



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

ORDER MO-1423

Appeal MA_000271_1

Amherstburg Police Services Board



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NATURE OF THE APPEAL:

This is an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a decision of the Amherstburg Police Services Board (the Police). The requester, now the appellant, originally made a five-part request under the *Act* to the Town of Amherstburg (the Town). Part 5 of the request (the request) was for information relating to employment severance payments made to two former Chiefs of Police of the Town. In particular, the appellant asked for:

Access to view all reports, recommendations and documentation by the town treasurer and town auditor pertaining to the buy-outs for the [two] former police chiefs and the criteria for the Municipal Restructuring Fund. This would include all documentation to town council regarding same.

The Town provided the appellant with a copy of the criteria for the Municipal Restructuring Fund, but stated that:

Access cannot be provided to view reports, recommendations and documentation by the Town Treasurer and Town Auditor as the records do not exist.

The appellant appealed the Town's decision on the basis that further records responsive to Part 5 of the request should exist, and this office opened appeal number MA-000062-1. In Order MO-1308 dated June 8, 2000, Acting Adjudicator Marianne Miller granted the appeal and, among other things, ordered the Town to conduct a further search for records. Item 1 of the Order states as follows:

The Town [is] to conduct a further search for records which may be responsive to the appellant's request such as, but not restricted to, the original employment contract, any communication to or from the Police Services Board and any internal communication and notations and calculations associated with the pay out.

As a result of that Order, appeal number MA-000062-1 was closed.

Pursuant to the Order and section 18(2) of the *Act*, the Town forwarded Part 5 of the request to the Police. The Police advised the appellant that they would grant access to some of the requested records, but were withholding other records on the basis of the exemption in section 14(1) (personal privacy), as well as on the basis of section 52(3) (employment or labour relations information) of the *Act*. The appellant appealed that decision of the Police, and appeal number MA-000271-1 was opened. This order disposes of the issues in appeal number MA-000271-1.

During the mediation stage of the appeal, the Police indicated that they were denying access based on the presumptions of an unjustified invasion of personal privacy under section 14 of the *Act*, and also on section 12 (solicitor-client privilege). The Police also identified a two page document that was not responsive to the request. The Police later advised that they were no

longer relying on section 52(3) (employment or labour relations information) of the *Act* to withhold records.

The appellant subsequently took the position that more records should exist, in addition to those that the Police had identified as being responsive to the request.

After the Report of Mediator was issued, the Police sent the appellant a number of records to which access had previously been denied (pages 18(a) through 29). I then sent the Police a Notice of Inquiry setting out the issues in the appeal. In their submissions, the Police have agreed to release additional records (pages 16-17, 30-33). All of those records are therefore no longer at issue in this appeal. I subsequently sent the appellant a Notice of inquiry and received submissions back.

RECORDS:

As a result of the proceedings to date described above, the only record at issue in this appeal is a Memorandum of Agreement dated December 21, 1997 between the Police and the Amherstburg Police Association (the Requested Agreement) which is reproduced on pages 12 and 13. The Requested Agreement established a new classification of police officer, that of senior constable.

DISCUSSION:

Background:

Among the records provided to the appellant by the Police was a prior Memorandum of Agreement dated December 19, 1997 between a former Police Chief (the Chief) and the Police (the Disclosed Agreement). The Disclosed Agreement set out the salary, benefits and other compensation that formed the buy-out package payable to the Chief. The Disclosed Agreement included the following provisions:

Salary: The Chief of Police shall be paid at the rate of 20% [twenty percent] above the next closest rank within the Amherstburg Police Service.

New Article: Disbandment/Restructuring

The Amherstburg Police Services Board shall agree to pay to the Chief of Police in lieu of restructuring and/or disbandment or loss of position for Chief of Police Wilfred Fryer the following compensational package

Minimum of 4 weeks pay, including any and all benefits pensionable or otherwise, for every year of service inclusive of the year in which the Chief leaves the service under the aforementioned conditions.

