



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2386

Appeal MA07-278

City of Vaughan



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BACKGROUND OF APPEAL:

A member of the public submitted a complaint to the City of Vaughan (the City) raising concerns about the expense claims submitted by two City of Vaughan employees. In response, the City Manager requested that the City's Auditor conduct an investigation and prepare a report. This appeal deals with the complainant's request for a copy of the completed audit report and related documentation.

NATURE OF THE APPEAL:

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

The Auditors report that was prepared as a result of an investigation into the expense report submissions of [two named individuals].

The requester also advised the City that "[m]y complaint and subsequent submission of documents to the City Manager in this regard is why an investigation was initiated. As such, this report would be considered as my personal information and is required to be disclosed to me."

The City located an audit report dated June 19, 2007, along with related documents. The City disclosed the responsive records, but for the audit report, a cover letter attached to the report and the Minutes of the Audit Committee's meeting at which the report was tabled.

The City withheld access to the audit report, cover letter and the meeting minutes pursuant to section 6(1)(b) (closed meeting) of the Act. The City also claimed that disclosure of the withheld records would constitute an unjustified invasion of personal privacy under section 14(1) of the Act.

With respect to appellant's position that the audit report contains his personal information, the City advised the following in its decision letter:

The confidential report of the City Auditor contains personal information that relates to two identifiable City of Vaughan employees. The personal information, as recorded in the confidential report of the City Auditor relates to these identifiable individuals. The confidential report of the City Auditor does not relate to you as an identifiable individual. Your name is not recorded in the confidential report of the City Auditor.

The requester, now the appellant, appealed the City's decision to deny access to the withheld records. Mediation did not resolve the issues in dispute and this appeal was transferred to the adjudication stage of the appeal process.

This office commenced its Inquiry by sending a Notice of Inquiry to the City, initially. The Notice of Inquiry set out the facts and issues in the appeal and asked the City to address the issue as to whether the analysis should be conducted under Part II of the Act. Sections 38(a) and (b)

under Part II of the *Act* recognize the special nature of requests for one's own personal information and the desire of the Legislature to give institutions the discretionary power to grant requesters access to their personal information.

The City provided representations in response. The non-confidential portions of the City's representations were provided to the appellant, along with a Notice of Inquiry, who also provided representations. The City was given a copy of the appellant's representations and provided this office with its reply representations. The appellant also provided this office with brief supplemental representations.

RECORDS:

The records at issue total 12 pages and comprise of the following documents:

1	Minutes of the Audit Committee's closed meeting, dated June 19, 2007
2	Cover Letter to Audit Report, dated June 10, 2007
3	Audit Report, dated June 6, 2007

The Minutes of the Audit Committee's closed meeting consists of two pages.

The audit report was prepared by the City Auditor and consists of nine pages. The first four pages of the audit report set out the definition, objective, scope and purpose of the audit. The remaining pages of the audit report contain the observations, opinion and recommendations of the City Auditor.

The one page cover letter was prepared by the City Auditor and is addressed to the City Manager.

DISCUSSION:

PERSONAL INFORMATION

In order to determine whether sections 14(1), 38(a) and/or 38(b) of the *Act* apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates.

The appellant submits that the records contain his personal information. The City claims that the records do not contain the personal information of the appellant, but rather only the personal information of two of its employees. The City submits that the employee's information qualifies as "personal information" as described in paragraph (b), (d), and (g) of the definition of that term in section 2(1) of the *Act*. The term "personal information" is defined in part, in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (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,

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (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].

Effective April 1, 2007, the *Act* was amended by adding sections 2.1 and 2.2. These amendments apply only to appeals involving requests that were received by institutions after that date. The request relating to the City's decision to deny access to the audit report and related records was filed after April 1, 2007.

Section 2.1 modifies the definition of the term "personal information" by excluding an individual's name, title, contact information or designation which identifies that individual in a "business, professional or official capacity". Section 2.2 further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as "personal information" for the purposes of the definition in section 2(1).

