



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1842

Appeal MA-030347-1

Town of Halton Hills



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NATURE OF THE APPEAL:

The requester made a request to the Town of Halton Hills (the Town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of a former senior officer's employment contract with the Town.

The Town notified the senior officer of the request and solicited his views on whether to disclose the record. The senior officer objected to disclosure. The Town subsequently issued a decision to the requester, granting partial access to the record. The Town denied access to the remaining information, relying on the exemption at section 14 (invasion of privacy).

The requester (now the appellant) appealed the Town's decision to deny access.

Mediation did not resolve this appeal, and the file was transferred to adjudication. I sent a Notice of Inquiry to the Town and the senior officer, initially, outlining the facts and issues and inviting them to make written representations. The Town submitted representations in response to the Notice. I then sent a Notice of Inquiry to the appellant, together with a copy of the non-confidential portions of the Town's representations. The appellant, in turn, provided brief representations. The appellant had also provided me with a letter earlier in the inquiry, which I will treat as forming part of his representations for the purpose of this appeal.

RECORD:

The record is an employment agreement between the senior officer and the Town. The undisclosed portions (clauses 5 through 9) remain at issue.

BRIEF CONCLUSION:

Some of the information at issue is exempt from disclosure under section 14(1) of the *Act*, while the remaining information is not exempt and must be disclosed.

DISCUSSION:

DOES THE RECORD CONTAIN PERSONAL INFORMATION?

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

Section 2(1) of the *Act* defines personal information as "recorded information about an identifiable individual," including certain types of information listed in paragraphs (a) through (h). This list is not exhaustive, and information that does not fall within paragraphs (a) through (h) may still qualify as personal information (Order 11).

The Town submits that the record contain the senior officer's personal information.

The appellant does not specifically make representations on this issue.

The record outlines the terms of the senior officer's appointment by the Town. The information remaining at issue in the record includes the senior officer's salary and benefits, and the obligations of the senior officer and the Town under the agreement. This information is "about" the senior officer and is personal in nature. As such, it qualifies as the senior officer's personal information (see, for example, Orders 61, MO-1272, MO-1358, MO-1796).

The record does not contain the personal information of any other individuals.

INVASION OF PRIVACY

General principles

Section 14(1) is a mandatory exemption protecting information whose disclosure constitutes an unjustified invasion of another individual's privacy. It reads, in part:

- (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
 - (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

- (2) 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,
 - (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
 - (f) the personal information is highly sensitive;
 - (h) the personal information has been supplied by the individual to whom the information relates in confidence;
 - ...

- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
 - (d) relates to employment or educational history;
 - (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

- (4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; ...

Where a requester seeks access to another individual's personal information, section 14(1) prohibits an institution (here, the Town) from disclosing this information unless any of the exceptions at sections 14(1)(a) through (f) apply. If any of these exceptions apply, the information cannot be exempt from disclosure under section 14(1). Section 14(1)(f), which is the only exception that might apply in this case, permits disclosure only where it "does not constitute an unjustified invasion of personal privacy."

Sections 14(2) through (4) of the *Act* provide guidance in determining whether disclosure would result in an unjustified invasion of an individual's personal privacy. Section 14(2) provides some criteria for determining whether the personal privacy exemption applies. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has ruled that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2). A section 14(3) presumption can be overcome, however, if the personal information at issue is caught by section 14(4) or if the "compelling public interest" override at section 16 applies (*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767).

If none of the presumptions in section 14(3) applies, the institution must consider the factors listed in section 14(2), as well as all other relevant circumstances.

Section 14(4)(a): exception for certain employment information

Under section 14(4)(a), the "classification, salary range and benefits, or employment responsibilities" of an individual do not constitute an unjustified invasion of personal privacy.

This office has interpreted "benefits" expansively to mean entitlements (in addition to base salary) that an officer or employee receives as a result of being employed by an institution (Order M-23). This office has also held that "benefits" include all the entitlements provided as part of employment or upon conclusion of employment (Order P-1212) and incentives and assistance given as inducements to enter into a contract of employment (Order PO-1885). Examples of "benefits" include insurance-related benefits, sick leave, vacation, leaves of absence, termination allowance, death and pension benefits, and a right to reimbursement from the institution for moving expenses (Order M-23; see also Order MO-1796).

While section 21(4)(a) generally does not apply to entitlements negotiated as part of a retirement or termination package, it does apply to such information if it also specifically forms part of the

employment contract as part of a package of entitlements in return for services (for example, Orders PO-1885 and PO-2050).

In this case, the Town submits that “Paragraphs 5 through 9 [of the record] outline the salary, benefits and entitlements of [the senior officer].” The Town notes that the record contains the senior officer’s exact salary, not a salary range. The Town also provides documentation confirming that the senior officer was a Town employee.

The appellant’s representations do not specifically address section 14(4)(a).

I find that the following information in the record qualifies as “benefits” within the meaning of section 14(4)(a): general information about the senior officer’s remuneration and benefits in clause 5 (except his exact salary and the salary commencement date); his vacation entitlements in clause 6; and his termination allowance in clauses 8(a) and 8(c). Because this information fits within the section 14(4)(a) exception, it is not exempt from disclosure under section 14(1) and I will order the Town to disclose it.

