



Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-2598

Appeal MA09-226

Town of Gravenhurst



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NATURE OF THE APPEAL:

The Town of Gravenhurst (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the Act) for access to the following:

This is a request under the Municipal Freedom of Information and Protection of Privacy Act to **access and review non-privileged records in connection with all lawsuits brought by, or against, the municipality**, including:

- (a) the date the proceeding was commenced; style of cause/title of proceedings; the amounts claimed; and the parties and legal counsel of record;
- (b) the records of all costs incurred by the municipality, including settlement payments, if any, connected with each action above; and
- (c) the records of all payments made to all lawyers engaged by, retained by or otherwise acting on behalf of, the municipality, including the date of payment and amount.

In response, the town provided two fee estimates based on the use of two different search parameters, described as follows:

Estimate #1

The first estimate is for the preparation of a record that would provide you with non-privileged information as it relates to the dates of proceedings, the type of proceeding, cost incurred by the municipality, and payments to the solicitor of record. Please be advised that this does not guarantee that all information contained in your request will be available. A thorough review of all such files will determine the information available and what is required to be protected in accordance with the Act.

The total number of files to be reviewed in order to obtain the non-privileged information noted above, to be included on the said list, includes 252 files. In accordance with Section 45 of the Act, the estimated fee, which includes the charge for time spent to date, is \$1902.00

Estimate #2

The second estimate is to prepare all of the 252 files in order to disclose them for your review. The fee estimate to proceed through this avenue, which includes the charge for time spent to date, is \$4,327.50. Once again, this does not guarantee that all information contained in your request will be available.

The requester, now the appellant, appealed this decision on the basis that the fee was excessive.

During mediation, in an effort to reduce the fee, the appellant provided the town with a revised request narrowing the scope of her request to include:

I have narrowed my request regarding the above application to the following:

- (a) the name(s) of the party(ies) commencing the proceeding;
- (b) the title of the proceeding;
- (c) the legal costs incurred by the municipality in defending the proceeding, and who was paid; and
- (d) the amount paid in settlement of the action

in connection with the 5 most recent cases of civil litigation commenced against the Town of Gravenhurst.

In response to the revised request, the town issued a revised decision which did not provide a specific fee estimate, but rather advised that the new fee would be under \$100.00. The town also provided a chart for the five most recent civil litigation cases listing the Name, the Title/Nature of Proceeding, the Legal Costs of Defence, the Payee and the Settlement Amount for each. The town determined that portions of the record would not be disclosed as it contained information that is exempt under the mandatory personal privacy exemption in section 14(1) of the *Act*.

The appellant advised the town and the mediator that she was not satisfied with the follow-up decision and wished to continue with her appeal of the original fee estimate and the denial of access to the record prepared by the town. As further mediation was not possible, the file was moved to the inquiry stage, where an adjudicator conducts an inquiry under the *Act*.

On August 30, 2010, I wrote to the parties advising that, based on my review of the file and the written documentation contained therein, I was of the view that the sole issues remaining for adjudication were the fee estimate of less than \$100 and the application of section 14(1) to those portions of the record which were not disclosed. Specifically, I advised the appellant that because she had withdrawn her original appeal and narrowed the scope of her request, the appropriateness of the original fee was no longer before me.

I then provided the town with a Notice of Inquiry setting out the facts and issues in the appeal and seeking its representations. I received the town's representations and provided a complete copy of them to the appellant, along with a Notice of Inquiry. The appellant also provided me with representations in response.

RECORDS:

The record at issue consists of the undisclosed portions of a table listing the five most recent civil litigation matters involving the town. The only portions of the record which were not disclosed were the names of the five persons who commenced the actions, the nature of the proceeding (for

only one of the actions) and the settlement amounts for two actions which were resolved by way of settlement. The appellant was provided with a statement of the nature of the proceeding for all but one of the actions, the legal costs of the defence, the payee of the settlement amount and an indication that, for three of the actions, the matter remains ongoing.

DISCUSSION:

FEES

In its response to excerpts in the Notice of Inquiry seeking its representations in support of its position that it was entitled to charge a fee of something less than \$100, the town stated only that:

As the requester had narrowed the scope of the request to the above [five points described in the Background section], it was determined that the information could be provided at a fee that was significantly lower than either of the two earlier estimates, *and likely without any fee attached at all*. [my emphasis]

The town then refers to its November 12, 2009 decision letter and attached a copy. With respect to the fees to be charged, the decision letter simply states that “it is anticipated that the fee estimate will be considerably lower than the \$100 set out in Regulation 823 and therefore a revised fee estimate is not necessary.”

In its decision letter of November 12, 2009, the town appears to take the position that it is entitled to charge a fee of some unspecified amount, which it estimates will be less than \$100. Because the amount is less than \$100, it is not required by Regulation 823 and the *Act* to provide a fee estimate. However, based on its representations, by not providing evidence or argument in support of its position that it is entitled to charge a fee of some unspecified amount, it appears that the town has decided not to pursue this unascertained fee.