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 City argues that the records contain the “personal information” of two individuals employed at the City. In particular, the City argues that the records contain:

- the employment history of two employees (paragraph (b) of the definition);
- information relating to financial transactions in which the employees have been involved (paragraph (b) of the definition);
- the residential addresses of the employees (paragraph (d) of the definition); and
- the views or opinions of the City Auditor about the employees (paragraph (g) of the definition).

The City’s representations state:

One of the purposes of the City’s Auditor report was to investigate to determine whether the mileage claims for which these two employees were re-imbursed, were excessive. The records contain the City Auditor’s observations, conclusions and opinions that relate to these two identifiable individuals, being the named City employees.

There is no personal information that relates to the appellant in the subject records.

...

The confidential report of the City Auditor does not relate to the requester as an identifiable individual. The requester’s name is not recorded in the confidential report of the City Auditor.

The June 19, 2007 closed meeting minutes makes reference to “suggested allegations by a resident of Vaughan, that the two employees overstated their mileage claims”. The confidential internal audit report of the City Auditor makes reference to “a member of the public brought forward suggested allegations of wrong-doing by two City employees”

The appellant submits that the records contain his personal information. In support of his position, the appellant attached correspondence between himself and the City to his representations. The correspondence relates to the appellant’s original complaint about the employees’ expense claims. The appellant submits that it demonstrates that he is the “member of the public” and “resident of Vaughan” who is referred to in the audit report. The appellant states that the information contained in the records relating to the two City employees cannot qualify as “personal information” as:

[t]he subject of the audit was not in relation to an individual's personal capacity, as it is in relation to their mileage claims incurred in their professional capacity. The record does not reveal information of a personal nature.

The appellant also takes the position that any information I find constitutes the "personal information" of an identifiable individual should be severed from other information contained in the records.

Decision and Analysis

Do the records contain the appellant's personal information?

The City argues and I agree that the appellant is not named in the records.

As noted above, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed. In my view, the appellant has failed to adduce sufficient evidence that disclosure of the records would identify himself as the individual the City describes as the "member of the public" and "resident of Vaughan". The appellant also does not provide any evidence explaining how the information at issue qualifies as his "personal information" within the definition of that term in section 2(1). I find that the records do not contain the appellant's "personal information" as defined in section 2(1) and, as a result, sections 38(a) and (b) have no application in the circumstances of this appeal.

Do the records contain the personal information of other identifiable individuals?

In my view, the information contained in the records either describes information which does not identify any individuals or contains information about individuals employed by the City.

I will first consider whether the information that does not identify any individual meets the definition of "personal information" and then will go on to consider the information that identifies individuals.

a) Information contained in the records which does not identify any individuals

Most of the information contained in the records at issue does not relate to any identifiable individual. Rather, the information describes the definition, objective, scope and purpose of the audit. Also described are the circumstances leading up to the City Manager's decision to request an internal audit, including the City's receipt of a complaint from an unnamed individual. Finally, the auditor's recommendations regarding the City's policy relating to expense claims are also described. In my view, this information does not qualify as "personal information" as it does not relate to an identifiable individual. As these portions of the records do not relate to any identifiable individual, the exemption at section 14(1) cannot apply to it. The City also claims that the exemption at section 6(1)(b) applies to this information. Accordingly, I will evaluate its application below.

b) *Information contained in the records which identifies individuals*

The records identify five individuals employed by the City. The individuals are the City Manager, Auditor and Commissioner and the two individuals whose expense claims are the subject of the audit.

As noted above, section 2.1 of the *Act* applies to this appeal. Section 2.1 modifies the definition of the term “personal information” by excluding an individual’s name, title, contact information or designation which identifies that individual in a “business, professional or official capacity”.