The senior officer’s exact salary and the salary commencement date in clause 5, however, are by definition not “benefits.” Similarly, the information in clauses 7, 8(b) and 9 cannot be characterized as “benefits;” rather, it defines certain obligations of the senior officer and the Town under the agreement. Because section 14(4)(a) does not apply to this information, I will now review whether any of the criteria and presumptions at sections 14(2) and (3) apply to it.

Section 14(3): presumptions of an unjustified invasion of privacy

The Town relies on the presumptions at sections 14(3)(d) (employment or educational history) and 14(3)(f) (finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness).

With respect to section 14(3)(d), the Town submits that the information at issue discloses the senior officer’s “terms of employment” and “previous entitlements” and therefore forms part of his “employment history.” I find that the salary commencement date in clause 5 relates to the senior officer’s employment history, thereby triggering the presumption of an unjustified invasion of his privacy at section 14(3)(d).

With respect to section 14(3)(f), this office has held that disclosing an individual’s exact salary would describe the individual’s income and is thus presumed to constitute an unjustified invasion of personal privacy under that section (for example, Orders 61, M-5, P-183, PO-2050 and MO-1749). Accordingly, I find that the section 14(3)(f) presumption applies to the senior officer’s salary in clause 5.

The section 14(3)(d) and (f) presumptions are not rebutted by section 14(4) or the “public interest override” at section 16, which was not raised in this case. The senior officer’s exact salary and the salary commencement date are therefore exempt under section 14(1), and they must not be disclosed.

The remaining information at issue (clauses 7, 8(b) and 9, which define certain obligations of the Town and the senior officer) does not qualify as “employment history” or “income” within the meaning of sections 14(3)(d) and (f), respectively (see also Order MO-1796).

Section 14(2): criteria for identifying an unjustified invasion of privacy

I will now review whether any of the criteria (either listed or unlisted) in section 14(2) apply to the remaining information at issue (clauses 7, 8(b) and 9). If so, I must determine whether, on balance, they weigh in favour of or against disclosure.

The Town relies on sections 14(2)(f) (highly sensitive) and (h) (supplied in confidence) as factors weighing against disclosure in this case. The appellant implicitly relies on section 14(2)(a) (public scrutiny) as a factor favouring disclosure.

With respect to section 14(2)(a), the Town submits that the senior officer’s objection to disclosing the record outweighs the appellant’s interest in obtaining access to it. The appellant, for his part, submits that the local government should be held accountable for its actions and that taxpayers have a right to know how their money is being spent.

With respect to section 14(2)(f), the Town submits that the senior officer may consider the information at issue to be “highly sensitive.” With respect to section 14(2)(h), the Town submits:

Although the Record does not explicitly contain a confidentiality clause, the negotiation[s] of the terms of employment were conducted by Council in-camera in accordance with the *Municipal Act*, therefore the affected party has an expectation of confidentiality.

I have concluded that on balance, the applicable considerations under section 14(2) weigh against disclosing the information in clauses 7, 8(b) and 9.

I find that section 14(2)(a) applies to the record at issue because the interest in scrutinizing an institution’s activities generally extends to the institution’s employment agreements, including those with senior employees. The specific information at issue in clauses 7, 8(b) and 9, however, does not itself attract significant public scrutiny, and disclosing it would serve the purpose of section 14(2)(a) to only a limited extent. In my view, the information that attracts greater public scrutiny is the information that I have already found must be disclosed because it qualifies as the senior officer’s “benefits” (clauses 6, 8(a) and 8(c) and most of the information in clause 5).

I am not persuaded that the information at issue is “highly sensitive” within the meaning of section 14(2)(f). In order for information to be considered highly sensitive, its disclosure must reasonably be expected to cause excessive personal distress to the individual to whom the information relates (Orders M-1053, PO-1681, PO-1736). In my view, the information at issue does not meet this requirement, and section 14(2)(f) does not apply to it.

I also find that section 14(2)(h) does not apply to the information in clauses 7, 8(b) and 9 because the senior officer did not “supply” this information to the Town. Rather, clauses 7, 8(b) and 9 are terms in the agreement to which both the senior officer and the Town agreed. At the same time, I find that the senior officer would nevertheless have a reasonable expectation that these specific terms (defining certain obligations of the senior officer and the Town) would be kept confidential. The senior officer’s expectation of confidentiality vis-à-vis this information, while not specifically listed in section 14(2), is a relevant and important consideration that carries considerable weight. In the circumstances, it is not necessary for me to decide whether Council discussed the agreement *in camera*.

On balance, the interest in protecting the confidential information in clauses 7, 8(b) and 9 outweighs the interest in subjecting it to public scrutiny. Consequently, I find that disclosing clauses 7, 8(b) and 9 would result in an unjustified invasion of personal privacy under section 14(1), and these clauses are therefore exempt under that section.

ORDER:

1. I order the Town to disclose the information in clauses 5 (except the exact salary and the salary commencement date), 6, 8(a) and 8(c) to the appellant by **November 1, 2004** but not before **October 26, 2004**.
2. I uphold the Town’s decision to deny access to the exact salary and the salary commencement date in clause 5, and the information in clauses 7, 8(b) and 9. For greater certainty, I am providing the Town with a highlighted version of the record with this order, identifying the portions that it must not disclose.
3. In order to verify compliance with this order, I reserve the right to require the Town to provide me with a copy of the record that is disclosed to the appellant.

Shirley Senoff
Adjudicator

September 30, 2004