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

ORDER M-1154

Appeal M-9800104

The Corporation of the County of Prince Edward

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NATURE OF THE APPEAL:

The Corporation of the County of Prince Edward (the County) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information described as follows: "During the last municipal election, I would like to know who made contributions to municipal politicians in [the County]."

The County responded to the request by denying access to the responsive information based on section 88(10) of the Municipal Elections Act, 1996 (the MEA), which reads:

> No person shall use information obtained from public records described in subsection (5), except for election purposes.

In its response letter, the County explained that access was being denied pursuant to this provision because the requester had indicated he was not "intending to use the information for the purpose described in the [MEA]." The County's response did not cite a specific provision of the Act under which access was refused, the reason the provision applied to the record, the name and office of the person responsible for making the decision, or a statement that the requester could have appealed to this office for a review of the decision, as required by section 22(1)(b) of the Act.

The requester appealed the County's decision to deny access, stating that the information he requested is "public information."

During mediation, the Appeals Officer assigned to this case requested that the County issue a proper decision under section 22(1)(b) of the Act. At the same time, she advised the County that the requester (now the appellant) had narrowed his request to include only those who made contributions to the candidates running for the office of mayor.

The County later issued a revised decision which complied with the requirements of section 22(1)(b). In its revised decision, the County cited various paragraphs under the section 14 personal privacy exemption [sections 14(1)(f), 14(2)(f), 14(2)(h) and 14(3)(f)] as the basis for its denial of access to the information responsive to the revised request.

A mediated settlement of the appeal was not effected and a Notice of Inquiry was sent to the County, the appellant and 38 affected persons. This office received representations from the County, the appellant and eight affected persons. Of these eight affected persons, four consented to the disclosure of all personal information about them contained in the records, one consented to the release of his/her name only, and three opposed the disclosure of their personal information.

THE RECORDS:

There are five records containing the information at issue in this appeal. They consist of four Financial Statements (Form 4) and one Financial Statement and Auditor's Report (Form 5). These records are forms completed by the five mayoral candidates and filed with the County Clerk pursuant to sections 78(1) and

(5) of the MEA and sections 10 and 11 of Ontario Regulation 101/97 (the Regulation) made under the MEA.

Each of the five forms contains (among other information) a list of contributors, including the name, address and amount of contribution for each contributor. Some of the listed contributors are individuals, while others are organizations. Further, although the forms indicate that candidates are to list those who contributed over $100, some of the records in question contain information about individuals or organizations contributing $100 or under.

DISCUSSION:

SCOPE OF THE REQUEST

As noted above, the appellant's original, written request for access to information reads: "During the last municipal election, I would like to know who made contributions to municipal politicians in [the County]." During mediation, the appellant narrowed his request to include only those individuals who made contributions to the candidates running for the office of mayor. The appellant subsequently indicated that his request included all of the information about individuals in the "lists of contributors", which contain the name, address and amount of contribution for each individual contributor, although the appellant clarified that he was interested in the amounts only to the extent that they exceeded $100. The County advised that it did not accept the appellant's view of the scope of the request.

In its representations on this issue, the County states:

> The plain English of the request submitted by the appellant relates only to the name of the contributors and makes no mention of address or amount of contribution.
> ...
>
> The respondent County is entitled to know without ambiguity what information it is being asked to provide pursuant to the [Act] ...

The appellant did not make specific representations on this issue.

In the usual case, in the absence of the institution's consent, a requester will not be permitted to unilaterally expand the scope of his or her request during the course of an appeal. However, in this case, the appellant is seeking to include within the scope of his request information which is already contained in the responsive records, and the additional information (addresses and contribution amounts) is closely associated with the information specifically identified in his original request (the names of individual contributors).

It appears from the face of the appellant's request that he may not have had knowledge of the specific records which might contain the information he was seeking, which is not unusual in the access to information context. Both requesters and institutions have obligations in relation to the formulation of an access request under the Act. Section 17(1)(b) of the Act requires a person seeking access to a record to "provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record." On the other hand, section 17(2) states:

> If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

In circumstances where the request does not sufficiently describe the **records** sought, it is incumbent on an institution to inform the requester of the defect and offer assistance in reformulating the request, by identifying the responsive records which contain the information the requester is seeking. This the County did not do.

While the institution takes issue with the appellant's revised request, it is reasonable to accept the revision to the request which the appellant now seeks. The County's initial response to the request did not comply with the requirements of section 22(1)(b) of the Act and effectively foreclosed the prospect of clarification of the records sought at that time. The County should not now be permitted to use this omission to its advantage. I find that the request in this appeal reasonably encompasses the names of the individual contributors in the five records at issue, the addresses of these individuals and the contribution amounts where they exceed $100.