Though the City does not claim that the records contain the “personal information” of the City Manager, Auditor or Commissioner, it seeks to withhold those portions of the records which contain references to these individuals. The information which relates to these individuals consists of their names, job positions, contact information and designations. I have reviewed these portions of the records and am satisfied that they refer to these employees in their business, professional or official capacity and does not reveal anything about a personal nature about them. Accordingly, I find that the exemption at section 14(1) cannot apply to the information relating to the City Manager, Auditor and Commissioner. I will determine below whether this information qualifies for exemption under section 6(1)(b).

Turning now to the information contained in the records which relates to the two individuals whose expenses are the subject of the audit report. The City claims that this information qualifies as the “personal information” of these two individuals as it constitutes their employment history and contains information relating to financial transactions in which they were involved, the City Auditor’s views about them along with their names and residential addresses. The appellant argues that this information relates solely to these individual’s business, professional or official capacities.

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]. Following the analysis set forth in Order PO-2225 the first question I must ask is: “*in what context do the names of the individuals appear*”? The second question I must ask is: “*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*”? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

With respect to the first question, I am satisfied that the information contained in the records relate to these two employees in a professional or business context only. As already stated, the records were prepared in response to the City Manager’s request for an audit relating to expenses the employees claim were incurred in the course of their employment with the City. In my view, the information gathered and prepared by the City Auditor relates to those individuals solely in professional or business context. As a result of my finding, the next question I must ask is whether there is something particular about the information relating to the two employees that, if disclosed, would reveal something of a personal nature about them.

Previous orders of this office have held that information about an individual in his or her professional or employment capacity does not constitute that individual's personal information where the information relates to their employment responsibilities or position, unless the information about the individual involves an evaluation of his or her performance as an employee or an investigation into his or her conduct. (Order MO-2197)

Having regard to the records and the representations of the parties, I am satisfied that disclosure of the information about the two employees would reveal something of a personal nature about them. In making my decision, I carefully considered the records themselves along with the representations of the parties. In doing so, I also reviewed the correspondence the appellant attached to his representations. In my view, the appellant's correspondence demonstrates that he alleged misconduct on the part of the employees who were the subject of the review. As previously stated, the City advises that the purpose of the audit was to determine whether the expense claims submitted by the employees named in the appellant's complaint were excessive. Previous decisions from this office have found that information relating to allegations of wrongdoing committed during the course of an individual's employment constitutes that individual's "personal information" (Orders PO-2633, PO-2524)

I am satisfied that the information in the records describing the expense claims submitted by these employees qualifies as their "personal information" as defined in paragraph (a) of the definition in section 2(1) as it contains information relating to financial transactions in which they were involved. I am also satisfied that the auditor's opinions and comments contained in the records about the employees qualifies as their "personal information" as defined in paragraph (g). Finally, I find that references to the employee's residential address and name appearing with other personal information relating to the individual meets the definition of "personal information" as defined in paragraph (d) and (h).

Having regard to the above, it is not necessary that I make a finding that the information contained in the records relating to the two employees also constitutes their employment history as set out in paragraph (b) of the definition in section 2(1). However, I must go on to determine whether disclosure of the portions of the records I found qualifies as "personal information" would constitute an unjustified invasion of privacy under section 14(1).

As noted above, the City claims that all three records are exempt under 6(1)(b). Accordingly, I will first consider whether the records in their entirety qualify for exemption under section 6(1)(b).

CLOSED MEETING

The City claims that all three records at issue are exempt under section 6(1)(b) of the *Act*. The appellant rejects the City's position and claims that the exception under section 6(2)(b) applies in the circumstances of this appeal. Section 6(1)(b) reads:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a

council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

Section 6(2) of the *Act* sets out exceptions to sections 6(1)(a) and/or (b). Section 6(2)(b) reads:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if, in the case of a record under clause (1)(b), the subject matter of the deliberations has been considered in a meeting open to the public

For the section 6(1)(b) exemption to apply, the City must establish that

1. a council, board, commission or other body, or a committee of one of them, held a meeting
2. a statute authorizes the holding of the meeting in the absence of the public, and
3. disclosure of the record would reveal the actual substance of the deliberations of the meeting

[Orders M-64, M-102, MO-1248]

Under part 3 of the test

- “deliberations” refer to discussions conducted with a view towards making a decision [Order M-184]
- “substance” generally means more than just the subject of the meeting [Orders M-703, MO-1344]

Section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting. For example, it has been found not to apply to the names of individuals attending meetings, and the dates, times and locations of meetings [Order MO-1344].

