



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

# **ORDER M-956**

**Appeal M\_9700040**

**Townships of Rolph, Buchanan, Wylie and McKay**



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## **NATURE OF THE APPEAL:**

In an article printed in a local newspaper, it was revealed that the Townships of Rolph, Buchanan, Wylie and McKay (the Townships) paid \$10,000 out of public funds to a named individual for an alleged building permit error. The appellant submitted a request to the Townships under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for background information pertaining to this payment. In particular, the appellant sought the following:

- (1) the request from [the named individual] (or agent) asking for compensation damages;
- (2) minutes of the relevant committee approval of the compensation package;
- (3) final compensatory offer letter sent to [the named individual].

The Townships located records responsive to the request and notified three individuals who might have an interest in the records (the affected parties) in accordance with section 21(1) of the Act. One affected party did not object to the disclosure of any information pertaining to himself, however, as representative of the named individual, he indicated the named individual's objection to the disclosure of his personal information. The third affected party, the Townships' Insurance Brokers, objected to disclosure of information pertaining to it on the basis of section 10(1) (third party information).

The Townships subsequently denied access to the responsive records on the basis of section 10(1) (third party information) and section 14(1) (invasion of privacy). The appellant appealed this decision and raised the application of section 16 of the Act, the so-called "public interest override".

During mediation, the appellant clarified that he was looking for the source of the approval for the compensation package, regardless of its nature. Also during mediation, the Townships advised that no record exists with respect to item (3) above.

There are eight records at issue, consisting of the following:

1. Letter to Insurance Brokers dated November 11, 1994 (2 pages);
2. Letter from Clerk-Treasurer to Insurance Brokers dated June 10, 1994 (1 page);
3. Facsimile cover page dated June 7, 1994 (1 page);
4. Letter from lawyer representing the named individual to the Reeve and Councillors dated June 6, 1994 (6 pages);
5. Letter to the named individual from the Townships dated June 2, 1993 (1 page);
6. Document entitled "Costs incurred" dated June 6, 1994 (1 page);
7. Letter to Council from the named individual dated May 25, 1993 (1 page);
8. Page 3 of the Planning Committee Meeting dated June 1, 1993 (page).

The Townships have included in the responsive records a duplicate copy of Record 5. I will include this duplicate record in my consideration of Record 5.

This office sent a Notice of Inquiry to the Townships, the appellant, the named individual and the Insurance Brokers. Representations were received from the Townships and the Insurance Brokers. The Insurance Brokers indicate their objection to the disclosure of Record 1 only.

During the Inquiry stage of this appeal, the Townships indicated that Record 8 reflects the minutes of a public Planning Committee Meeting. The Townships advised that these minutes are publicly available and have agreed to release this page of the records to the appellant. Record 8 is, therefore, no longer at issue in this appeal.

## **DISCUSSION:**

### **PERSONAL INFORMATION/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 and find that, with the exception of Record 3 (facsimile cover sheet), they all contain information pertaining to the costs incurred by the named individual in relation to a building permit application. The records do not contain any personal information of the appellant.

As I indicated above, Record 3 does not contain personal information. The Townships have not claimed that any discretionary exemptions apply to this record, and as no mandatory exemptions apply, Record 3 should be disclosed to the appellant.

Section 14(1) of the Act prohibits an institution from disclosing personal information except in the circumstances listed in sections 14(1)(a) through (f). Of these, only section 14(1)(f) could apply in this appeal. It permits disclosure if it “does not constitute an unjustified invasion of personal privacy.”

Disclosing the types of personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the institution can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it.

If none of the presumptions in section 14(3) apply, the institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

The Townships submit that the presumption in section 14(3)(f) applies to the personal information in the records. This section states:

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.

The records at issue in this appeal relate to a claim for damages made by the named individual against the Townships as a result of an error allegedly committed by the Townships. In my

view, these records do not describe an individual's finances or financial activities in the sense contemplated by this section, and I find that it does not apply in the circumstances.

The Townships claim that the following factors are also relevant in the circumstances of this appeal:

- the information is highly sensitive - section 14(2)(f)
- the information was supplied in confidence - section 14(2)(h)
- disclosure may unfairly damage the reputation of any person referred to in the record - section 14(2)(i).

Although the named individual did not submit representations, this individual did respond to the Townships in response to the third party notice issued pursuant to section 21(1). The named individual indicates that the appellant has already caused his family some problems regarding this matter and he is unclear as to why the appellant is now seeking this information. As a result, he is concerned about any information being released to the appellant.

The appellant did not submit representations, but in his letter of appeal he stated:

The information request was for the specific building-permit-related technical error details and why this error was sufficient to require compensation. Building regulations are public knowledge, therefore we submit it is in the public interest to know the details of matters pertaining to alleged building regulation-related errors which might possibly involve generic matters of public safety.

In my view, the appellant has raised the factors in sections 14(2)(a) (public scrutiny) and 14(2)(b) (access may promote public health and safety) in addition to the public interest override (section 16).

The appellant also sent an affidavit to this office which was sworn by a neighbour of the named individual. In this affidavit, the neighbour alleges that, as a result of neighbourly advice provided by himself and others, the named individual was aware of the building requirements for his land prior to commencing the building on his property.

I have considered all of the circumstances of this case and I find that, in the circumstances described above, the personal information in the records is highly sensitive, and section 14(2)(f) is relevant. Moreover, I find that Records 4, 6 and 7 were supplied by the counsel for the named individual (on his behalf) in confidence, and section 14(2)(h) is relevant with respect to these three records.

I am not persuaded that the factors in section 14(2)(b) or (i) are relevant in the circumstances of this appeal. However, I am of the view that in circumstances where public monies are paid to an individual as a result of an error or alleged error made by an institution, there is a need for the public to be able to scrutinize the actions of that institution. Accordingly, I find that the factor in section 14(2)(a) is relevant.

In weighing the privacy interests of the named individual against the interests of the appellant in disclosure of the information, I find that the factors weighing in favour of privacy protection outweigh that favouring disclosure. Accordingly, disclosure of these records would constitute an unjustified invasion of privacy and the exemption in section 14(1) applies.

As I indicated above, the appellant has raised the application of the public interest override in section 16 of the Act. This section provides:

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. [emphasis added]

The appellant did not provide representations on this issue. As I noted above, he argues that there is a public interest in knowing the details of matters pertaining to alleged building regulation-related errors.

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.

One of the principal purposes of the Act is to open a window into government. The Act is intended to enable an informed public to better participate in the decision-making process of government and ensure the accountability of those who govern. Accordingly, in my view, there is a basic public interest in knowing more about the operations of government.

In Order P-984, Inquiry Officer Holly Big Canoe defined “a compelling public interest” as follows:

“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.

I have carefully considered the circumstances of this appeal. While I am cognizant of the concerns raised by the appellant, I do not agree that disclosure of the information in the records at issue in this appeal would shed light on the operations of the Townships. Nor, in the circumstances of this appeal, would it serve to inform the public about the activities of the Townships themselves or provide a means whereby the public can express an opinion or make political choices.

Accordingly, I find that a compelling public interest does not exist in the disclosure of the information that I have found to be exempt under section 14(1) of the Act.

Because of the findings I have made in this order, it is not necessary for me to consider the application of section 10(1) to Record 1.

**ORDER:**

1. I order the Townships to disclose Record 3 to the appellant by sending him a copy of this record by **August 8, 1997** but not earlier than **August 5, 1997**.
2. I uphold the Townships' decision to withhold the remaining records from disclosure.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the Townships to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ July 4, 1997