



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1469**

**Appeal MA-010062-1**

**Municipality of Red Lake**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

**NATURE OF THE APPEAL:**

The Municipality of Red Lake (the Municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of the “separation package” provided to a former employee of the Township of Golden, which is now a part of the Municipality.

The Municipality located the responsive document and denied access to it, in its entirety, claiming that its disclosure would result in an unjustified invasion of the former employee’s privacy and that the record is exempt under section 14(1) of the *Act*. The Municipality relies other enumerated financial information.

The appellant appealed the Municipality’s decision. During the mediation of the appeal, the appellant agreed to limit the scope of her appeal to certain information contained in paragraph two of the record which is responsive to the request. Also during mediation, the Municipality suggested that the request was “frivolous and vexatious” within the meaning of section 20.1(1) of the *Act*. The former employee, the affected person, was also contacted and he declined to consent to the disclosure of the information requested. Further mediation of the appeal was not possible and it proceeded to the Inquiry stage of the process.

I decided to seek the representations of the Municipality and the affected person initially. Having received submissions from both of these parties, I shared the representations of the City with the appellant, in their entirety. I decided not to share the affected person’s submissions with the appellant due to concerns which I had about confidentiality, however. The appellant also made representations in response to the Notice of Inquiry provided to her.

**RECORDS:**

The information at issue relates to the method of calculation of a severance payment to the affected person which is contained in paragraph two of a document entitled Memorandum of Agreement and Release dated May 22, 1998.

**DISCUSSION:**

**FRIVOLOUS AND VEXATIOUS**

During the mediation stage of the appeal, the Municipality first indicated that it intended to rely on the “frivolous and vexatious” provisions in the *Act* in order to justify its decision to deny access to the responsive records. These provisions are included at section 4(1)(b) of the *Act* and Section 5.1 of Regulation 823 made under the *Act* and state the following:

Section 4(1)(b) of the *Act* reads:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

. . . . .

the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

Section 5.1 of Regulation 823 made under the *Act* specifies that:

A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

- (a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or
- (b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

The Municipality has not made any specific submissions on the application of section 5.1(a) to the present circumstances beyond its assertion that the request is “frivolous and vexatious”. For example, the Municipality has not provided me with any evidence to substantiate that the request is part of a pattern of conduct that amounts to an abuse of process or that the request would interfere with the operations of the institution. I am not aware that any other requests have been made to the Municipality by the appellant which would give rise to a finding of an abusive or interfering pattern of conduct, as contemplated by section 5.1(a) of the Regulation.

In support of its argument that the request is “frivolous and vexatious” within the meaning of section 5.1(b) of the Regulation, the Municipality submits that any use which the appellant may make of the requested information would only serve to embarrass the affected person. Similarly, the affected person suggests that the appellant’s request is simply an attempt to acquire this information in order to embarrass the elected officials of the Municipality.

The Municipality also infers that the appellant has some personal interest in the information contained in the record due to her husband’s past employment by one of its predecessor municipalities. Again, as was the case with the arguments put forward with respect to section 5.1(a), I find that I have not been provided with sufficient evidence to demonstrate that the appellant’s request was made in bad faith or for a purpose other than to obtain access, under section 5.1(b) of the Regulation. The fact that the appellant’s husband may have once been employed by the Municipality’s predecessor does not, in my view, demonstrate that the request was made in bad faith or for a purpose other than to obtain access.

In conclusion, I find that the “frivolous and vexatious” provisions in the *Act* have no application to the appellant’s request. I will now address the application of the section 14(1) exemption to the information contained in the subject record.

## **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, information relating to the employment history of an individual, or information relating to financial transactions in which the individual has been involved.

The Municipality submits that the Memorandum of Agreement and Release contains the personal information of the affected person, as it describes his "finances" which would "result in an invasion of personal privacy". The affected person also submits that the record contains information which qualifies as his "personal information" within the meaning of section 2(1).

I find that the Memorandum which forms the record at issue in this appeal contains the personal information of the affected person. It includes his name and information concerning the calculation of a lump sum to be paid to him by the transition board on behalf of the municipality where he worked prior to the termination of his employment. This information qualifies as his personal information as that term is defined in sections 2(1)(b) and (h).

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).

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.