The City submits that all three parts of the test for the application of section 6(1)(b) have been met and that the exception at section 6(2)(b) does not apply in the circumstances of this appeal. The representations provided by the appellant do not dispute that the Audit Committee held a meeting. However, the appellant’s representations question the City’s position that disclosure of the records would reveal the substance of the Audit Committee’s deliberations.

As noted above, the appellant also claims that the exception at section 6(2)(b) applies in the circumstances of this appeal. This appellant submits that the subject matter of the record was presented at a meeting open to the public. Section 6(2)(b) of the *Act* provides that an institution shall not refuse to disclose a record if the subject matter of the deliberations has been considered

in a meeting open to the public. Accordingly, for the exception at section 6(2)(b) to apply, it must be shown that the subject matter of the deliberations was considered in a meeting open to the public. Other than stating that the subject matter of the deliberations was considered at an open meeting, the appellant did not provide any evidence in support of his position.

I note that there is no evidence that the City, at anytime, sought to conceal the fact that the audit report exists or that the Audit Committee considered it during a closed meeting. Accordingly, it is possible that the existence of the audit report was referred to at an open meeting of Council or the Audit Committee. However, evidence that the audit report was mentioned at an open meeting does not demonstrate that the subject matter of the deliberations was also considered in an open meeting. Having regard to the above, I find that the exception at section 6(2)(b) has no application in this appeal.

I will now consider each part of the three part test to determine whether section 6(1)(b) applies to the records.

Part 1 – meeting or council, board, commission or other body, or a committee of one of them

The City states that the Audit Committee held a meeting on June 19, 2007 and that the audit report was considered during a closed session. In support of its position, the City provided a copy of the Extract from Council Meeting Minutes of June 25, 2007 which states that “[t]he Audit Committee recommends approval of the confidential recommendation of the Audit Committee (Closed Session) of June 19, 2007.

As noted above, the appellant does not dispute that a meeting took place. Having regard to the above, I am satisfied that on June 19, 2007 a meeting of the Audit Committee took place. Accordingly, I find that part 1 of the test has been met.

Part 2 – statute authorizes the holding of the meeting in the absence of the public

The City submits that the meeting was held in camera in accordance with section 239(2)(b) of the *Municipal Act*. Section 239(2)(b) reads:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is personal matters about an identifiable individual, including municipal or local board employees

The City submits that section 2.4 of the City of Vaughan’s By-Law to Govern the Proceedings of Council and Committee of Council By-Law Number 400-2002 also authorizes it to hold a meeting that is closed to the public. However, this section mirrors the language in section 239(2)(b) of the *Municipal Act*. In particular, section 2.4(1)(ii) states that “a meeting may be closed to the public if the subject matter being considered relates to personal matters about an identifiable individual including municipal or local board employees”.

Having regard to the evidence provided by the City, I am satisfied that the City was authorized by section 239(2) of the *Municipal Act* to hold a meeting in the absence of the public to discuss personal matters about two of its employees. In making my decision, I took into consideration that the purpose of the audit was to determine whether the expenses submitted by the employees were excessive.

Accordingly, I find that part 2 of the test has been met.