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including information relating to financial transactions in which the individual has been involved, the address of the individual and the individual's name where disclosure would reveal other personal information about the individual [paragraphs (b), (d) and (h)].

In the circumstances, disclosure of the requested information would reveal the fact that identifiable individuals made financial contributions to mayoral candidates in the last municipal election, the amounts these people contributed (where the amounts exceed $100) and the individuals' addresses. Therefore, the information at issue constitutes personal information as defined in section 2(1) of the Act.

INVASION OF PRIVACY

The Act

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information unless one of the exceptions listed in the section applies. The appellant argues that the information at issue is "public" in nature. This raises the possible application of the exception at section 14(1)(d). In these circumstances the exception at section 14(1)(f) also may apply. These provisions read:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
> >
> > (f) if the disclosure does not constitute an unjustified invasion of personal privacy;

Since the County has not claimed any exemptions outside section 14, the information at issue must be disclosed if either of the exceptions at section 14(1)(d) or (f) is found to apply,

The MEA

Section 78(1) of the MEA requires a candidate for municipal office, at a specified time, to file with the clerk with whom the candidate's nomination was filed a financial statement and auditor's report, each in the form prescribed by the Regulation, reflecting the candidate's election campaign finances. Pursuant to section 78(5), no auditor's report is required if the total contributions received and total expenses incurred in the election campaign up to the end of the relevant period are each equal to or less than $100,000. Sections 10 and 11 of the Regulation, made by the Minister of Municipal Affairs and Housing (the Minister) under the authority of section 95(1)(g) of the MEA, read:

> A financial statement under section 78 of the Act that does not require an auditor's report shall be in Form 4.
>
> Where an auditor's report is required under section 78 of the Act, a financial statement and auditor's report shall be in Form 5.

Both Forms 4 and 5 are set out as attachments to the Regulation, and include (among other categories of information) a portion which requests the candidate completing the form to include a list of single contributors each totalling more than $100.

Section 88(5) of the MEA states:

> Despite anything in the Municipal Freedom of Information and Protection of Privacy Act, documents and materials filed with or prepared by the clerk or any other election official under this Act are public records and, until their destruction, may be inspected by any person at the clerk's office at a time when the office is open.

Section 88(10) reads:

> No person shall use information obtained from public records described in subsection (5), except for election purposes.

The representations

The County submits that section 88(5) of the MEA speaks of inspection at the clerk's office during office hours, a method of access which the appellant does not seek. Further, the County argues that section 88(10) requires that any information provided under section 88(5) must be used only for election purposes, and that the appellant is intending to use the information for other, non-election purposes. The County also submits that the information will likely be used not for election purposes, but "to try to embarrass the 1997 candidates after the fact ..."

One of the affected parties submits that, under the MEA, all of the information in the records is public "save and except personal financial transactions between named candidates and named contributors ..." The remaining two affected parties who opposed disclosure did not make representations specifically directed to the MEA or its application to section 14(1)(d) of the Act.

With respect to the MEA, the appellant states in his representations that "the information is in the interest of the public if it pertains to the election" and that "the election itself is in the interest of the public and should be reported responsibly by the media."

Analysis

I will first address the information concerning the "over $100" individual contributors (name, address and contribution amounts).

Previous orders of this office have found that the interpretation of the words "expressly authorizes" in section 14(1)(d) of the Act closely mirrors the interpretation of similar words in section 28(2) of the Act and its provincial counterpart, section 38(2) of the Freedom of Information and Protection of Privacy Act [Orders M-292, M-484 (reversed on other grounds on reconsideration in Order M-787]. In this office's Compliance Investigation Report I90-29P, the following comments were made about the latter section:

> The phrase "expressly authorized by statute" in subsection 38(2) of the [provincial] Act requires either that the specific types of personal information collected be expressly described in the statute or a general reference to the activity be set out in the statute, together with a specific reference to the personal information to be collected in a regulation made under the statute, i.e., in the form or in the text of the regulation.

I agree with this interpretation and consider it the appropriate test to apply in this case.

In my view, by enacting section 88(5) of the MEA, the Legislature clearly intended that municipalities should make available for inspection, to any member of the public upon request, any documents or materials filed with municipal clerks. Section 88(5) itself does not describe in detail the type of information to be disclosed. Nevertheless, by requiring candidates for municipal office under section 78(1) of the MEA and sections 10 and 11 of the Regulation to file prescribed forms which specifically describe the type of information to be provided, the Legislature and the Minister have identified the information to be disclosed to the public with sufficient detail to satisfy the requirements of section 14(1)(d) of the Act.