All benefits applicable to the existing contractual language share[d] by the Chief of Police and the Amherstburg Police Association, inclusive of all future negotiated benefits through contractual negotiations.

Responsiveness of the Records:

In their submissions in this appeal, the Police state:

These records [that is, the Requested Agreement] are considered “non-responsive”; they have no impact on the contract of the Chief’s [sic] of Police. This is an agreement between the Police Services Board and the Amherstburg Police Association designating a new rank of senior constable dated December 21, 1997.

The appellant submits that the records at issue are responsive to her request on the basis of:

1. the wording in item 1 of Order MO-1308, and
2. the wording of the Disclosed Agreement.

With respect to the first submission, the Order relates only to “records which may be responsive to the appellant’s request.” In this appeal, the appellant’s request is restricted to information “pertaining to the buy-outs for the [two] former police chiefs.” The issue in this appeal therefore is whether the Requested Agreement would fall within the scope of the appellant’s request.

The concepts of “responsiveness” and “relevancy” were dealt with by former Adjudicator Anita Fineberg in Order P-880. In that order, Adjudicator Fineberg stated:

In my view, the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request. It is an integral part of any decision by a head. The request itself sets out the boundaries of relevancy and circumscribes the records which will ultimately be identified as responsive to the request. I am of the view that, in the context of freedom of information legislation, “relevancy” must mean “responsiveness.” That is, by asking whether information is “relevant” to a request, one is really asking whether it is “responsive” to a request. While it is admittedly difficult to provide a precise definition of “relevancy” or “responsiveness,” I believe that the term describes anything that is reasonably related to the request.

Under Adjudicator Fineberg’s statement of the relevant principles, the issue in this appeal is whether the Requested Agreement is “reasonably related” to the appellant’s request, or, to be more precise, to the buy-outs of the former chiefs of police. This leads to a consideration of the appellant’s second submission, concerning the wording of the Disclosed Agreement.

The Disclosed Agreement provides for a “buy-out” package with two components – one based on salary and another relating to benefits. The salary-related payment to the Chief provides for a

“minimum of 4 weeks pay ... for every year of service.” Under the Disclosed Agreement, the Chief’s salary is twenty percent more than the salary of the next closest rank within the Amherstburg Police Service (the Police Service). Therefore, in order to calculate the salary portion of the buy-out package, one must know the amount of the salary of the next closest rank within the Police Service.

The Police submit that:

At the time of the Chief’s departure the next highest rank was Sergeant. Although there may have been a classification for the rank of Staff Sergeant in the uniform collective agreement this position was not filled at the time.

The Requested Agreement established the new rank within the Police Service of Senior Constable. The Police indicate that:

... the rank of Sr. Constable is an officer who has been a police officer for a minimum of 10 years. This does not have any impact on the rank of Chief of Police.

The Disclosed Agreement provides for the buy-out payments made to a former Chief of Police. Based on the wording of the Disclosed Agreement and the submissions of the Police, further information might be responsive to the appellant’s request if it related to the police rank of Sergeant or Staff Sergeant. However, the Requested Agreement related only to the rank of Senior Constable. Furthermore, there is nothing in the record to indicate that the Requested Agreement is relevant to the buy-out payments made to the other former Chief of Police.

With regard to the benefits-related component of the buy-out, the language in the Disclosed Agreement is broad enough, in my view, to include benefits negotiated exclusively between the Chief of Police and the Police, as well as benefits negotiated between the Police and the Police Association that related to police officers generally, or at least to ranks of the police that included the chief. There is nothing in the record before me that indicates that the Requested Agreement pertains, directly or indirectly, in any way, to benefits payable to the Chief of Police.

Accordingly, based on the record before me, I find that the Requested Agreement is not “relevant” or “responsive” or “reasonably related” to the appellant’s request for information concerning the buy-outs of the former chiefs of police.

ORDER:

I uphold the decision of the Police to withhold access to the Requested Agreement.

Original signed by: _____
Dawn Maruno
Adjudicator

April 23, 2001