In the absence of any evidence in support of the town’s position that it is entitled to charge a fee or the quantum of that fee, I do not uphold its decision to do so and find that the appellant is not required to pay a fee to obtain access to the record at issue.

PERSONAL INFORMATION

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 if 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 where 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, 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.)].

The town takes the position that the undisclosed portions of the records represent the personal information of the five individuals listed on the table as it includes their names, along with the fact that they “had commenced legal action against the Town of Gravenhurst”. Under the heading Title/Nature of the Proceeding, one of the entries was not disclosed. The town argues that because it is a small community where information about the town's activities is generally well-known, disclosing the type of action in this case would reveal the personal information of the individual to whom this entry relates. The town does not, however, address whether the dollar amounts contained in the Settlement Amount column of the record qualifies as the personal information of the five individuals listed on the record.

I have reviewed the contents of the record and have made the following findings:

- The names of the five individuals listed in column 1 of the table, taken with the fact that they have commenced legal actions against the town, qualifies as their personal information within the meaning of paragraph (h) of the definition of that term in section 2(1).
- I am not satisfied that the disclosure of the single severed entry under the Title/Nature of Proceeding column would reveal the personal information of an identifiable individual, as is required by the definition of that term. In my view, the town has failed to provide sufficient information to enable me to make such a finding in this case.
- Similarly, the town has failed to establish that the dollar amounts listed in the Settlement Amount column on the table is related to an identifiable individual, assuming that their names are found to qualify as “personal information” for the purposes of the *Act*.

To summarize, I find that the names listed in the Name column of the table qualify as personal information within the meaning of the definition of that term in section 2(1). However, the remaining undisclosed information in the records cannot be so characterized. The personal privacy exemption in section 14(1) was the only exemption claimed by the town for this information. Because section 14(1) can only apply to information that qualifies as “personal information”, I find that the undisclosed portions of the record, other than that contained in column 1, cannot qualify for exemption under section 14(1). As no other exemptions were claimed for it and no mandatory exemptions apply, I will order that it be disclosed to the appellant.

PERSONAL PRIVACY

Where the record contains *only* the personal information of other individuals and not the appellant, as is the case here, section 14(1) prohibits the disclosure of this information unless one of the exceptions listed in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of those paragraphs, it is not exempt from disclosure under section 14(1). The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it “... does not constitute 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). 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).

Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. I find that none of the section 14(4) exceptions apply in the circumstances of this appeal. Similarly, the “public interest override” in section 16 has not been raised or argued.

If none of the presumptions against disclosure contained in section 14(3) apply, the town must consider the application of the factors listed in section 14(2) of the *Act* as well as all other considerations which are relevant in the circumstances of the case (Order P-99).

In its representations, the town has not referred to the possible application of any of the presumptions in section 14(3) to the remaining information in the record, nor has it indicated reliance on any of the factors favouring non-disclosure in section 14(2).

The appellant’s submissions focus on the need to ensure that public tax dollars are wisely spent by the town, which brings into consideration the factor listed in section 14(2)(a), which states:

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,

the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

In addition, the appellant argues that the name of the plaintiff and the title of the proceedings, or style of cause in the action, are “matters of public record” and must be disclosed on that basis. The appellant also presents arguments in favour of the disclosure of the “legal costs for defending the proceedings”, but I note that this information was, in fact, disclosed to her with the town’s decision letter of November 12, 2009.

Findings

The purposes of the *Act* are two-fold and are set forth in section 1, which reads:

The purposes of this Act

- (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,

- (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

The right of access to information and the protection of personal privacy are given equal importance in the purposes section of the *Act* and in the Commissioner's office's interpretation of this section over the years.

The appellant's arguments in favour of greater public scrutiny of the town's spending on litigation and the legal costs associated with it are valid and of significant weight when balancing her right of access against the personal privacy interests of the individuals listed on the record. I note, however, that as a result of this order, the appellant will receive access to the dollar amounts paid by way of legal costs and the settlement amounts for those actions which had been resolved of the date of the request. The only information that will not be disclosed is the names of the individual plaintiffs to these actions, which I have found above to constitute their personal information.

In my view, the appellant's goal of obtaining the information in the record in order to ensure greater public scrutiny of the town's spending on litigation will be met through the disclosure of the information that I have found not to be the personal information of the individuals identified in the record. Those goals will not, however, be furthered by the disclosure of the litigants' identities.

As a result, I find that the disclosure of the individuals names listed in the first column of the record would constitute an unjustified invasion of their personal privacy. As a result, this information is exempt under section 14(1) and may not be disclosed. The remaining information in the record is not personal information and cannot, therefore, be subject to the personal privacy exemption in section 14(1). It is not exempt and must be disclosed to the appellant.

ORDER:

1. I order the town to disclose to the appellant all of the information in columns 2 through 5 of the record by providing her with a copy by **March 22, 2011**, but not before **March 15, 2011**.
2. I uphold the town's decision not to disclose the personal information contained in column 1 of the record.

3. I find that the town is not entitled to charge a fee for the provision of this information to the appellant.

Original signed by: _____
Donald Hale
Adjudicator

February 14, 2011 _____