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

# ORDER MO-1415

Appeal MA_000154_1

Regional Municipality of Ottawa_Carleton

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## NATURE OF THE APPEAL:

The Regional Municipality of Ottawa-Carleton (the Region, now part of the City of Ottawa since January 1, 2001) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for detailed information about the participation of community agencies in the Community Placements Program established under the *Ontario Works Act, 1997* (the *"OWA"*). The *OWA* establishes a compulsory program, commonly and hereinafter referred to as "workfare", whereby eligible recipients of social assistance participate in community placements.

The request sought a "list of all past, present and future participating organizations", as well as sublists of those organisations with three or more individual placements and those with participants working 140 hours per month, 280 hours per month and 420 hours per month. In addition, the requester sought numerical information on the total number of individual participants in the Region, broken down for a number of different factors.

Finally, the requester asked for all records of correspondence between the Region and the Government of Ontario with respect to an expansion of the workfare program implemented in 1999.

The Region responded to the request by disclosing the numerical information on the participating individuals and a partial list of the current and future participating agencies, broken down by hours of work as requested. The decision did not provide an explanation for the fact that a large and unspecified number of agencies had been excluded from the list. The Region released copies of correspondence from its Social Services Department to the Ministry of Community and Social Services concerning the expansion of the workfare program in 1999.

The requester appealed the decision of the Region. The letter of appeal objects to the fact that the decision fails to identify which of the agencies are past participants in workfare and which are current or future participants. Further, the requester (now the appellant) challenged the adequacy of the search for records and the unexplained exclusion of a large number of participating agencies from the list.

During the mediation stage of the appeal, the Region provided the appellant with an explanation for the exclusion of agencies from the list which had been provided. All agencies with three or more placements were identified on the disclosed list, but agencies with two or fewer placements were excluded. These agencies were excluded on the basis that identification of the agencies "may reasonably allow an individual to be identified as a participant of the Ontario Works Program, and would constitute an unjustified invasion of their personal privacy".

Also during mediation, several of the other issues raised in the appeal were resolved. The Region released a list of past participating agencies, with the names of agencies with two or fewer placements excluded. The appellant also sought and received a copy of the reply correspondence from the Ministry of Community and Social Services on the expansion of workfare. The Region satisfied the appellant as to the adequacy of the search for records.

The record at issue is a two-page list identifying 75 agencies who have accepted placements, currently have placements, or will in future accept placements from the Ontario Works program. The list contains only the name of each agency.

The Region has stated that, at the time of its initial decision, a printout from the data base identified approximately 80 excluded agencies, but that a copy of that list was not retained in its files and cannot be re-created from its data base. The list of 75 agencies is a printout listing the past, present or future agencies which, as of September 2000, had two or fewer placements. The reduction in the number of agencies on the printout provided apparently indicates that some agencies which had fewer than three placements in April 2000, had three or more placements when an up-dated printout was obtained for this appeal.

At the conclusion of mediation, this Office confirmed that the remaining issue in dispute in this appeal is the Region's refusal, in reliance on section 14 of the *Act*, to grant the appellant access to the names of those participating agencies, past, current or future, with two or fewer placements. The Region has estimated that approximately 80 agencies were excluded from the list which has been provided to the appellant.

Because a previous decision of the Commissioner's office in Order MO-1254 addressed a similar issue to that which is the subject of this appeal in favour of the position taken by the Region, the Adjudicator assigned to the appeal decided to seek the representations of the appellant initially. The appellant responded with detailed submissions which were then shared with the Region and each of the 75 participating organizations. The Region and three of the agencies also made representations on the issues raised in the Notice of Inquiry. The Region's submissions were also shared with the appellant, who then provided me with additional reply representations. The submissions of the agencies were not shared with the appellant due to concerns which I had about the confidentiality of the information which they contained. One of the agencies consented to the disclosure of its submissions which were, however, received after the reply submissions of the appellant had been requested.