### **Application of the Presumptions in Section 14(3)**

While the Municipality has not explicitly claimed the application of the presumption in section 14(3)(f), it characterizes the information contained in the record to be about the affected person's "finances". Section 14(3)(f) states:

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; [my emphasis]

In Order MO-1184, Assistant Commissioner Tom Mitchinson reviewed a number of previous orders which address the application of the section 14(3)(f) presumption to one-time payments to employees of institutions made in accordance with the terms of retirement agreements or in settlement of other claims. He found that:

Previous orders of this office have dealt with monetary entitlements relating to retirement agreements. These orders 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" cannot 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). In Order M -1160, I found that section 14(3)(f) also did not apply to the one-time amount agreed to in the settlement of an individual's human rights complaint against a municipality. Similarly, I find that in the present case, with respect to the one-time amounts agreed to in the settlement of the named individual's claim of wrongful dismissal against the City, the presumption in section 14(3)(f) does not apply. This would include not only the total amount found in both Schedules A and C, but also the breakdown of this amount found in Schedule A for legal costs, out-placement counselling etc.

In the present appeal, the payment referred to in the record at issue relates to a one-time entitlement to be paid as a result of the termination of the affected person's employment. In accordance with the reasoning expressed in Order MO-1184, I find that the presumption in section 14(3)(f) has no application in the present case.

### **Application of the Considerations in Section 14(2)**

While none of the parties to this appeal have made any direct reference to any of the factors listed in section 14(2) or to any other unlisted considerations previously applied by this office, I am able to infer that the parties take the position that some factors favouring disclosure and privacy protection are present.

Much of the representations of the affected person focus on his perception of the reasons why the appellant made the request which has given rise to this appeal. As I have found above that I have not been provided with any evidence to indicate that the request was made in bad faith or for a reason other than to obtain access to the information requested, I find that this is not a relevant consideration favouring the non-disclosure of the information. I note that the Agreement which forms the record at issue in this appeal contains a clause requiring that the affected person not divulge its terms to anyone, save and except his own legal and financial advisors. I find that this is a factor favouring privacy protection, though not a significant one.

The Municipality reiterates that the Agreement includes a confidentiality provision prohibiting the affected person from publicizing the terms of the Agreement. It also indicates that since the time of the execution of the Agreement, there has not been any public interest in its contents and the Municipality has not received any other requests under the *Act* for access to this document. The affected person also submits that there has not been any perceived public outcry about the circumstances surrounding the Agreement at issue.

The appellant's representations are focussed on what she perceives to be the shortcomings of the Municipality's financial acumen, including what she feels was an improvident agreement between it and the affected person. In my view, the appellant is implicitly relying on the consideration listed in section 14(2)(a), which 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;

It has been well-established in a number of previous decisions that the contents of agreements entered into between institutions and senior employees represent the sort of records for which a high degree of public scrutiny is warranted (Order M-173, M-953). Based on this, and the appellant's desire to scrutinize how the Municipality compensated a senior management employee upon his termination, I find that section 14(2)(a) is a relevant consideration in the circumstances of the present appeal. I further find that this is a significant factor favouring the disclosure of the information contained in the record.

Previous orders issued by the Commissioner's office have identified another circumstance which should be considered in balancing access and privacy interests under section 14(2). This consideration is that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution". (Orders 99, P-237, M-129, M-173, P-1348 and M-953).

The severance agreement which forms the record at issue involved a significant expenditure of public funds on behalf of a senior employee. Further, the climate of spending restraints in which these agreements were negotiated placed an obligation on the Municipality's officials to ensure

that tax dollars were spent wisely. On this basis, I conclude that the public confidence consideration also applies in the present circumstances.

While the information at issue qualifies as the personal information of the affected person, I find that, on balance, the considerations favouring disclosure, particularly section 14(2)(a), outweigh any factors weighing in favour of the non-disclosure of this information. Accordingly, I find that the disclosure of information which relates only to the method of calculation of the severance payment to the affected person would not constitute an unjustified invasion of his personal privacy. This information, contained in paragraph two of the Agreement, is not exempt under section 14(1) and it should be disclosed.

**ORDER:**

1. I order the Municipality to disclose to the appellant the information contained in paragraph two of the Agreement by **November 9, 2001**, but not before **November 5, 2001**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the Municipality to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

October 5, 2001 \_\_\_\_\_