With respect to the method of access, section 88(5) allows any member of the public to inspect the records at the clerk's office at a time when the office is open. While this provision does not specifically address other methods of access which may be permitted under the Act, such as the provision of copies of the records, there is nothing in section 88(5) or any other provision of the MEA which prevents municipalities from granting access to public records in a manner other than that set out in section 88(5). The fact that Forms 4 and 5 are in effect "public records" under section 88(5) is sufficient authorization under section 14(1)(d) of the Act. Barring any other exemption applying, the methods of access set out in section 23 of the Act are available to the appellant.

In my view, section 88(10) of the MEA does not take the records outside the exception at section 14(1)(d) of the Act merely because it restricts the "use" to which the information is put. A distinction must be drawn between disclosure and use in this context. Both the Act and the MEA distinguish between the two concepts of "use" and "disclosure". Section 31 of the Act prohibits the use of personal information (with certain listed exceptions), while section 32 prohibits the disclosure of personal information (also with certain listed exceptions). Similarly, section 88(5) of the MEA addresses disclosure, while section 88(10) is concerned with how the information, once disclosed, is subsequently used. Section 88(10) does not, in my view, place a limitation on the extent to which the public may access information under section 88(5) of the MEA or under the Act.

In short, for the purpose of determining the issue of access under the Act, the use to which the appellant intends to put the information is not relevant. To be clear, my finding should not be construed as a determination of whether or not the appellant's intended use, or any other use, of the information in question is permitted or not permitted under section 88(10) of the MEA.

As to the submission of one of the affected parties that information concerning "financial transactions" should not be available to the public, neither the MEA nor the Regulation draws any distinction between this type of information and any other information contained in the forms at issue. I find no basis for inferring such a distinction in this case.

To conclude, I find that the exception at section 14(1)(d) of the Act applies to the information relating to the "over $100" individual contributors (names, addresses and contribution amounts), and therefore this information is not exempt under section 14.

I will now turn to the information relating to the "$100 or under" individual contributors (names and addresses). Under the Regulation, information about contributors falling within this category is not required to be included in the records, and therefore it cannot be concluded that its disclosure is authorized by the MEA within the meaning of section 14(1)(d).

Having found that section 14(1)(d) is not applicable to the information concerning the "$100 or under" individual contributors, the only other exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f), which applies if disclosure of the personal information would **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, personal information can be disclosed only if it falls under section 14(4) or if the section 16 "public interest override" applies to it.

If none of the presumptions in section 14(3) applies, section 14(2) requires me to consider all relevant circumstances, including the factors specifically listed therein and any unlisted factors, in order to determine whether disclosure would constitute an unjustified invasion of personal privacy under section 14(1)(f).

The County has claimed the application of the presumption at 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 Order P-267, Assistant Commissioner Tom Mitchinson considered the application of section 21(3)(f) of the Freedom of Information and Protection of Privacy Act, the provincial counterpart to section 14(3)(f) of the Act. The Assistant Commissioner found that a record which described "various fund-raising activities" for a provincial political party and which referred to political "contributions made or planned for named individuals" satisfied the requirements of the words "financial history or activities" in section 14(3)(f). The Assistant Commissioner's findings are applicable here. Disclosure of the fact that the "$100 or under" individuals have made financial, political contributions, together with the amount of those contributions, is presumed to be an unjustified invasion of privacy because it describes those individuals' "financial history or activities".

Regarding the section 14(4) presumption in favour of disclosure and the section 16 "public interest override", the appellant made no representations. In the circumstances, I find that neither provision compels disclosure of the names or addresses of the "$100 or under" individual contributors.

To conclude, the names, addresses and contribution amounts of the "over $100" individual contributors fall within the exception at section 14(1)(d) and therefore are not exempt from disclosure under the Act. The names and addresses of the "$100 or under" individual contributors are exempt under section 14(1) of the Act. The contribution amounts relating to the "$100 or under" individuals, and the balance of the information in the records, need not be disclosed by the County in the context of this appeal because this information is not responsive to the request. To assist the County, I have provided highlighted copies of the records, the highlighted portions of which should **not** be disclosed.

ORDER:

1. I order the County to disclose to the appellant the names, addresses and contribution amounts of the "over $100" individual contributors as contained in the five records, in accordance with the highlighted copies of the records as provided to the County with this order, on or before **November 23, 1998** but not earlier than **November 18, 1998**.

2. I uphold the balance of the County's revised decision.

3. In order to verify compliance with the provisions of this order, I reserve the right to require the County to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: ______________________ ____________ October 19, 1998
David Goodis
Senior Adjudicator