## DISCUSSION:

### PERSONAL INFORMATION

Under section 2(1) of the *Act*, the term "personal information" is defined, to mean recorded information about an identifiable individual. The information contained in the records does not refer to any individual by name. The records do not identify the persons who have been placed with the listed agencies under the workfare program or any other individuals associated with the agencies. The issue in the appeal revolves around the question of whether the disclosure of the names of the participating agencies would make it possible to identify the individuals who are involved in the workfare program. If it were possible to do so, can it be argued that the records therefore contain the personal information of the program participants?

#### The Appellant's Submissions on the Personal Information Issue

The appellant submits that no accurate inferences about the identity of the workfare participants can be drawn from the lists of participating organizations and that there does not exist any

"reasonable expectation of identification". The appellant also provided me with substantial and persuasive evidence to indicate that workfare participants in the Ottawa-Carleton Region are engaged in a wide variety of types of jobs, and are not limited to the job categories suggested by the Region in its submissions. The appellant's evidence includes a summary of a research paper prepared by a student at Carleton University which indicates that workfare participants were engaged in such occupations as advertising manager, computer servicing, painters, counsellor, nurse's aide and carpenter requiring specialized skills and accreditation. Accordingly, the appellant submits that the ability to identify workfare participants by the jobs they hold is not substantiated by the facts. He argues that the diversity of the work which these individuals perform protects them from the "accurate inferences" which formed the basis for the decision in Order MO-1254.

In addition, the appellant points out that the individuals engaged by the organizations listed on the record at issue in this appeal would have completed their six-month placements by the date of this order. The individuals who would have been affected, potentially, by the disclosure of this information would no longer be associated with the organizations and could not, therefore, be identified.

**The Submissions of the Region on the Personal Information Issue**

The Region relies upon the reasoning expressed in Orders MO-1254 and MO-1255. In those decisions, which arose from very similar requests for information about organizations participating in the workfare program, Adjudicator Laurel Cropley made certain findings with respect to the risk of identification of program participants in situations where the organizations operated with small staffs of employees and volunteers. In that decision, she found that:

> With respect to the record at issue in the current appeal, I note that in most cases, the number of placements is below two. In all of these cases, I am satisfied that the participating agency is very small and identification of the agencies, including their addresses and anyone who works for them, could allow anyone familiar with them to make reasonable inferences as to the identities of the workfare participants. To the extent that their identities can be ascertained, this would reveal that they are on workfare and thus disclosure would reveal information 'about" them. Therefore, based on the approaches taken in Orders P-230 and P-644, I find that, with two exceptions, the names of the participating agencies, their addresses and contact person constitutes personal information.

Adjudicator Cropley then went on to also accept the institution's arguments with respect to two organizations which were larger and also engaged a larger number of participants from the workfare program. She found that:

> Two of the participating organizations are larger than the others and the numbers of participants in each is also greater. On first blush it would not appear that the principles enunciated in Orders P-230 and P-644 would apply. However, after considering the totality of the evidence, I find the City's arguments that the identities of individual recipients could still be revealed by disclosure of this information to be persuasive. In this regard, I find that, given the nature of the two remaining organizations and the nature of the types of work which would

> "typically" be done by individuals on workfare, there is a reasonable expectation that at least some of these individuals could be identified through disclosure of the record and would similarly reveal that they are on workfare. The possible identification of only one individual from each organization is all that is required to bring the names, addresses and contact person of the two remaining organizations within the definition of "personal information".

The Region submits that the disclosure of the names of the agencies would enable members of the public who are knowledgeable about the workfare program to identify the individuals filling the community placement positions as workfare participants. This is particularly so with respect to the agencies engaging a small number of volunteers/employees, particularly given the kinds of jobs being performed by workfare participants, which are specifically enumerated in the confidential portion of the Region's representations. The Region suggests that accurate inferences could be drawn with regard to the identity of these individuals as opposed to others who are employed or otherwise associated with an organization.

