new issues raised by the Township under the heading "Preliminary Matters".

PRELIMINARY MATTERS:

TIMELINESS OF THE APPEAL

In its representations, the Township indicates that the appellant was given access to the records at issue throughout 1995. The Township indicates further that it attached a general covering letter to the records at the time that access was given. The Township submits that if the appellant had a problem with the severed portions of the documents, he should have appealed to this office at the time of receipt. Accordingly, the Township takes the position that the appellant's time to appeal the severances to the records at issue has lapsed, and as the appeal is out of time, it should be dismissed.

At my request, the Township provided a sample copy of the letter which was attached to the records at the time of disclosure. The Township advised, that although the covering letters for each month had some variation, the content was similar. In reviewing the sample letter, dated June 16, 1995, I note that it simply makes reference to the appellant's request, sets out the cost of providing the records and indicates that the records are enclosed. The letter makes no reference to information which has been withheld, nor does it specify a reliance on any exemptions in the Act, nor does it indicate who was responsible for making the decision regarding access or that

the appellant may appeal to this office. In my view, this letter does not represent a proper decision as contemplated under section 22(1)(b) of the Act. Accordingly, I find that, at the time that access was given to portions of the requested records, the Township did not provide the appellant with a decision as required by the Act.

Even if I were to find that the Township had provided a decision at the time partial access was given, this finding would be immaterial to my ultimate determination of this issue. In my view, when the appellant submitted his letter to the Township on February 16, 1996, he initiated a new request to the Township, to which it responded on March 10, 1996. The appellant's appeal of this decision on March 12, 1996 was clearly within the 30 day time limit set out in section 39(2) of the Act. Accordingly, I will proceed to determine the remaining issues in this appeal.

LATE RAISING OF NEW DISCRETIONARY EXEMPTIONS

Upon receipt of the appeal, this office provided the Township with a Confirmation of Appeal. This notice indicated that the Township had 35 days from the date of the notice, that is until May 22, 1996, to raise additional discretionary exemptions not claimed in its decision letter. No additional exemptions were raised during this period.

Subsequently, in its representations dated August 27, submitted in response to the Notice of Inquiry issued on August 6, 1996, the Township raised the application of the discretionary exemptions provided by sections 11(c) and (d) and 12.

It has been determined in previous orders that the Commissioner has the power to control the process by which the inquiry is undertaken (Orders P-345 and P-537). This includes the authority to set time limits for the receipt of representations and to limit the time during which an institution can raise new discretionary exemptions not claimed in the original decision letter.

The Township did not provide any reasons for claiming the discretionary exemptions after the expiration of the 35-day period.

In Order P-883, Inquiry Officer Anita Fineberg concluded that in cases where a discretionary exemption is claimed late in the appeals process, a decision-maker has the authority to decline to consider the discretionary exemption. I agree with Inquiry Officer Fineberg's reasoning and adopt it for the purposes of this appeal.

This practice was endorsed by the Ontario Court of Justice (General Division) (Divisional Court) which reviewed this order in Ministry of Consumer and Commercial Relations v. Anita Fineberg, Inquiry Officer et al. (21 December 1995), Toronto Doc. 220/95 (Ont. Div. Ct.). An application for leave to appeal this decision was filed, but was refused.

I have carefully reflected on the approach set out in Order P-883, as endorsed by the Divisional Court, and I find that it is equally applicable in the context of the present appeal. In the circumstances of this appeal, I am not satisfied that a departure from the 35-day time frame is justified. Accordingly, I decline to consider the application of sections 11(c), (d) and 12 to those portions of the records which refer to legal services.

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.

The records at issue consist of the portions of 23 entries on the General Accounts ledger sheets which have been withheld. The information which has been withheld pertains to four general categories: salary information, contributions to a particular pension fund, legal services and a disbursement relating to the purchase of land.

I find that none of the information in the records relates to the appellant.

Six of the entries contain the names of individuals. Four of the entries relate to salary information and the purchase of land, and represent payments made to the individuals identified in them. The other two entries refer to three individuals and relate to legal services performed concerning them. I find that the entries with respect to these named individuals constitute their personal information.

The Township indicates that twelve entries deal with one employee's contributions to a particular pension fund. I note that this type of information was the subject of two previous orders directed to the Township (Orders M-378, dated August 25, 1994 and M-768, dated May 6, 1996). In Order M-378, Inquiry Officer Mumtaz Jiwan stated as follows:

The Townships have indicated that, despite the fact that there is no name associated with the account entries, these entries reflect 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 may be identified by the disclosure of the information contained in the record. Accordingly, I find that these entries also constitute the personal information of the individual to whom it relates.