Part 3 – disclosure of the record would reveal the actual substance of the deliberations of the meeting

In support of its position that disclosure of the records would reveal the actual substance of the deliberation of the closed session, the City states:

It is the City of Vaughan's position that the City Auditor's report was considered at a June 19, 2007 Audit Committee closed session meeting. The Auditor's report was the subject matter of the meeting, closed session, and it was considered in its entirety by the Committee, and at length. The Audit Committee meeting recessed into closed session at 2:09pm and reconvened at 2:30pm. It is the City of Vaughan's position that disclosure of the Auditor's report dealing with a personnel matter that relates to two identifiable City of Vaughan employees would reveal the substance of deliberations at that closed sessions meeting.

As previously noted, the appellant takes the position that the exemption at section 6(1)(b) does not apply to the records. However, the only evidence the appellant provides is his submission that the subject matter of the record was presented at a meeting open to the public. In any event, the issue to be determined under part 3 of the test is whether disclosure of the record would reveal the actual substance of the deliberations of the meeting. As noted above, "deliberations" refer to discussions conducted with a view towards making a decision and "substance" generally means more than just the subject of the meeting.

The three records the City submits are exempt under section 6(1)(b) are the Minutes of the Audit Committee's closed meeting, the cover letter to the audit report and the audit report itself. In my view, the City has failed to adduce sufficient evidence to demonstrate that disclosure of the audit report and the cover letter would either reveal the substance of the deliberations or reveal any discussion that took place in the closed session. In making my decision, I carefully reviewed the audit report and the cover letter and note that they do not refer to any decisions or discussions that took place at the closed meeting. Though I accept the City's evidence that the audit report was used or referred to during the closed meeting, the record itself does not reveal any information relating to any decisions or discussions that took place at the meeting.

However, I am satisfied that the Minutes of the Audit Committee meeting contains information which if disclosed, would reveal the substance of the deliberations or reveal discussions that took place in the closed session. Accordingly, I find that part 3 has been met for this record. As a result, I find that the Minutes of the Audit Committee's meeting qualifies for exemption under section 6(1)(b) of the *Act*.

Summary

I find that section 6(1)(b) applies to the Minutes of the Audit Committee meeting and uphold the City's decision to withhold this record from the appellant.

I find that section 6(1)(b) does not apply to the audit report or cover letter. I already found that the exemption at section 14(1) cannot apply to those portions of the audit report and cover letter which do not contain personal information. As the City has not claimed that any other exemption applies to this information, I will order the City to disclose these portions of the cover letter and audit report to the appellant. In my view, this information can be reasonably severed from the remaining information at issue. For the sake of clarity, a highlighted copy of these records will be provided to the City along with this order.

The remaining information at issue is the information I found constitutes the "personal information" of two individuals employed at the City. This information consists of:

- information describing some of the expenses the employees submitted to the City;
- the auditor's comments about the employees; and
- the residential address and names of the employees.

I will now consider whether disclosure of the portions of the audit report which contains the personal information of the two employees would constitute an unjustified invasion of personal privacy under section 14(1).

PERSONAL PRIVACY

General principles

Where a requester seeks 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) to (f) of section 14(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. None of the parties claim that any of the exceptions in section 14(1) apply to the circumstances of this appeal. In my view, the only exception that could apply to this appeal is paragraph (f) (disclosure does not constitute an unjustified invasion of personal privacy).

Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. If any of the paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1). The appellant claims that the exclusion in paragraph (a) applies in the circumstances of this appeal. Section 14(4)(a) reads, in part:

... 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.

In support of his position, the appellant states that “mileage claims are related to the employment responsibilities and would also constitute a benefit of such employment. Mileage claims would be a detail of a contract between an individual and an institution.”

There is no dispute that the personal information at issue relates to individuals employed by the City. Accordingly, for the exclusion at section 14(4)(a) to apply to the information at issue I must find that disclosure of the personal information at issue would disclose the classification, salary range and benefits and/or the employment responsibilities of the two individuals.

In my earlier discussion, I carefully reviewed the audit report and cover letter and found it contains the “personal information” of the two employees. Namely, information describing some of the expenses they submitted to the City, the auditor’s comments about them along with their residential address and names. I am satisfied that this personal information does not relate to their classification, salary range, benefits or employment responsibilities. In fact, the records do not contain any information which, in general terms, describes their responsibilities or compensation. Accordingly, I find that the exclusion at section 14(4)(a) does not apply.