**Findings**

Im my view, the situation in the present appeal may be distinguished, in part, from the circumstances present in Order P-1254. In this appeal, all of the organizations have engaged either one or two workfare participants only. Given what the appellant has persuasively demonstrated in his submissions regarding the type of work the workfare participants are engaged in, I find that the larger organizations included on the record as participating agencies have many employees or volunteers working in these many, varied job categories. The evidence tendered by the appellant suggests that because of the wide range of job classifications into which participants were placed, it is much less likely that these individuals can be identified as workfare participants simply because of the jobs they hold. I cannot agree with the position taken by the Region that these individuals are identifiable solely because of the nature of the work they are performing. As a result, unlike the situation in Order MO-1254, I accept the fact that workfare participants are engaged in a wide variety of occupations by the larger organizations which engage them, making it extremely unlikely that accurate inferences could be drawn which would lead to them being identified solely as a result of the disclosure of the name of the organization.

Accordingly, I find that the names of the larger organizations which appear on the record do not qualify as the "personal information" of the individuals who may have been engaged by them under the workfare program.

The same cannot be said, however, for the smaller participating organizations. In many cases, these are small, community-based organizations with a very specific mandate, engaging only one or at most two workfare participants for a limited period of time. In these cases, I adopt the reasoning expressed by Adjudicator Cropley in Order MO-1254 which found that the disclosure of the names of these agencies could reasonably be expected to give rise to the drawing of accurate inferences as to who among their small numbers of employees/volunteers were, in fact, workfare participants. As a result, I am of the view that the names of the smaller organizations which are listed on the record qualify as the personal information of the individuals who were engaged by them in the workfare program.

The difficulty lies in drawing the line between these two types of organizations and the appropriate number of employees/volunteers in order to determine where that risk of identification becomes reasonably likely. In her discussion of the personal information issue in Order MO-1254, Adjudicator Cropley canvassed a number of earlier decision of the Commissioner's office which addressed the question of the drawing of accurate inferences regarding the identity of individuals from a small number of persons. In Order P-230, former Commissioner Tom Wright held that:

> If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

In Order P-644, former Adjudicator Anita Fineberg considered a policy adopted by the Ministry of Health with respect to similarly small samples of information called "small cell counts" whereby the Ministry took the position that in situations where fewer than five individuals were included in a list of physicians, an individual could be identified. She agreed with this argument and found that:

> In the circumstances of this appeal, given the small number of individuals and the nature of the information at issue, I am of the view that there is a reasonable expectation that the release of the information would disclose information about **identifiable** individuals.

In my view, the situation in the present appeal is similar. I find that where more than five individuals are employed or otherwise associated with an organization as working volunteers, it is not reasonable to expect that an individual can be identified as a workfare participant, particularly given the wide range of job categories in which they are engaged. Accordingly, I make a distinction between those organizations contained in the record which employ or engage as volunteers more than five persons. I find that it is reasonable to expect that the release of the names of those agencies which employ or engage five or fewer persons would disclose information about identifiable individuals. This information would qualify as the personal information of those individuals. This is not the case however, with those agencies which employ or engage more than five persons. In this situation, the disclosure of the names of these organizations would not disclose information about identifiable individuals.

As a result of these findings, I will only address the application of the mandatory personal privacy exemption in section 14(1) to the names of those agencies which employ or engage fewer than five individuals.

## INVASION OF PRIVACY

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. Section 14(1)(f) 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 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. Section 14(4) refers to certain types of information whose disclosure does not 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).

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the *Act* or where a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

The Region submits that:

> the *Ontario Works Act, 1997* creates two types of social assistance: employment assistance or financial assistance. As discussed above in this submission, community placements form part of employment assistance. Pursuant to section 7 of the *Ontario Works Act, 1997* the administrator of the *Act* (in this case, staff at the Region's Social Department, now the People Services Department of the City) may require that a recipient participate in work placement in a community placement agency. As such community placement is an integral part of the Ontario Works system of social services.
>
> The City [formerly the Region] submits that disclosure of the names of the 75 community placement agencies would reveal the identities of the participants occupying the community placement positions within those agencies. The identification of these positions and individuals would in turn disclose that the individuals are eligible for, and recipients of, social assistance under the *Ontario Works Act*, thereby revealing personal information about those individuals within the meaning of section 14(3)(c) of the MFIPPA. The City states that this disclosure would constitute an unjustified invasion of personal privacy.

