



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

FINAL ORDER MO-1361-F

Appeal MA-000129-1

Township of Southgate



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NATURE OF THE APPEAL:

The appellant, on behalf of a group known as the Southgate Resident and Ratepayers' Association, wrote to the Township of Southgate (the Township) seeking access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the "time sheets of the employees of Egremont Township from June 21, 1999 up to December 31, 1999." (The former Township of Egremont now forms part of the new Township of Southgate, as of January 1, 2000). The appellant indicated that she was not seeking access to the names of the individual employees in the records.

The Township responded to the request by advising the appellant that access to the records was denied on the basis of the personal privacy exemption at section 14 of the *Act*. The Township stated that "the provisions apply to the records because the information provided would still enable someone to determine whom the time sheet belonged to."

The appellant then appealed the Township's decision to this office. In particular, the appellant stated:

I believe under Section 73-1-C and Section 74 of the *Municipal Act*, I am entitled to the specific amounts pertaining to the position payments for each category of employee of the former Corporation of the Township of Egremont from June 21, 1999 to December 31, 1999. Including total number of hours worked and remuneration for those hours. This information is normally contained on a time sheet. This information cannot be denied to me sitting under protection of personal privacy. As per enclosed [request] you will note that in order to protect the privacy of the individual employees I had already indicated in my original request, my willingness to have all identifying personal information removed from the records prior to the release to me.

During the mediation stage of the appeal, the Township notified four employees whose records were being sought of the request and appeal. The Township asked these affected persons whether or not they consented to the disclosure of the records relating to them. Each of these affected persons gave a written reply to the Township, in which they indicated that they did not so consent.

Also during the mediation stage of the appeal, the appellant agreed that she was seeking access to the records for only the full-time and part-time employees that are paid on an hourly basis. This eliminated the records for the five employees who are paid by salary or for a fixed period of time weekly, and the five casual employees for whom no time sheets are on file. Remaining at issue in this appeal are the time sheets for nine employees.

I sent a Notice of Inquiry setting out the issues in the appeal initially to the Township and six affected persons (individuals whose names appear in the responsive records). The remaining affected persons could not be located. In response, I received representations from the Township, counsel for a group of five affected persons, and counsel for the remaining affected person. I then sent a Notice of Inquiry, together with the non-confidential portions of both sets of representations from the affected persons to the appellant, and the appellant made representations in response.

Prior to receiving the appellant's representations, counsel for the single affected person wrote to me stating that he objected to the appeal proceeding, since the appellant, being an unincorporated association, lacked the capacity to make a request or appeal a decision under the *Act*. After receiving representations on the issue, by Interim Order MO-1361-I, I dismissed the single affected person's objection.

RECORDS:

The records at issue in this appeal consist of 53 pages of time sheets for nine employees of the Township. The time sheets contain the name of the individual employee, a description of the work performed, numbers of hours worked corresponding to days in the specified time period, total numbers of hours worked in the specified time period, the hourly rate, any applicable deductions, the total amount paid to the employee and the cheque number.

ISSUES:

PERSONAL INFORMATION

In order for the section 14 personal privacy exemption to apply, the information in question must constitute "personal information". Under section 2(1) of the *Act*, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The Townships submits that even if the names are removed from the records, the remaining information constitutes personal information because "the information provided would still enable someone to determine whom the time sheet belonged to." The Township makes the following additional comments:

Enclosed please find a copy of the Township . . . By-Law 16 of 1999, passed June 21, 1999. This by-law sets remuneration and allowances for municipal employees and Council. As you will note the By-Law states the hourly wage of each of the Township employees or category of Township employees. This By-Law is a public record. The Township believes that by using this By-Law and the time sheets, which show the actual number of hours worked by each employee, a calculation could determine the income of the Township employees.

The five affected persons submit:

. . . The information requested is indeed personal information as that term is defined in the *Act*. It is information about an identifiable individual, notwithstanding that the [appellant] has allowed that the "names can be removed" from the time sheets requested. In most instances, given the small number of employees the [appellant] could easily deduce who

[or] which employees the time sheets related to. The information requested relates to the employees' work history, and in particular the hours that the employee works.

. . . The information requested provides information related to the employee's work history, namely hours of work, and indirectly describes the individual's income. It should be noted that the [Township], being a municipality, sets its staff's wage rates by bylaw. We understand that you have been provided with a copy of the [Township] Bylaw 16-1999. The wage rates of each class of employees are set forth in the bylaw. With the wage rates, together with the time sheets that are requested, it is only a [simple] mathematical calculation to determine the salary of each employee.

The five affected persons further submit that they rely on the findings of former Commissioner Tom Wright in Order M-35.