The appellant has not claimed that any other exclusion under section 14(4) applies to the records and I am satisfied that none apply.

Section 14(1)(f): disclosure not an unjustified invasion of personal privacy

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 personal privacy under section 14(1)(f) of the *Act*. 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.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a 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 v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. If a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe*, cited above]. The City claims that the presumptions at sections 14(3) (d) and (g) apply to this appeal.

Section 14(3): presumptions

The City argues that the presumptions at sections 14(3)(d) and (g) apply to the personal information contained in the audit report and cover letter. These sections read:

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;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

The appellant did not provide representations on the issue as to whether the presumptions at sections 14(3)(d) and (g) apply. The City's representations repeat the arguments it made in support of its position that the records contain the "personal information" of the two employees. Namely, that the information comprises of the individual's employment history, reveals information relating to their financial transactions and includes the auditor's views about them.

For the presumption at section 14(3)(d) to apply, the City must demonstrate that this information forms part of the identifiable individual's employment history with the City. The audit was conducted to investigate whether the mileage claims for which the employees received reimbursement were excessive. Previous orders from this office have held that reports relating to an investigation of expense claims are not considered to be part of an individual's employment history (Orders P-256 and P-433). The rationale in Orders P-256 and P-433 is that the policies relating to expense claims have no connection to an individual's position, job responsibilities, career history, performance appraisal, or other characteristics which are normally associated with a person's employment history. Accordingly, information relating to the expense claims submitted by employees cannot be described as forming part of an individual's employment history. As a result, I find that the presumption at section 14(3)(d) does not apply.

Turning now to the presumption at section 14(3)(g). Section 14(3)(g) creates a presumption concerning recommendations, evaluations or references about the identified individual in question rather than evaluations, etc. by that individual [Order P-171]. The terms "personal evaluations" or "personnel evaluations" refer to assessments made according to measurable standards [Order PO-1756]. The City submits that the auditor's comments about the two employees in question amount to "personal evaluations" or "personnel evaluations" made according to accepted audit principles and practices. However, the City did not provide me with evidence explaining whether the auditor's assessments were made according to measurable standards. In my view, the auditor's comments relate to the evaluation of information relating to expenses claimed by the employees in question and are general in nature. Accordingly, I am not satisfied that the terms "personal evaluations" or "personnel evaluations" accurately describe the auditor's comments. I also am not satisfied that the auditor's comments about the employees refer to assessments made according to measurable standards. Having regard to the above, I find that the presumption at section 14(3)(g) also does not apply.

As I have found that none of the presumptions apply, I will go on to consider the factors and considerations under section 14(2).

Section 14(2): factors and considerations

If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The City claims that the factors favouring non-disclosure at sections 14(2)(e), (f) and (i) apply to the circumstances of this appeal. The appellant submits that the factor favouring disclosure at section 14(2)(d) applies. These sections read:

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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

I will start with the appellant's submission that the factor at section 14(2)(d) applies to the circumstances of this appeal.

14(2)(d): fair determination of rights

For section 14(2)(d) to apply, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing

[Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)].

The appellant submits that the withheld personal information is “required to prepare for the small claims court proceeding, which is a legal right in order to recover public funds”. The appellant’s supplemental representations state that the withheld personal information is also required to respond to the City’s allegations against him set out in their Statement of Claim. The appellant’s supplemental representations state:

All four of the criteria for section 14(2)(d) to apply, are met in this circumstance. (1) the right is my legal right, (2) the right is related to a current legal proceeding, (3) the personal information I am seeking is significant to my legal right, (4) the personal information is required for me to prepare for the proceeding.

...

This Expense Audit Report and Related Records are clearly required in order for me to enforce my legal right in the existing legal proceeding and certainly would have great bearing and significance in this matter.

