



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

ORDER M-1026

Appeal M-9700191

The Corporation of the City of Sault Ste. Marie



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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 Corporation of the City of Sault Ste. Marie (the City). The request was for access to records relating to the terms and conditions of a named individual's temporary employment contract with the City. The named individual was a former permanent employee of the City who had retired and then was given a temporary employment contract by the City. The City located records responsive to the request and determined that the interests of the former employee would be affected by disclosure of the information. The City notified the former employee pursuant to section 21 of the Act and requested representations with respect to release of the information.

The former employee objected to the disclosure of his employment contract to the appellant. The City granted partial access to the record. Access was denied to parts of the record based on the exemption in section 14 of the Act. The appellant appealed the denial of access.

This office sent a Notice of Inquiry to the City, the appellant and the former employee. Representations were received from all three of the parties.

THE RECORD:

The record at issue in this appeal consists of the severed portion of a two-page document entitled "Letter of Agreement, Temporary Employment, City of Sault Ste. Marie".

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, and I find that it contains the personal information of the former employee.

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. Specifically, section 14(1)(f) of the Act 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.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(4)

identifies certain information, the disclosure of which would **not** constitute an unjustified invasion of personal privacy. Sections 14(4)(a) and (b) read:

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 City submits that the record is an employment contract with the former employee, not a contract for personal services, and therefore section 14(4)(b) has no application in the circumstances of this appeal. Having reviewed the record and the representations, I agree.

I have reviewed the information severed from the record. In my view, none of it could be characterized as relating to the former employee's classification, salary range or employment responsibilities. The information severed from paragraph 2 refers to the exact salary of the former employee. Because this information is clearly not a "salary range", it does not fall within section 14(4)(a).

With respect to the term "benefits", however, paragraphs 5, 6 and 7 of the record refer to certain entitlements received by the former employee either as a result of his original employment or through this new employment contract. "Benefits" for the purposes of section 14(4) include life, health, hospital, dental and disability insurance as well as sick leave, vacation, leaves of absence, termination allowance, death and pension benefits (Orders M-23 and M-378). In my view, the entitlements in paragraphs 5, 6, and 7 of the record which refer to sick leave, vacation, and pension benefits, constitute "benefits" for the purpose of section 14(4)(a). Consequently, I find that the personal information relating to these entitlements contained in paragraphs 5, 6 and 7 of the record fall within the ambit of section 14(4)(a) of the Act.

Section 14(2) provides some criteria for the head to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2).

With respect to the information severed from paragraph 2 of the record, in my view, the presumption in section 14(3)(f) is relevant. 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.
[emphasis added]

In the circumstances of this appeal, it is my view that disclosure of the salary information severed from the record would describe the former employee's finances and/or income as set out in section 14(3)(f) and would, therefore, constitute a presumed unjustified invasion of personal privacy.

As previously noted, section 14(4) does not apply to this information, and the appellant has not raised the possible application of section 16.

Accordingly, I find that disclosure of the information severed from paragraph 2 of the record would constitute an unjustified invasion of personal privacy of the former employee under section 14(1). It is, therefore, exempt from disclosure.

ORDER:

1. I order the City to disclose paragraphs 5, 6 and 7 to the appellant by sending him a copy by **December 4, 1997** but not earlier than **December 1, 1997**.
2. I uphold the City's decision to refuse to disclose the information severed from paragraph 2 of the record.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the City to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ October 30, 1997