The single affected person submits:

Although the [appellant] asserts that they are willing to receive the information without disclosure of names of the individual employees attached thereto, any information provided about the income received by our client, in an unnamed manner, will clearly identify our client as the recipient of that income . . . The provision of the information sought by the [appellant], even in an unnamed format, will clearly disclose the income of our client, if described by the Township . . . The [Township] passed By-law 16/99 on June 21, 1999 to establish hourly rates for each of its municipal employees, as well as honorariums for council members etc. The application of the Employee Time Sheet information, (even if unnamed) will allow the Appellant to ascertain our client's exact income by simple mathematical calculations without disclosure of [the name].

The appellant submits:

The records at issue are time sheets. In the original request, the known identifiers, namely employee names, were willingly relinquished. These identifiers have now been shown to include the name of the individual employees, applicable deductions and a cheque number, all of which are hereby relinquished as not being of interest for the purposes of this request. It is noted that although eligibility for disclosure exists for a description of the work performed under Section [14(4)(a)], this is not necessary for completion of this particular request.

What remains of interest then from the time sheets are the numbers of hours worked in the specified time period, the hourly rate, and the total time sheet amount (not *income* total) paid to the employees by *classification*.

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. . . If the total number of hours worked for each *class* of employee broken into total regular hours and total overtime hours, plus hourly wage rate for the class and the total wages paid for each class are provided from the time sheets by the commission for the time frame requested, this request can be satisfied and all concerns about invasion of personal privacy allayed. This would be acceptable to this requester. [Counsel for the five affected persons] have admitted the by-law stipulates wages *by class of employee*, which is one of the allowable exemptions under section [14(4)(a)]. And, Commissioner Tom Wright, in [Order M-35], has held that actual numbers of hours worked alone are not a justified presumption under Section 14(3)(d). Thus again, the records are not protected as private information [appellant's emphasis].

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In Order M-35, involving the Township of Osprey, a requester sought access to the number of hours worked during a specified month by three township employees named by the requester. Former Commissioner Wright found that the number of hours worked constituted those employees' personal information, since it was "recorded information about identifiable individuals".

In this case, similar to the situation in Order M-35, I find that all of the information in the time sheets related to the single affected person constitutes the single affected person's personal information, since that individual is identifiable in the circumstances, given the rate of pay information in the publicly available by-law. This individual does not belong to a "class" of employees, but rather is the only person performing the particular type of work. This applies equally to the more limited information the appellant seeks, namely the hours worked, the hourly rate and the total amounts paid, without the person's name or other information.

However, I find that disclosure of the limited information the appellant seeks with respect to the remaining eight employees would not permit the appellant to identify the relevant individuals, either because they belong to a "class" of employees, or because the individuals are otherwise not identifiable in the circumstances.

To conclude, I find that the hours worked, the hourly rate and the total amounts paid with respect to the eight employees does not constitute personal information and, therefore, this information is not exempt under section 14. This information respecting the single affected person does constitute personal information, and thus may be exempt under section 14.

INVASION OF PRIVACY

Introduction

Where a requester seeks personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (h) of

section 14(1) applies. In the circumstances, the only exceptions which could apply are set out in paragraphs (e) and (f), which read:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (e) for a research purpose if,
 - (i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,
 - (ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and
 - (iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Research purpose: section 14(1)(e)

Section 14(1)(e) requires that all three elements set out in the provision be satisfied in order for it to apply [Order PO-1741]. The term “research” in this section has been defined by this office as “the systemic investigation into and study of materials, sources, etc., in order to establish facts and reach new conclusions, and as an endeavour to discover new or to collate old facts etc., by the scientific study or by a course of critical investigation” [see Orders P-666, P-1493 and PO-1741].

The appellant submits:

The time sheets requested are strictly a vehicle for research by a group represented by an individual (the appellant), for the purpose of determining how the public business has been conducted. This most certainly fulfills Section 14(2)(a) as a disclosure desirable for the purpose of subjecting the activities of the institution to public scrutiny . . .

It should be apparent that it is the manner in which the public business was being done which is of concern and which is being researched, not the income of identifiable individuals. Even if the information being sought were actually identifiable as individual information, which it is not, Section 14(1)(e)(ii) *would allow* release if the research could not be reasonably accomplished unless the information was provided in individually identifiable form. Our concession to remove identifiers is only possible because the research for this particular request is very narrow in scope. This section allows for release under research conditions whether or not individual identifiable criteria exist.