Section 14(3)(c) of the *Act* states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

> ( c). relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

In Order MO-1254, Adjudicator Cropley held that:

> It is clear from the OWA and the Directives made pursuant to it that in order to maintain eligibility for social assistance, a recipient of social assistance must, with a few exceptions, participate in the workfare program. In my view, identification of a participating agency which could, in turn, serve to reveal the identity of the individual placed under this program could indirectly disclose information relating to the individual's eligibility for social service. Therefore, I find that the presumption in section 14(3)(c) applies to the personal information in the record.

I concur with her finding and agree that, having found that the disclosure of the names of some of the participating agencies would reveal personal information relating to participants in the workfare program, the disclosure of this information would reveal information relating to that individual's eligibility for social service benefits. As a result, I find that the presumption in section 14(3)(c) of the *Act* applies to this personal information and that it qualifies for exemption under section 14(1).

None of the exceptions in section 14(4) apply to this information. The appellant has raised the possible application of section 16. I will consider this section below.

**COMPELLING PUBLIC INTEREST**

The appellant submits that there exists a compelling public interest under section 16 in the disclosure of the information which I have found to be exempt from disclosure under section 14(1). Section 16 of the *Act* states:

> 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].

It has been established in a number of orders of the Commissioner's office that in order for section 16, "the public interest override", to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the personal information exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1998] O.J. No. 420, 107 O.A.C. 341, 5 Admin. L.R. (3d) 175 (Div. Ct.), reversed (January 27, 1999), Docs. C29916, C29917 (C.A.)].

In Order P_984, Adjudicator Holly Big Canoe described the criteria for the first requirement mentioned in the preceding paragraph, as follows:

> 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.

Adjudicator Big Canoe went on to address the second component of the "public interest override" as follows:

> Once a compelling public interest is established, it must be balanced against the purpose of the exemption which has been found to apply. Section 23 (the equivalent provision to section 16 in the provincial *Act*) recognizes that each of the exemptions listed therein, while serving to protect valid interests, must yield on occasion to the public interest in access to government information. Important considerations in this balance are the principle of severability and the extent to which withholding the information is consistent with the purpose of the exemption.

I adopt the approach to the interpretation of the "public interest override" articulated by Adjudicator Big Canoe for the purpose of this appeal.

**Is there a compelling public interest in disclosure?**

The appellant has made extensive submissions which speak to the nature of the public interest which exists in the disclosure of this information. He summarizes his representations on this question as follows:

> Disclosure of the names of the placement organizations would assist the public in monitoring workfare, critically interpreting government statements, and enhance the public debate on workfare with concrete information such as the names of the placement agencies. Full disclosure of the names of the placement organizations is necessary in order to prevent misunderstanding and ambiguities in the complex nature of the workfare debate.

In Order MO-1254, Adjudicator Cropley found that there exists a compelling public interest in the subject matter of the records at issue in that case. As noted above, the records at issue in the present appeal are similar to those in the earlier decision. She held that:

> In this regard, I find that the evidence and submissions clearly demonstrate that this program has attracted wide public debate. I am satisfied that accessing the information in the records pertaining to the participating agencies will enable the appellant and the organizations with which she is associated to:
>
> - inform the citizenry about the activities of their government by revealing the elements of and participants in the Ontario Works program and allowing the public to understand how the program is being implemented;
>
> - add in some way to the information the public has to make effective use of the means of expressing public opinion. The evidence indicates that the

> protest movement believes that it must direct its challenges not only to the provincial government and municipalities, but to the organizations participating in the program in an attempt to educate them as to the "evils" they see in the program, and to dissuade them from participating.

I accept that there is a public policy interest in non-disclosure of records which could reveal the identities of individual social assistance recipients which goes beyond the individual privacy interests. In my view, the integrity of the social assistance scheme and the vulnerability of recipients relating to their dependence on such a scheme and to their social and political status or lack thereof resulting from their circumstances requires an environment which protects and promotes confidentiality and sensitivity to their needs. Therefore, I agree that there is a public interest in non-disclosure of the personal information in the record.

