



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1834

Appeal MA-040005-1

City of London



Tribunal Service Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téloc: 416-325-9188
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The requester made a request to the City of London (the City) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the names of the poll clerks and deputy returning officers in the last municipal election. The requester indicated that he requires this information organized by ward.

The City issued a decision to the requester denying access to the records, relying on the exemption at section 14 (invasion of privacy).

The requester (now the appellant) appealed the City's decision.

Mediation did not resolve this appeal, and the file was transferred to adjudication. I sent a Notice of Inquiry to the City, outlining the facts and issues and inviting the City to make written representations. The City submitted representations in response to the Notice. After reviewing the City's representations, I decided that it was not necessary to seek representations from the appellant.

In this appeal I must decide whether the records qualify for the personal privacy exemption at section 14.

RECORDS:

The records before me are lists of the names and addresses of the poll clerks and deputy returning officers, organized by ward. The appellant is not seeking access to the addresses, however, but only the names. Accordingly, the records at issue are lists of the names of the poll clerks and deputy returning officers, organized by ward.

BRIEF CONCLUSION:

The records do not contain personal information and thus do not qualify for exemption under section 14. The City must therefore disclose them.

DISCUSSION:

DO THE RECORDS CONTAIN PERSONAL INFORMATION?

The first issue I must decide is whether the records contain personal information, and if so, whose personal information it is.

General principles

Section 2(1) of the *Act* defines personal information as "recorded information about an identifiable individual," including the individual's name if 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 (section 2(1)(h)).

To qualify as personal information, the information at issue must be about an individual in a personal capacity. Previous orders of this office have established that as a general rule, information associated with an individual in a professional, official or business capacity is not “about” the individual (Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225). In addition, previous decisions of this office have found that the names of individuals acting in an official capacity are not personal information, including, for example, the names of: officers of the Council on Mind Abuse (Order 80); publicly elected officials and community representatives and leaders (Order P-978); and school council chairs (Privacy Complaint Report PC-010018-1).

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if it reveals something of a personal nature about the individual (Orders P-1409, R-980015, PO-2225).

The City’s representations

The City submits:

... the information requested by the [appellant] relates to information collected as a result of a municipal election in 2003. Municipal Elections are held in accordance with the *Municipal Elections Act, 1996*, S.O. 1996, c. 32 [the *MEA*].

...

... the City proceeded with caution in this matter as the information in question relates to individuals who are private citizens, and are not employees of the City.

...

The information in question is personal information as defined in section 2(1), and relates to the individuals appointed as Deputy Returning Officers and poll clerks. Under section 2(1), “personal information” is defined to include (h) “the individual’s name if 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 person’s name is associated with the fact that: (a) the individual was appointed as a Deputy Returning Officer (DRO) or as a poll clerk; and (b) the individual received a sum of money in return for their duties. These individuals are not considered to be employees of the City ..., and therefore the information relates to individuals in a personal capacity.

Further, it would not be difficult to determine the individuals’ address and phone number on the information that is provided. The Clerk appoints over one thousand people to assist with the election duties. Like every other municipality, those who assist are, in most cases residents within that municipality. In many cases the persons who assist with the election duties are normally assigned to a

location close to their home in their ward or poll. Although the [appellant] has only requested names of the poll clerks and DRO's, he has also requested that it be organized by ward. The release of the name will make it very easy to determine the phone number and address of the individual. A street index of the City which is organized by ward was generated during the election and was widely distributed. Therefore by releasing the name of the poll clerks and DRO's and knowing that the majority of the individuals live within the City and that the individuals usually are assigned to a location very close to their address the [appellant] may then identify the address and telephone number of the individual. It must be noted that the City of London has over 500 polls within the City which means that there are a small number of persons (300-500) in each poll. This number compared to some other municipalities is quite small.

...

... the information is about an individual in a personal capacity, and is not about an individual in a professional or business capacity. It might be argued that the information is about an individual in an official capacity, since that individual was appointed by the Clerk under the authority of the [MEA].

...

... In this instance, the information would reveal the fact that the person was appointed as a DRO or poll clerk, and the amount of money paid to the individual as a DRO or poll clerk, which may constitute an unjustified invasion of personal privacy.

...

... the DRO's and poll clerks are not employees of the City of London for the reasons that follow. Municipal Elections are held pursuant to the [MEA]. Section 15(1) of the Act states "When it is necessary to conduct an election, the **clerk** shall appoint a deputy returning officer for each voting place established under section 45 and may appoint any other election officials for the election and for any recount that the clerk considers are required." Therefore it is the Clerk that appoints DRO's and poll clerks, and not the Corporation of the City of London. In terms of payment of the DRO's and poll clerks, section 7(1) of the [MEA] states "Unless an Act specifically provides otherwise, the **costs incurred by the clerk** of a local municipality in conducting an election shall be paid by the local municipality". Therefore, in paying the DRO's, the Clerk is incurring the costs, and the Corporation of the City of London is paying the costs the Clerk incurred. In *Meunier v. Canada (Minister of National Revenue – M.N.R.)*, [2001] T.C.J. No. 723 (Tax Court of Canada), it was held that 18 hours worked on election day were properly excluded from insurable employment because the worker did not hold regular employment with the payer and held the employment for less than 25

days. Further in *Lefebvre v. Canada (Minister of National Revenue – M.N.R.)*, [2001] T.C.J. No. 433 (Tax Court of Canada) it was held that Lefebvre, who had rendered services as a secretary for a board of revisors during an election, did not hold insurable employment on the basis that: there was no employer-employee relationship between her and the payer; she was not regularly employed by the payer; she was not under a contract of employment; and she worked for less than 25 days. It appears from the case law then that election workers are not considered to be employees.