In support of this position, the appellant provided this office with a copy of the Statement of Claim the City served on him. The City maintains that the personal information at issue is not relevant to a fair determination of the appellant’s rights.

Having regard to the representations of the parties, I am satisfied that the appellant is seeking to enforce a legal, as opposed to a moral right, which is related to a contemplated or ongoing legal proceeding. In making my decision, I accepted the appellant’s evidence that he has filed or intends to file a small claims court action for the recovery of public funds. I also took into account the appellant’s evidence that he must now respond to a civil proceeding commenced by the City.

However, taking into consideration the actual personal information at issue, I am not satisfied that disclosure of the information has some bearing on or is significant to the determination of the appellant’s rights. Similarly, I am not satisfied that the appellant requires the withheld personal information in order to prepare for either of the proceedings or to ensure an impartial hearing.

The withheld personal information comprises of information describing some of the expenses the employees in question submitted to the City, the auditor’s comments about the employees and the residential address and names of the employees. The only evidence the appellant provided me relating to the small claims matter is his advice that he seeks to “recover public funds”. No evidence was provided explaining how the withheld personal information has some bearing or is significant to the determination of the appellant’s right to recover public funds. I also note that the information relating to the expenses the employees in question submitted to the City are described in the audit report in general terms. In fact, the actual expense forms do not form part

of the report and no dollar figures representing the expenses submitted are reproduced. In my view, the appellant has failed to adduce sufficient evidence demonstrating that disclosure of the personal information at issue is relevant and significant to the determination of issues to be decided by the courts.

I also considered the appellant's evidence that he requires the withheld personal information to prepare his response to the Statement of Claim the City filed against him. In doing so, I reviewed the portions of the Statement of Claim the appellant advises contain allegations against him relating to his original complaint about the expense claims. In this portion of the Statement of Claim, the City describes its response to the appellant's original complaint and provides a timeline relating to its receipt and response to subsequent correspondence from the appellant. It appears that the City's position is that the appellant's subsequent correspondence was inappropriate and entitles the City to damages and/or injunctive relief. In my view, disclosure of the withheld personal information at issue would not have a bearing on the determination of whether the appellant's conduct warrants the relief claimed by the City.

Having regard to the above, I find that the factor at section 14(2)(d) has no application to the withheld personal information at issue.

As I have found that the factor at section 14(2)(d) raised by the appellant does not apply, it is not necessary that I consider the factors at sections 14(e), (f) and (i) favouring non-disclosure raised by the City. As previously stated, where the records contain personal information of an individual other than the appellant, the only way the record can be disclosed is if I find that disclosure would not constitute an unjustified invasion of personal privacy under section 14(1)(f). In my view, the appellant has failed to adduce sufficient evidence to demonstrate that any of the factors favouring disclosure apply to the circumstances of this appeal. Accordingly, in the absence of factors favouring disclosure, I find that disclosure of personal information at issue would constitute an unjustified invasion of personal privacy under section 14(1).

The appellant did not raise the possible application of the public interest override in section 16 of the *Act*. In fact, the majority of the appellant's representations focus on his private legal rights. I am satisfied that the public interest override in section 16 does not apply to the personal information I found exempt under section 14(1).

In my view, the personal information at issue can be reasonably severed from the information I will order the City to disclose to the appellant. For the sake of clarity a highlighted copy of the audit report and cover letter will be provided to the City with this order.

ORDER:

1. I order the City to disclose the portions of the records that I found do not constitute the "personal information" of identifiable individuals by **March 4, 2009** but not earlier than **February 26, 2009**. For the sake of clarity, I have highlighted the portions of the audit report and cover letter that should **not** be disclosed in the copy of the records enclosed with this Order.

2. I uphold the City's decision to withhold the remaining portions of the records.
3. 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 order provision 1 to be provided to me.

Original signed by: _____
Jennifer James
Adjudicator

_____ January 27, 2009