



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2098**

**Appeal MA-060172-1**

**The Corporation of the Town of Essex**



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## **NATURE OF THE APPEAL:**

The Town of Essex (the Town) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act):

I am requesting from your office the corresponding names of the following numbers; these are the numbers for the volunteers working at the ESSEX FUN FEST in the year of 2003.

Numbers and amounts were as follows.

#1 = #510100----amount of money paid--\$1,047.54

#2 = #510102----amount of money paid--\$ 821.20

#3 = #510104----amount of money paid--\$ 2,975.23

On April 20, 2006, the Town issued a decision denying access to the names of the volunteers. The Town denied access to the records in accordance with section 4(1)(b) of Regulation 823, which states:

An institution is not required to give notice of the collection of personal information to an individual to whom it relates if the head complies with subsection (2) and if, providing notice might result in an unjustifiable invasion of another individual's privacy;

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

During mediation, the Town provided this office with one responsive record which had been withheld from the appellant in its entirety. The Town confirmed that the individuals listed on the responsive record were all full-time employees of the Town of Essex at the time the amounts were paid. During the mediation stage of this appeal, the Town advised the mediator, who advised the appellant, that there were no volunteers paid by the Town in the accounts requested by the appellant, nor in any other account pertaining to the Essex Fun Fest. The Town indicated that it would be pleased to provide the appellant with the salary ranges for the full time employees; however, the appellant informed the Mediator that he wanted access to the individuals' names contained in the record.

The Mediator notified the six individuals whose names appear on the record (the affected persons) to determine whether they would consent to the release of their names to the appellant. All of the affected persons objected to the release of their names. The Town, therefore, agreed to provide the appellant with a severed copy of the responsive record which contains details of the three accounts requested, but does not include any of the individual employees' names. The Town also provided the appellant with a supplementary decision dated July 27, 2006, in which it advised that the names of the employees had been severed pursuant to the personal privacy exemption in section 14(1) of the *Act*. In follow-up discussions with the Mediator, the Town confirmed that it is relying upon the presumption in section 14(3)(f) of the *Act*, on the basis that the information relates to the individual employees' personal financial information.

The appellant subsequently advised the Mediator that he was not satisfied with the information provided by the Town, and wished to pursue access to the individuals' names. As no further mediation was possible, this file was transferred to me to conduct the inquiry. I sought the representations of the Town and the six affected persons, initially. I received the representations of the Town which had attached to it a note from each affected person denying their consent to the release of their personal information from the record. I provided the appellant with a copy of the Town's representations in their entirety (without the attachments) along with a Notice of Inquiry. I also received representations in response to this Notice of Inquiry from the appellant.

## **RECORD:**

The responsive record consists of a chart with the following four headings: "Account Number", "Employee Name", "Employee Status" and "Amount". The portion remaining at issue consists of the severed column under the heading "Employee Name".

## **DISCUSSION:**

### **PERSONAL INFORMATION**

#### *General principles*

In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. 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 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].

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

### **Representations of the Parties**

The Town submits that as the record contains the names of six employees of the Town, that disclosure of these employees' names would reveal other personal information about these employees. The Town, in denying access to the employees' names in the record, is relying on paragraph (h) of the definition of personal information in the *Act*.

The appellant, although providing lengthy representations in two letters, did not directly address the issue of whether the record contains personal information.

### **Findings**

I find that the information in the record generally relates to the affected persons in their professional, rather than their personal, capacity. However, I find that the undisclosed information in the record reveals something of a personal nature about the affected persons,

namely, the salary paid to them for the period in question. In my view, disclosure of the employees' names, along with this salary information, would reveal other personal information about them. Specifically, I find that the payment of a specific sum of money which is linked to their names qualifies as their personal information within the meaning of paragraph (h) of the definition.

## **PERSONAL PRIVACY**

Where an appellant seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. In this case, the only applicable exception to the mandatory exemption in section 14 is section 14(1)(f), which reads:

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.