It should be noted that the positions of poll clerks and DRO's are such that they receive 2 hours of training regarding their responsibilities in accordance with the [MEA] and they perform their duties on Election Day or on an advanced poll day. In total, they would perform their function for 10 hours. The fee for a poll clerk/DRO does not vary and it is a standard amount throughout the City which is advertised in the media.

...

... the Clerk appoints the individual under authority of a statute (and in fact must appoint DROs). The City then pays the costs incurred by the Clerk in appointing those individuals. ...

...

... the poll clerks and DRO's of a municipal election are not considered to be "employees" of the Corporation and they do not receive a payroll cheque or T4A for their assistance during the election process [City's emphasis].

The City submits that "under the MEA, there is no requirement for payment to DROs and polling clerks."

The City also makes other submissions relating primarily to the MEA, but they do not bear upon the question of whether the information at issue meets the definition of "personal information" under the Act.

Analysis and findings

I find that the names of the deputy returning officers and poll clerks do not qualify as "personal information" because these individuals were acting in an official capacity.

I have reviewed the MEA, which governs the appointment of deputy returning officers and poll clerks and these individuals' responsibilities in connection with municipal elections. Section 11(1) of the MEA provides that the clerk of a local municipality (not to be confused with a poll clerk) is responsible for conducting elections within that municipality, subject to certain exceptions. Section 11(2) specifies that the clerk's responsibilities include preparing for

elections, preparing for and conducting recounts, and maintaining peace and order in connection with elections.

As the City notes in its representations, the clerk appoints deputy returning officers and poll clerks under section 15 of the *MEA*. It is helpful to reproduce section 15 in its entirety here:

- (1) When it is necessary to conduct an election, the clerk shall appoint a deputy returning officer for each voting place established under section 45 and may appoint any other election officials for the election and for any recount that the clerk considers are required.
- (2) The clerk may delegate to a deputy returning officer or other election official any of the clerk's powers and duties in relation to an election, as he or she considers necessary.
- (3) The clerk may continue to exercise the delegated powers and duties, despite the delegation.
- (4) The delegation shall be in writing.

Pursuant to section 15(1), the appointment of deputy returning officers is mandatory and the appointment of "other election officials" (including poll clerks) is discretionary. Significantly, section 15(2) authorizes the clerk to delegate "any" of his or her powers and duties to deputy returning officers and other election officials.

In addition to the powers and duties that the clerk may delegate, the *MEA* specifically assigns certain responsibilities to the deputy returning officer, including: on advance voting days, sealing the ballot box and delivering it to the clerk, together with a list of each person who voted (section 43(5)); attending on electors residing in institutions or retirement homes to allow them to vote (section 45(8)); attending on electors with disabilities to allow them to vote (section 45(9)); giving ballots and recording objections on the voters' list (section 52(1)); amending the voters' list (section 52(2)); depositing ballots in the ballot box (section 52(4)); counting votes (section 54(1)); rejecting ballots and votes that do not comply with the prescribed rules (section 54(2)); deciding objections (section 54(4)); preparing a statement of the election results (section 55(1)(a)); and sealing the ballot box and delivering it to the clerk, together with the statement of results (sections 55(1)(c) and (d)).

The respective roles of the clerk, deputy returning officers and other election officials (including poll clerks), as outlined above, are not personal in nature. On the contrary, these individuals perform a key function in the public process of electing municipal governments. Together they serve to organize, administer and oversee these elections.

The records at issue are simply lists of the names of the deputy returning officers and poll clerks, organized by ward. These individuals are appointed to perform public duties pursuant to legislation governing municipal elections. In my view, the definition of "personal information"

in section 2(1) is not directed at this type of information. Whether and how these individuals are remunerated for their service does not change the fact that they are acting in an official, public capacity in the context of a municipal election. In the circumstances, it is not necessary for me to decide whether the deputy returning officers and poll clerks are “employees.” Because they were acting in an official capacity, their names, as requested, do not qualify as personal information under the *Act*.

As noted above, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if it reveals something of a personal nature about the individual. In this case, the City submits that disclosing the names of the deputy returning officers and poll clerks, organized by ward, would make it easy to determine their home addresses and telephone numbers, which would qualify as “personal information” (section 2(1)(d)). The City also submits that these individuals were paid a standard fee and that disclosing their names would reveal that they received this amount. I accept that it may be possible to combine some (though certainly not all) of the names with other information outside the records at issue in an attempt to determine the individuals’ home addresses or telephone numbers. The potential to associate names with addresses or telephone numbers in this manner exists with many public officials who represent a particular district, however, and it does not bring the names themselves within the definition of “personal information.” Similarly, the fact that all deputy returning officers and poll clerks received a standard fee that may be publicly known (but does not appear in the records) does not make their names “personal information.”

I therefore find that the names of the deputy returning officers and poll clerks do not qualify as personal information. Because this information does not constitute personal information, it cannot be exempt under section 14, and I will order the City to disclose it.

ORDER:

1. I order the City to disclose the records at issue (the lists of the names of the poll clerks and deputy returning officers, organized by ward) to the appellant by **October 14, 2004**.
2. In order to verify compliance with the terms of Provision 1, I reserve the right to require the City to provide me with a copy of the records that are disclosed to the appellant.

Original signed by: _____
Shirley Senoff
Adjudicator

September 22, 2004 _____