



**Information and Privacy
Commissioner/Ontario**

**Commissaire à l'information
et à la protection de la vie privée/Ontario**

ORDER M-1160

Appeal MA-980133-1

Regional Municipality of Haldimand-Norfolk



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NATURE OF THE APPEAL:

The Regional Municipality of Haldimand-Norfolk (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) from a member of the media for the settlement agreement reached by mediation between the Haldimand-Norfolk Regional Police, its Chief of Police, a named police constable and a named individual. The settlement arose from a complaint made by the named individual under the Ontario Human Rights Code.

The Municipality responded to the requester on behalf of itself and the Haldimand-Norfolk Regional Police Services Board (the Board), and denied access to all responsive records, claiming the following exemptions:

- closed meeting - section 6(1)(b)
- invasion of privacy - section 14

The requester, now the appellant, appealed the Municipality's decision. In her letter of appeal, the appellant also raised the possible application of section 16, the so-called "public interest override".

The appellant also broadened her request to include the amount of legal fees incurred by the Municipality in reaching the settlement. This information was disclosed to the appellant during mediation and is not at issue.

This office issued a Notice of Inquiry to the appellant, the Municipality, the named individual, the Chief of Police and the named police constable. Representations were received from the appellant, the Municipality and the Deputy Chief of Police on behalf of the Chief, but not from the named individual or the named police constable.

The records at issue in this appeal consist of a four-page Minutes of Settlement, with five pages of attached appendices; two sets of handwritten notes of *in camera* meetings of the Board held on September 17, 1997 and January 20, 1998; and the minutes of these two *in camera* meetings.

DISCUSSION:

CLOSED MEETING

Section 6(1)(b) of the Act states:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

In order to qualify for exemption under section 6(1)(b), the Municipality must establish that:

1. a meeting of a council, board, commission or other body or a committee of one of them took place; **and**

2. that a statute authorizes the holding of this meeting in the absence of the public;
and
3. that disclosure of the record at issue would reveal the actual substance of the deliberations of this meeting. (Order M-64)

The first and second parts of the test for exemption under section 6(1)(b) require the Municipality to establish that a meeting was held by the Board **and** that it was held *in camera*. (Order M-102)

The Municipality states that meetings of the Board were held on September 17, 1997 and January 20, 1998, and that:

These meetings were closed meetings held pursuant to Section 35(4) of the Municipal Police Services Boards Act. ... because they dealt with financial and personal matters, they were properly held closed meetings.

Section 35(4) of the Municipal Police Services Boards Act provides:

The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that

- (b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that proceedings be open to the public.

The appellant states in her representations:

I can only assume this issue was discussed in a closed meeting, as stated by [the Municipality] since I attend all the public sessions of the Police Services Board and it was not discussed there.

I am satisfied that section 35(4) of the Municipal Police Services Boards Act authorizes the holding of meetings in the absence of the public, and that *in camera* meetings were held by the Board on September 17, 1997 and January 20, 1998. Therefore, the first and second parts of the test have been established.

To satisfy the third requirement of the test, the Municipality must establish that disclosure of the records would reveal the actual substance of the deliberations of these *in camera* meetings. As I found in Order M-98, the third requirement would not be satisfied if the disclosure would merely reveal the **subject** of the deliberations and not their **substance** (see also Order M-703). Furthermore, "deliberations" in the context

of section 6(1)(b) means discussions which have been conducted with a view to making a decision. (Orders M-184, M-196 and M-385)

The Municipality submits that:

Because the details of the settlement were discussed at the closed meetings, the Minutes of Settlement would as well reveal the substance of the deliberations.

The Deputy Chief submits that the January 20 *in camera* meeting was held for the purpose of giving final approval to the settlement.

The appellant states:

... the settlement itself was decided upon before the meeting, so the information shouldn't qualify under section 6(1)(b). The Police Services Board was simply required to ratify an agreement, one which I understand was made previously by the parties. Disclosure of the terms of the settlement won't reveal the actual substance of the deliberations at the board meeting.

At the *in camera* meeting on September 17, the Board discussed how to proceed with respect to the named individual's human rights complaint. A motion was tabled and carried. The relevant handwritten notes and formal minutes for this meeting reflect the deliberations of the Board and the rationale for the Board's decision on how to respond to the complaint. As such, I find that disclosure of these two records would reveal the substance of the deliberations of this *in camera* meeting, thereby satisfying the third requirement of the test. Accordingly, these two records qualify for exemption under section 6(1)(b) of the Act.

However, the notes and minutes of the January 20 meeting are different. By this point in time the mediated settlement among the parties had been completed. As the Municipality confirms in its representations:

The Board is not a party and was not approving the terms of settlement in their closed meetings. In fact the agreement had been finalized on January 9 and the Board apprised of the details on January 20.

In my view, these two records deal with the subject of the human rights complaint and the outcome of the mediation exercise, but not the substance of any deliberations about this matter. The terms of settlement were simply reported to the Board at the January 20 meeting. The Board did not, and it would appear did not have authority to, discuss these terms with a view to approving or making a decision about them. Therefore, I find that the third requirement has not been established for these two records, and that they do not qualify for exemption under section 6(1)(b).