However, as I indicated above, the documentary evidence presented by the parties indicates that the subject of workfare has received wide ranging attention and that much concern has been expressed about it. This issue has received critical attention from a variety of sources, including the United Nations Committee on Economic, Social and Cultural Rights and, initially, by City council. The evidence demonstrates that this issue has brought together many grassroots and organized labour organizations in common protest, not only in the City but across the province. The clear message from the documentary evidence is that the motivation for and driving force behind the protest movement is the concern for the rights of the "poor" in Ontario. Many of the supporters of the grassroots organizations involved in protesting this issue in the City are likely in receipt of social assistance themselves. While I accept that there is a public interest in non-disclosure, I find that the evidence establishes a public interest in disclosure which is "rousing" regarding the issue of workfare.

On the basis of the above, in my view, the public interest in disclosure in this case is "compelling" as that word has been interpreted in section 16. Accordingly, I am satisfied that there is a compelling public interest in the disclosure of the record at issue under section 16 of the *Act*.

I concur with Adjudicator Cropley's finding that there exists a compelling public interest in information relating to the workfare program and its institutional participants. I agree that the disclosure of the information contained in the records at issue in this appeal would also serve to inform the citizenry about the activities of their government by revealing the elements of and participants in the Ontario Works program and allowing the public to understand how the program is being implemented and add in some way to the information the public has to make effective use of the means of expressing public opinion. Accordingly, I find that the first part of the test for the application of section 16 to the remaining portions of the record which are subject to the section 14(1) exemption has been satisfied.

**Does this Compelling Public Interest Outweigh the Purpose of the Exemption in Section 14(1)?**

The appellant submits that because the request only seeks access to the names of the placement agencies, and not the names of the workfare participants, the stated goals of the program and the privacy of these individuals would not be compromised as he would be unable to identify them. I have found above, however, that with respect to those organizations with fewer than five employees or volunteers performing work, the names of the organizations represent the personal information precisely because it would be possible to identify the workfare participants from the names of the agencies which engaged them.

Under section 1 of the *Act*, the protection of personal privacy is identified as one of the central purposes of the *Act*. It is important to note that section 14 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified.

Commenting generally on the personal privacy exemption under the Freedom of Information scheme, the drafters of *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy/1980, vols. 2 and 3* (Toronto: Queen's Printer, 1980) (the Williams Commission Report) indicated that the legislation must take into account situations where there is an undeniably compelling interest in access, situations where there should be a balancing of privacy interests, and situations which would generally be regarded as particularly sensitive in which case the information should be made the subject of a presumption of confidentiality. In this regard, the Williams Commission Report recommended that "[a]s the personal information subject to the request becomes more sensitive in nature ... the effect of the proposed exemption is to tip the scale in favour of non-disclosure".[Order MO-1254]

In my view, the appellant has not provided me with sufficient evidence to establish that the public interest which exists in the disclosure of the personal information in the record is such as to clearly outweigh the purpose of the personal privacy exemption in section 14. I note that the information in question is subject to the presumption in section 14(3)(c) as it relates to the eligibility of individuals to public assistance and that these individuals are among the most vulnerable in our society. In my view, I have not been provided with the kind of cogent evidence which would tip the balance in favour of the disclosure of this information. I find that the public interest which exists in this information does not clearly outweigh the purpose of the section 14(1) exemption in the present circumstances.

I find, therefore, that section 16 has no application to the information contained in the record which I have found to be exempt under section 14(1).

## ORDER:

1. I uphold the Region's decision to deny access to the names of those participating agencies which employ or engage as volunteers fewer than five individuals.

2. I order the Region to disclose to the appellant the names of the participating agencies who employ or engage as volunteers more than five individuals by providing him with a list of names by **May 17, 2001** but not before **May 11, 2001**.

3. I reserve the right to require the Region to provide me with a copy of the information provided to the appellant.

Original Signed By: April 10, 2001
Donald Hale
Adjudicator