



Information and Privacy
Commissioner/Ontario

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

ORDER MO-1833

Appeal MA-040079-1

Town of Oakville



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NATURE OF THE APPEAL:

The Town of Oakville (the Town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to “the individual amounts of all severances paid or agreed to be paid in the year 2003. Plus total paid.” In response, the Town provided the requester with the figure representing the total amount paid for severances in 2003. The Town refused to provide a breakdown of the seven amounts which comprised this total on the basis that this information is exempt from disclosure under section 14(1) of the *Act*, with reference to the considerations in sections 14(2)(e) (unfair exposure to pecuniary or other harm), (f) (the information is highly sensitive), (h) (the information was provided in confidence) and (i) (the disclosure of the information may unfairly damage an individual’s reputation), as well as the presumptions in sections 14(3)(d) (the information relates to employment history), (f) (the information describes an individual’s finances etc.) and (g) (the information consists of personnel recommendations).

The requester, now the appellant, appealed the Town’s decision. During the mediation stage of the appeal, the appellant confirmed that she was not seeking access to the names or job titles of the individuals listed on the record, but rather, only the dollar amounts of the seven severance payments.

Further mediation was not possible and the matter was moved into the adjudication stage of the process. I sought and received the representations of the Town, initially. Because the Town’s representations were confidential in nature, I provided the appellant with a summary of their contents, along with a Notice of Inquiry. The appellant also made representations and raised the possible application of the “public interests override” provision in section 16. I shared the appellant’s submissions with the Town, which made additional reply representations.

RECORDS:

The sole record at issue consists of a listing of the dollar amounts of seven severance payments made by the Town in the year 2003.

DISCUSSION:

PERSONAL INFORMATION

The section 14 personal privacy exemption applies only to information that qualifies as “personal information”. That term is defined in section 2(1) as follows:

“personal information” means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history

of the individual or information relating to financial transactions in which the individual has been involved,

- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except where they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

Does the record contain “personal information” about an identifiable individual?

To qualify as personal information, it must be reasonable to expect that an individual may be identified from the information [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

The Town submits that:

. . . there were a limited number of individuals who left the Town's employ in 2003. Out of this small number, only one individual's former salary would merit a severance of such an amount in comparison to the other severances therefore making it quite obvious for anyone to identify who the individual was.

Therefore, the Town argues that the severance information relating to that individual qualifies as their personal information and that the disclosure of this information would result in an unjustified invasion of the individual's personal privacy.

The appellant states that:

To qualify as personal information, it must be reasonable to expect that an individual may be identified from the information.

The seven people who received severance payment from the Town are a small percentage of the employees who left the Town in 2003. Only the Town knows the exact number and who they are, and the Town does not make this information public. Therefore, it is impossible for a citizen of Oakville to determine who left the Town, and of those seven which one received which amount. The Town's argument that a person may be identified by the size of the severance does not stand up either because the largest severance does not necessarily go to the highest paid employee. This was seen in the City of London in 2002/2003 when [the] Deputy City Manager was terminated for a relatively small amount of money considering his salary per year and length of service with the City. History can show that severance amounts are affected by circumstances behind the termination, not just wage and service time. So it would be impossible for anyone without inside knowledge to determine who received which amount.

The appellant relies on my decision in Order P-1389 in which I determined that:

In my view, the Ministry's arguments rely on the unproven possibility that there **may** exist a belief or knowledge of the type described. I have not been provided with any substantive evidence that information exists outside the Ministry which could be used to connect the dollar amounts to specific doctors. The scenario described by the Ministry is, in my view, too hypothetical and remote to persuade me that individual practitioners could actually be identified from the dollar amounts contained in the record. I find, therefore, that the information at issue is not about an **identifiable** individual and does not, therefore, meet the definition of "personal information" contained in section 2(1) of the *Act* [original emphasis].

The appellant also refers to the decision in Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.), in which Adjudicator Irena Pascoe found that:

With respect to the current appeal, although the Ministry refers to a number of previous orders and correctly identifies the conclusions reached in those cases, the Ministry does not provide any evidence applying these general principles to the circumstances of this appeal. For example, although the Ministry refers to Order P-316 and states that "the reasonable expectation of identification is based on a combination of information sought and otherwise available", it does not provide any evidence as to what the "otherwise available" information might be. Similarly, in referring to Orders P-651, P-1208 and 27, the Ministry does not provide any specific information as to how it would be possible to identify the affected person given the circumstances of this particular case.

Although the Ministry takes the position that the record at issue discloses a “medical practice profile” that can identify the affected person, the Ministry does not provide any further information or explanations in this regard. I have carefully reviewed the record at issue. Although it does contain a brief description of each of the top ten medical services that were rendered, these descriptions are derived from the OHIP Schedule of Benefits and are very general in nature. Even though the record contains information relating to the top ten services that were rendered, as well as the number of times these services were rendered, based on the material before me, I am not persuaded that the affected person can be identified from this information.

The appellant concludes by stating that:

. . . it is not reasonable to expect that an individual may be identified from the information, therefore the information is not personal information and the disclosure of that information would not result in an unjustified invasion of that person’s personal privacy. Section 21 [in fact section 14(1) of the municipal *Act*] has no application to Appeal MA-040079-1.

Analysis and Findings

In my view, the information at issue does not, on its face, qualify as “personal information” for the purposes of the *Act* as it does not relate to “an identifiable individual”. The record consists of a list of dollar amounts only. Clearly, standing alone, this information does not relate to anyone in particular.

I adopt the reasoning set out in the orders referred to above. I conclude from those decisions that in order for me to make a finding that the information in the record qualifies as “personal information”, the Town must establish that the information can be linked to identifiable individuals. In my view, the Town has not provided me with sufficient evidence to establish that the information in the record can be identified as relating to any specific individual, either through common knowledge or as a result of some special knowledge of the Town’s activities on the part of the appellant. The Town has not argued that the appellant would be able to link the listed dollar amounts (or any one of them) to one of the specific individuals as a result of her understanding of the Town’s activities in 2003. I find that, without some particular knowledge of the comings and goings of the Town’s employees, it would be impossible for anyone outside the Town’s administration to make such a connection.

Because the invasion of privacy exemption in section 14(1) can only apply to information that qualifies as “personal information” under section 2(1), I find that the requested list of dollar amounts is not exempt from disclosure under that section. As no other exemptions have been claimed and no mandatory exemptions apply to it, I will order that the list of dollar values be disclosed to the appellant.

Because I have found that section 14(1) has no application to the information, it is not necessary for me to address the possible application of the “public interest override” in section 16 to it.

ORDER:

1. I order the Town to disclose to the appellant the dollar amounts listed on the record at issue by providing her with a copy by **October 21, 2004** but not before **October 15, 2004**.
2. In order to verify compliance with Order Provision 1, I reserve the right to require the Town to provide me with a copy of the record which is disclosed to the appellant.

September 15, 2004

Donald Hale
Adjudicator