As far as the Minutes of Settlement and attached appendices are concerned, they reflect the terms agreed to by the parties as a result of their successful mediation efforts. These terms were not the substance of deliberations by the Board at either the September 17 or January 20 meetings, as the Municipality appears to acknowledge in its representations. Therefore, I find that the third requirements of the section 6(1)(b) test has not been established for the Minutes of Settlement and appendices, and these records do not qualify for exemption on the basis of this exemption claim.

In summary, I find that only the handwritten notes and minutes of the September 17, 1997 *in camera* Board meeting qualify for exemption under section 6(1)(b) of the Act.

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, including the individual's name where it appears with other personal information relating to the individual, or where the disclosure of the name would reveal other personal information about the individual.

I find that the Minutes of Settlement and attached appendices clearly contain the personal information of the named individual, as they reflect the terms of settlement of her human rights complaint. I also find that these records contain the personal information of the named police constable who was the subject of the complaint, but not the Chief of Police, who was included as a party to the complaint in an official rather than personal capacity. I also find that the handwritten notes and minutes of the January 20 meeting contain the personal information of the named individual, since they contain the amount of the payment made to her under the terms of the settlement. None of the records contain the personal information of 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. 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) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. 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 section 14(2).

A section 14(3) presumption can be overcome if there is a finding under section 16 of the Act that a compelling public interest exists in the disclosure of the record which clearly outweighs the purpose of the section 14 exemption.

The Municipality states that Appendix B to the Minutes of Settlement relates to the named individual's employment history, thereby raising the possible application of the presumption contained in section 14(3)(d).

Appendix B is a letter of reference. It contains information about the named individual's employment relationship with the Board over a number of years and in more than one capacity. It also contains information which can accurately be described as "personal recommendations" or "character references" (section 14(3)(g)). As such, I find that the presumptions under sections 14(3)(d) and (g) apply to Appendix B and, in the absence of consent from the named individual, its disclosure would constitute an unjustified invasion of personal privacy.

The handwritten notes, the minutes of the January 20 meeting, and clause 1 of the Minutes of Settlement contain the dollar figure agreed to by the parties as part of the mediated settlement. The Municipality submits that this "monetary settlement is financial information", which I assume refers to the section 14(3)(f) presumption, 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;

Previous orders of this office have dealt with monetary entitlements relating to retirement agreements. These orders have found that "one time payments to be conferred immediately or over a defined period of time that arise directly from the acceptance by the former employees of the retirement packages" could not be described as an individual's "finances, income, assets, net worth, financial history or financial activities for the purpose of section 14(3)(f) of the Act." (See Orders M-173 and M-1082). I agree with this conclusion and find that it applies similarly to the one-time amount agreed to in the settlement of the named individual's human rights complaint. In my view, the presumption in section 14(3)(f) does not apply to this information.

I must now determine how to properly balance the various factors under section 14(2), and any unlisted factors relevant in the context of this appeal, and determine whether disclosure of the personal information in the records (other than Appendix B) would constitute an unjustified invasion of the personal privacy of the named individual and/or the named police constable.

The appellant states:

I don't argue that some of this information is personal in nature, but it does have bearing on the actions of a public body that is accountable to the public, namely a police force.

I maintain that disclosure of this information is desirable for the purpose of subjecting the activities of this institution to public scrutiny per Section 14(2)(a). In Order P-982, the Commission says the Act is "intended to enable an informed public to better participate in the decision-making process of government and to ensure the accountability of those who govern."

...

The [named individual's] version of the events leading up to her dismissal certainly raises some questions about fair treatment and favouritism on the force. The public has a right to know whether the institution they depend upon to protect their rights and freedoms is hampering the rights of its employees.

The appellant also argues that by making the settlement public, this "might help ensure that the individual to whom the information relates is not adversely affected by the episode" and "assist in restoring her reputation in the community."

The Municipality argues against the application of section 14(2)(a) when it states:

In determining whether disclosure would be an unjustified invasion of personal privacy, it was considered whether disclosure would subject the activities of the police to public scrutiny. The issue of the sexual harassment complaint and the subsequent Human Rights complaint and the eventual settlement were all matters of public record via the media ...

...

... the Police Services Board being a body of appointed and elected citizens with an oversight role, provides the necessary public scrutiny of police affairs, albeit in a representative manner.

The Municipality also raises the application of section 14(2)(h). It submits that the monetary figure contained in the records "was supplied by the [named] individual in confidence", and further that "[t]he agreement itself bears a mutual confidentiality clause which, I suggest, would make release an unjustified invasion of personal privacy".

The Deputy Chief of Police also refers to the confidentiality clause as follows:

The minutes of settlement also contained a confidential, non-disclosure as to the amount of the settlement, and non-disclosure of details except as to any facts disclosed in subsequent press release by the Board through the Chief of Police.