For section 14(1)(f) to apply, I must find that disclosure of the personal information would not constitute an unjustified invasion of the affected parties' personal privacy.

In applying section 14(1)(f), the factors and presumptions in sections 14(2), (3) and (4) 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(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated 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 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (*John Doe*)] though it can be overcome if the personal information at issue falls under section 14(4) of the *Act*, or if 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 exemption. [See Order PO-1764]

## **Representations of the Parties**

The Town maintains that the mandatory exemption in section 14(1) applies to the information at issue because the disclosure of the names of the affected persons would constitute an unjustified invasion of their personal privacy. The Town has released to the appellant the account numbers, the employee status and the dollar amounts paid which are included in the record. The Town also has confirmed that no volunteers were paid by the Town at the Fun Fest. The Town relies on the presumption in section 14(3)(f), submitting that disclosure of the employees' names

would constitute a presumed unjustified invasion of their personal privacy, as it would reveal information about their finances, in particular their income.

The appellant does not directly address the Town's representations on the issue of invasion of privacy.

### **Findings**

Upon my review of the record and the representations of the parties, I find that the only exception in paragraphs (a) to (f) of section 14(1) which may apply in this case is paragraph (f), namely, if the disclosure of the names from the record does not constitute an unjustified invasion of the personal privacy of the affected persons.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). Section 14(3)(f) has been relied upon by the Town. This section reads:

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]

I find that the disclosure of personal information in the record is, in this case, presumed to constitute an unjustified invasion of personal privacy, as disclosure would reveal the affected persons' income, as contemplated by section 14(3)(f).

As paragraph (f) of section 14(3) applies and disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14, this presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies. [*John Doe*, cited above].

Section 14(4)(a) states:

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

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

I find that the exception in section 14(4)(a) does not apply in this case as the information at issue does not represent the employees' salary ranges, but rather a single payment made to them.

Based on the application of the presumption in section 14(3)(f) and subject to my discussion below of the application of the public interest override in section 16 of the *Act*, I conclude that disclosure of the employees' names in the record constitutes a presumed unjustified invasion of their personal privacy. Accordingly, I find that the undisclosed personal information is exempt under section 14(1).

## **PUBLIC INTEREST OVERRIDE**

The appellant appears to have raised the possible application of the public interest override at section 16. The appellant states that:

I wish to receive the names of these employees and those names be revealed to the public taxpayers so they have information as to where and to whom their money is going... Town administrators must be held accountable, is that not a big part of their "Oath" when they were sworn into office?

Section 16 of the *Act* reads:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [Emphasis added]

For section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

In Order P-984, Adjudicator Holly Big Canoe discussed the first requirement referred to above:

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act's* central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

In Order MO-2080, Adjudicator Steve Faughnan found that:

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent

to which denying access to the information is consistent with the purpose of the exemption. [Order P-1398]

Section 14(1) is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. In my view, where the issue of public interest is raised, one must necessarily weigh the costs and benefits of disclosure to the public. As part of this balancing, I must determine whether a compelling public interest exists which outweighs the purpose of the exemption. [Order PO-1705]

A compelling public interest has been found not to exist where, for example:

- another public process or forum has been established to address public interest considerations [Orders P-123/124, P-391, M-539]
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations [Orders P-532, P-568]
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding [Orders M-249, M-317]...

Although I accept the appellant's position that there is a public interest in some of the information contained in the records, in my view this interest has been adequately satisfied by the disclosure already provided by the Town. The disclosed portions of the record reveal the amount of payments made to each affected person. The appellant has received a significant amount of information and in my view this is adequate to address any public interest considerations [Orders P-532, P-568].

Accordingly, I find that there is no "compelling" public interest in disclosure of the remaining undisclosed personal information in the record and section 16 does not apply. Therefore, the mandatory section 14(1) exemption applies to the undisclosed information in the record and the Town is precluded from disclosing it to the appellant.

**ORDER:**

I uphold the Town's decision.

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_  
October 11, 2006