In my view, the section 14(1)(e) exception was designed to permit disclosure for the purpose of a technical, scientific, social scientific or similar study, not, as in this case, for the purpose of subjecting the institution's employment practices or expenditures to public scrutiny. The latter purpose is reflected in other parts of the personal privacy exemption, such as section 14(2)(a), one of the listed factors favouring disclosure, and sections 14(4)(a) and (b), listed circumstances in which employment related personal information must be disclosed. In any event, the appellant has not provided sufficient information to demonstrate that each of the requirements of clauses (i), (ii) and (iii) under section 14(1)(e) has been met here. Therefore, I conclude that the exception at section 14(1)(e) does not apply.

Unjustified invasion of personal privacy: section 14(1)(f)

The only remaining exception which could permit disclosure is section 14(1)(f). Sections 14(2) and (3) of the *Act* provide guidance in determining whether, under section 14(1)(f), 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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that 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) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

In this case, the Township and all of the affected persons submit, either expressly or by implication, that the section 14(3)(f) presumption applies. That section 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 M-35, in similar circumstances, the former Commissioner stated:

Turning to section 14(3)(f), the actual number of hours worked by an employee does not, in my view, meet the requirements of this section. However, the township has set the exact hourly wage of each employee by a by-law, thereby making the exact hourly wage of each of its employees public knowledge. As such, as the institution submits, the appellant “by simple calculation may determine the particulars of ... monthly income of each individual.” In these particular circumstances, disclosure of the actual hours worked in one month by the affected persons would constitute disclosure of their actual income and, therefore, it falls within the scope of section 14(3)(f). Accordingly, disclosure of the information is presumed to be an unjustified invasion of the personal privacy of the affected persons.

Similarly, in this case, disclosure of the single affected person’s numbers of hours worked in the records, together with the by-law, would permit the appellant to calculate this individual’s monthly income and, therefore, the section 14(3)(f) presumption applies. In addition, disclosure of the total payments would reveal this individual’s monthly income. Once the presumption is found to apply, based on *John Doe*, the information cannot be disclosed unless section 14(4) or 16 applies. Those sections read:

14(4) 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.

16. 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.

The numbers of hours worked and the total payments made clearly do not fit within section 14(4)(a), which contemplate disclosure of salary *range* information only, not precise payments. I have not been provided with information which indicates that the individuals involved performed work on the basis of a contract for personal services, as opposed to on the basis of an employment arrangement. The representations of the parties, if anything, support the latter view. As a result, section 14(4)(b) cannot apply.

Finally, the appellant has not provided me with sufficient information to demonstrate that there is a *compelling* public interest in the disclosure of financial information about the single affected person fitting within the section 14(3)(f) presumption which clearly outweighs the purpose of the exemption. As a result, the information about this individual revealing the numbers of hours worked and the total payments made is exempt under section 14 of the *Act*.

The only remaining personal information at issue is the single affected person's hourly rate of pay. In my view, this information, on its own, does not fit within the section 14(3)(f) presumption, because it does not reveal actual income or payments made to him or her.

I also find that the factor at section 14(2)(a) is relevant in the circumstances. That section reads:

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 appellant has satisfied me that there is at least some public interest in scrutinizing the conduct of the Township in its payment of employees. Disclosure of the hourly rate information in the time sheets will assist the appellant in determining whether or not the single affected person is, in fact, being paid at the rate prescribed by the by-law. As a result, I find that this factor applies, although I find that it has only moderate weight in the circumstances.

On the other hand, the privacy interest in protecting the hourly rate information is very low. As all of the parties, including the single affected person, have submitted, this information is already contained in a publicly available by-law. Therefore, its disclosure as contained in the time sheets cannot be characterized as a serious invasion of personal privacy.

On balance, I find that the moderate public interest in scrutinizing the Township's actions in paying its employees outweighs the very low privacy interest of the single affected person in the circumstances. Accordingly, I find that the hourly rate information in the records relating to the single affected person is not exempt under section 14 of the *Act*.

To conclude, the hours worked, rate of pay and total payment information in the records relating to the eight affected persons does not constitute personal information and therefore is not exempt under section 14. The rate of pay information in the records relating to the single affected person, while constituting personal information, is not exempt under section 14. The remaining information in the records is either exempt or need not be disclosed based on the appellant's submission that this information is no longer being sought.

FINAL ORDER:

1. I order the Township to disclose the records to the appellant, with the exception of the portions highlighted on the copies of the records enclosed with the Township's copy of this order, no later than **December 15, 2000**, but no earlier than **December 10, 2000**.
2. I uphold the Township's decision to withhold the highlighted information referred to in provision 1.
3. In order to verify compliance with this order, I reserve the right to require the Township to provide me with copies of the material provided to the appellant in accordance with provision 1.

David Goodis
Senior Adjudicator

November 10, 2000