Having reviewed the records and representations, I make the following findings:

1. Section 14(2)(a) is a relevant consideration, which favours disclosure. However, Appendix C, a press release, provides a number of details about the complaint and the terms of settlement. Appendix C was posted in a number of public locations (listed in Appendix D). I find that this public disclosure addresses some public scrutiny concerns, and reduces the weight given to section 14(2)(a) with respect to the undisclosed information.
2. There is no evidence before me to substantiate that the monetary figure was “supplied” by the named individual. I find that the figure was more likely the subject of negotiations among the parties, and section 14(2)(h) is not a relevant consideration in this respect.
3. The Minutes of Settlement includes a confidentiality clause which provides that all parties agree to keep the terms strictly confidential except for the contents of the press release. The press release itself confirms this fact. I find that this is an unlisted factor favouring non-disclosure, and that the weight given to this factor is significant in the circumstances.
4. In the absence of representations from the named individual, I do not accept the appellant's arguments that the disclosure of the terms of the settlement agreed assist in restoring the named individual's reputation in the community, or help ensure that she is not adversely affected by the episode that led to the complaint.

In balancing these factors, I find that those favouring privacy protection outweigh those favouring disclosure, with the following exceptions.

Appendix D simply lists the locations where the press release was posted, and Appendix E is a notice posted in all police notice boards which refers to the existence of the settlement, but not the terms. These appendices deal with process rather than substance and, in my view, their disclosure would not constitute an unjustified invasion of any individual's personal privacy, and should be disclosed.

Clauses 5, 6 and 7 of the Minutes of Settlement refer to the press release, its distribution, and the confidentiality arrangements, all of which are already publicly known, as are the names of the parties to the settlement agreement and the fact that the named individual filed a human rights complaint. As such, I find that disclosure of the style of cause and preamble to the Minutes of Settlement, clauses 5, 6 and 7, and the signatures to the agreement, would not constitute an unjustified invasion of personal privacy, and should also be disclosed.

Disclosure of the remaining portions of the Minutes of Settlement, Appendices A and B, and the handwritten notes and minutes of the January 20 Board meeting, which reflect the terms of the Minutes of Settlement, would constitute an unjustified invasion of personal privacy, and qualify for exemption under section 14(1) of the Act.

PUBLIC INTEREST

Section 16 of the Act reads as follows:

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)

In order for section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records; and second, this interest must clearly outweigh the purpose of the mandatory personal information exemption.

The appellant refers to Order P-1254, in which it was held that to exhibit a compelling public interest, a request “must serve the purpose of informing citizenry about the actions of their government, adding in some way to the information the public has to express its opinion or make choices.”

The appellant states:

At the time this request was originally made, Haldimand-Norfolk Regional Council was in the process of deciding whether to disband the Haldimand-Norfolk Regional Police Force in favour of a contract with the Ontario Provincial Police. Council had voted to do so, but there were factions still hoping to reverse the decision or, at least, delay it. If information about unfair dismissal practices or possible discrimination against women were brought to light, it might have influenced councillors and the public in this decision. As it turned out, council did grant the OPP a contract and a disbandment hearing has been held. However, this information might have had some real bearing on the unfolding events.

The Municipality states:

There was a press release announcing the settlement (Appendix C to the Minutes of Settlement) which indicated that the details were confidential, press coverage reflected that status, and to the best of my knowledge no public requests for the details of this settlement have been received by the Board or by the Police other than the subject FOI request. Every regular monthly meeting of the Board has a public, open component with a Question Period portion on the agenda inviting questions from public or media. Meetings of the Board are held in various locations throughout the Region to maximize accessibility. To the best of my knowledge this issue has never been raised. There may very well be curiosity on the part of the [appellant] and her readers as to the details of the settlement. However curiosity is not the public interest contemplated by the legislation.

In my view, the level of disclosure through the press release and the information which will be disclosed in compliance with this order, satisfactorily address the public interest issues raised by the appellant. I am not

persuaded that any public interest in further disclosure is compelling, particularly in light of the fact that concerns expressed in the community appear to be restricted to the appellant and not other members of the media or the public, and the fact that the decision to contract police services with the Ontario Provincial Police has already been made by the Municipality. In addition, even if the public interest in further disclosure is compelling, I find that it is not sufficient to clearly outweigh the purpose of the mandatory section 14 exemption claim.

Therefore, I find that section 16 does not apply in the circumstances of this appeal.

ORDER:

1. I order the Municipality to disclose the style of cause, preamble, and clauses 5, 6 and 7 of the Minutes of Settlement and Appendices D and E by **December 15, 1998** but not earlier than **December 10, 1998**. I have attached a highlighted copy of the Minutes of Settlement with the copy of this order sent to the Municipality which indicates the portions of the Minutes of Settlement which should **not** be disclosed.
2. I uphold the Municipality's decision not to disclose the remaining records and parts of records.
3. In order to verify compliance with this order, I reserve the right to require the Municipality to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

November 9, 1998