



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2083-F

Appeal MA-050186-1

City of Toronto



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NATURE OF THE APPEAL:

This is a final order to dispose of the outstanding issues in this appeal, which were noted in Order MO-2024-I.

In a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) submitted to the City of Toronto (the City), the requester asked: “What was the total amount paid [to a named law firm] with respect to [a former named City employee] from May 26, 2003 to Dec. 31, 2004?” The former employee had commenced an action against the City. In its response to this question, the City stated, “Following a review of the requested records, it has been determined that sections 52(3)1 and 52(3)3 apply to the records in their entirety. Access is therefore denied in full to the records that are responsive to this question.” These sections exclude certain labour relations and employment-related records from the scope of the *Act*.

The requester (now the appellant) appealed the City’s decision to this office. After conducting an inquiry, I issued Order MO-2024-I, in which I did not uphold the City’s claim that sections 52(3)1 and 3 applied. I therefore found that the *Act* applied to the requested information. I also found that, based on the wording of the request, only the total amount of legal fees paid to defend the former employee’s action could be considered responsive.

As the City had indicated that, if I found that the *Act* applied, its position would be that the requested information is exempt under section 12 (solicitor-client privilege), Order MO-2024-I stated that I would send a Notice of Inquiry to commence the adjudication of that issue. I also indicated that I would notify the law firm whose fees were involved and invite its representations. Because it appeared that the information might be argued to be the personal information of the former employee, and could therefore be exempt under the mandatory exemption at section 14(1) of the *Act* (personal privacy), I indicated that I would notify the former employee and invite her representations. As well, based on the appellant’s reference to the public’s “right to know”, I indicated that I would invite representations on the possible application of the “public interest override” at section 16.

The order provisions in Order MO-2024-I stated:

1. I do not uphold the City’s determination that the records are excluded from the scope of the *Act* under section 52(3).
2. I remain seized of this appeal to deal with all outstanding issues including the section 12 and 14(1) exemptions under the *Act*, and the possible application of section 16.

I subsequently issued Orders PO-2483 and PO-2484, which addressed the issue of legal fees and how to determine whether they are exempt under the solicitor-client privilege exemption at section 19 of the *Freedom of Information and Protection of Privacy Act* (equivalent to section 12 of the *Act*). I then sent Notices of Inquiry to the City, the law firm and the former employee, enclosing copies of those decisions and inviting their representations on the outstanding issues. The City responded by indicating that it is now prepared to disclose the total amount of legal

fees. The former employee took the position that the information is not exempt under section 12, and is also not personal information (and therefore not exempt under section 14(1)). The law firm indicated that it would not be providing representations.

DISCUSSION:

SOLICITOR-CLIENT PRIVILEGE

Given the City's new decision, it has withdrawn its reliance on this discretionary exemption, which is found in section 12 of the *Act*, with respect to the information at issue (i.e., the total amount of legal fees). Accordingly, I need not consider whether this information is exempt under section 12.

PERSONAL INFORMATION

This 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 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 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].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

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

The former employee submits that the amount of legal fees paid by the City to defend the action she brought against it is not personal information.

I agree. In my view, this information is not "about" the former employee. It is about the City's expenses in defending an action against it. Accordingly, I find that it is not information about an identifiable individual, and is therefore not personal information.

Because only personal information can be exempt under section 14(1) of the *Act*, I find that this exemption does not apply. In the circumstances, it is not necessary for me to consider whether the public interest override at section 16 applies.

ORDER:

1. I order the City to disclose the total amount of legal fees paid to defend the former employee's action by sending this information the appellant no later than **September 19, 2006**.
2. In order to verify compliance with this order, I reserve the right to require a copy of the information disclosed by the City pursuant to Provision 1.

Original Signed By: _____
John Higgins
Senior Adjudicator

_____ August 28, 2006