Inquiry Officer Holly Big Canoe came to the same conclusion in Order M-768. I agree with both Inquiry Officers in this regard and find that these entries constitute the personal information of the individual to whom it relates.

The Township argues that although there are no names referenced in the remaining five entries (which relate to legal services), a requester can, through another access request, obtain the original invoices for these disbursements and obtain information which would identify the individuals about whom the records at issue relate.

In my view, the Township's concerns are premature. The invoices are not available in the public realm and disclosure pursuant to an access request would be subject to the provisions of the Act.

In reviewing the information in the five entries pertaining to legal services which do not make reference to a named individual, I find that they do not contain personal information within the meaning of section 2(1) of the Act. Nor is it reasonable to expect that anyone's identity could be revealed by linking this information to another piece of information that might be obtained by the appellant.

Consequently, I find that the entries relating to legal services which do not contain personal information cannot qualify for exemption under section 14(1) (Order P-304). I will consider the two entries in this category which do contain personal information below. Since no other mandatory exemption applies to the remaining legal services information, and as no discretionary exemptions will be considered in this order, the information in these entries should be disclosed 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.

Pension fund contributions

In its representations, the Township states:

[T]he Commission through Order M-784 identified [these contributions] as personal information and should therefore be protected from the applicant. The Township fully supports this position and expects the Commission to reconfirm the position as outlined in Order M-784.

Order M-784, which was directed to the Township, also dealt with a request for access to the Township's general accounts and budget status reports for a specified period of time. During mediation of the appeal in this case, the appellant indicated that he was not seeking access to the personal information of other individuals. In reviewing the records at issue in this appeal, Inquiry Officer Jiwan found that some of the information satisfied the definition of personal information. She ordered that these portions of the records not be disclosed "as they are not responsive to the request, not because they qualify for the section 14(1) exemption". In my view, the final disposition of the personal information in Order M-784 is not relevant to the issues in the current appeal.

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. [emphasis added]

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 Township, 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 Orders M-378 and M-768, both Inquiry Officers found that the information in the account entries relating to pension fund contributions qualified as a benefit of an employee of the Township under section 14(4)(a) and that disclosure did not constitute an unjustified invasion of personal privacy. In both cases, the Township was ordered to disclose this information to the appellant. The reasoning behind these findings is well known to the Township and I need not refer to it further, other than to say that I agree fully with the reasoning and the findings in both orders and I adopt them for the purposes of this appeal. Accordingly, I find that section 14(4)(a) applies to this information, and disclosure of these portions of the records does not constitute an unjustified invasion of personal privacy. As a result, the exception under section 14(1)(f) applies and this information should be disclosed to the appellant.

Salary information/purchase of land

The Township indicates that three of the entries relate to specific salary payments made to individuals who worked as casual employees for the Township. The final entry pertains to a deposit paid by the Township to a property owner as part of an offer to purchase land. The Township submits that disclosure of the information in these four entries 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 four entries referred to in this discussion satisfies the requirements of a presumed unjustified invasion of privacy of the named individuals under section 14(3)(f) of the Act. I find, however, that the privacy interests of these individuals will be adequately protected by withholding their names from disclosure. Once this information is removed, disclosure of the remaining information contained in these entries will not constitute an unjustified invasion of privacy.

Legal services

As I indicated above, two of the entries refer to legal services rendered on behalf of the Township relating to three named individuals. The appellant has not provided representations. In the absence of representations from the appellant on this issue, I find that there are no factors which weigh in favour of disclosure of the names of these individuals. Accordingly, I find that disclosure of their names would constitute an unjustified invasion of personal privacy. Similar to my findings above, once the names of the individuals are removed, disclosure of the remaining information contained in the legal services entries will not constitute an unjustified invasion of privacy.

Summary of Findings

In summary, I find that disclosure of the names of the seven individuals referred to in the records would constitute an unjustified invasion of their personal privacy. I find that neither section 14(4) nor 16 (the “public interest override”) applies to this information. Therefore, I find that this information is properly exempt under section 14(1) of the Act. I find further that disclosure of the remaining personal information in the records would not constitute an unjustified invasion of personal privacy and this information is not exempt under section 14(1). As no other mandatory exemptions apply to this information, and as no discretionary exemptions will be considered in this order, the remaining information should be disclosed to the appellant.

ORDER:

1. I uphold the Township’s decision to withhold the names of the individuals referred to in the following items (as referred to in the Township’s representations): salary payments - nos. 455, 502 and 464; legal services - nos. 316 and 936; and land purchase - no. 502.
2. I order the Township to disclose to the appellant the remaining information at issue by **December 23, 1996**.
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 records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____

Laurel Cropley
Inquiry Officer

December 2, 1996