



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

# **ORDER M-953**

**Appeal M\_9700078**

**City of Trenton**



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## **NATURE OF THE APPEAL:**

The City of Trenton (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to records containing information pertaining to the salary range and benefits paid to four senior management employees of the Town (the affected persons). In addition, the requester sought access to records containing information about the number of months that each continued to receive such payments following the termination of their employment.

The City located records containing information which was responsive to the request and denied access to them, claiming the application of section 14(1) of the Act, the invasion of privacy exemption. The City also indicated that the records fall within section 52(4) of the Act. On this basis, the City decided that the records fall outside the jurisdiction of the Act.

Pursuant to section 21(1) of the Act, the City notified each of the four former employees and sought their consent to the disclosure of the information contained in the records. Three of these individuals declined to consent and specifically requested that the City not disclose the information requested. The fourth did not respond to the communication from the City.

The requester, now the appellant, appealed the City's decision to deny access to the records, raising the possible application of the "public interest override" found in section 16 of the Act.

During the mediation of the appeal, the City agreed to disclose to the appellant the salary ranges and the dollar amount of the benefits received by each of the affected persons for the year 1992. The City also acknowledged that it could not rely on section 52(4) to deny access as this provision operates as an exception to the exclusion contained in section 52(3). Accordingly, the City has conceded that the records are subject to the Act.

A Notice of Inquiry was provided to the appellant, the Town and to the four affected persons. Representations were received from the Town, the appellant and two of the affected persons.

## **PRELIMINARY ISSUE:**

### **THE SCOPE OF THE REQUEST**

Because of the disclosure which took place during the mediation of the appeal, the only information in the records remaining at issue is the number of months for which the four former employees received severance payments following the termination of their employment. This information is contained in only three of the four severance agreements which comprise the records in this appeal.

The fourth record does not specifically state the period of time covered by the severance payment made by the City. Rather, it only contains the dollar value of the severance payment. Because it does not state the period of time which it is intended to cover, I find that the dollar value of the severance payment contained in the fourth severance agreement is not reasonably

related to the appellant's request. Consequently, it falls outside the ambit of the appellant's request and subsequent appeal.

## **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 separation agreements which contain the information at issue and find that they contain the personal information of three affected persons only, and not the appellant or any other identifiable individual.

### **INVASION OF PRIVACY**

Section 14(1) of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section. In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which 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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of the affected persons' 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. In circumstances where section 14(4) does not apply, sections 14(2) and (3) provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Even if a record qualifies for exemption under section 14(1), this exemption may be overridden where a finding is made that section 16 (public interest override) of the Act applies to the personal information. The appellant has made detailed submissions regarding the application of section 16.

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;

Consistent with previous orders dealing with similar issues, I find that the severance entitlements described in the records do not constitute "benefits" within the meaning of section 14(4)(a) of the Act and this provision does not, accordingly, apply (Orders M\_173, M\_278, M-419 and M-797).

The City argues that the information at issue falls within the ambit of the presumption in section 14(3)(d) of the Act, which includes information relating to the "employment history" of an individual.

The appellant submits that the presumption contained in section 14(3)(d) does not apply because the information does not qualify as employment or educational history. He argues that this presumption applies only to information which predates the employment of these individuals by the City. In my view, the appellant is correct in arguing that the section 14(3)(d) presumption does not apply. This is because the information at issue pertains to payments made to the affected persons following the termination of their employment by the City. In my view, it cannot, therefore, be said that the information relates to their employment history with the City.

The appellant also submits that the disclosure of the information contained in the records which relates to the duration of the severance payments made to the affected persons is desirable for the purpose of exposing the City's handling or mishandling of taxpayer's money. This consideration, which favours disclosure, is consistent with section 14(2)(a), which states:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

The contents of agreements entered into between institutions and senior employees represent the sort of records for which a high degree of public scrutiny is warranted (Order M-173). Based on this, and the appellant's desire to scrutinize how the City compensated senior management employees upon their termination, I find that section 14(2)(a) is a relevant consideration in the circumstances of the present appeal.

The affected persons note that over three years have elapsed since the end of their employment with the City and that their personal lives would be disrupted again by the disclosure of this information. I find that this factor, although not among those listed as considerations in section 14(2), favours the non-disclosure of the information and also applies in the circumstances of this appeal.

Previous orders issued by the Commissioner's office have identified another circumstance which should be considered in balancing access and privacy interests under section 14(2). This consideration is that "the disclosure of the personal information could be desirable for ensuring

public confidence in the integrity of the institution” (Orders 99, P-237, M-129, M-173 and P-1348).

The severance agreements involved a large expenditure of public funds on behalf of senior City employees. Further, the climate of spending restraints in which these agreements were negotiated placed an obligation on City officials to ensure that tax dollars were spent wisely. On this basis, I conclude that the public confidence consideration also applies in the present circumstances.

While the information at issue qualifies as the personal information of the three affected persons, I find that, on balance, the considerations favouring disclosure, including section 14(2)(a), outweigh any factors weighing in favour of the non-disclosure of this information. Accordingly, I find that the disclosure of information which relates only to the length of time for which severance payments were made would not constitute an unjustified invasion of the personal privacy of the affected persons. The information is not, therefore, exempt under section 14(1) and it should be disclosed.

I have highlighted on the copy of the three records which I have provided to the City’s Freedom of Information and Protection of Privacy Co-ordinator those portions which are to be disclosed to the appellant. Because I have found that the requested information is not exempt from disclosure under section 14(1), it is not necessary for me to address the possible application of section 16 to it.

**ORDER:**

1. I order the City to disclose to the appellant the highlighted portions of the records which I have provided to the City’s Freedom of Information and Protection of Privacy Co-ordinator by **July 24, 1997**, but not before **July 19, 1997**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the City to provide me with a copy of the highlighted records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ June 19, 1997