



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

# **ORDER MO-2611**

## **Appeal MA10-104**

### **Corporation of the City of Pembroke**



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## **NATURE OF THE APPEAL:**

The requester made a request to the City of Pembroke (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to the city's expenses for a specified OMB hearing. Among other things, the request was for:

...any written or details of any verbal agreement with any private business interests to recoup any or all of these costs.

The city located an indemnity agreement and provided the requester with a severed copy of it. Only the signature line of that agreement identifying the signing party was severed from the agreement. The requester appealed the city's decision to this office.

After providing the requester with the severed record, the city notified an affected party about the information disclosed to the requester seeking its views on the disclosure of the information severed from the agreement under section 14 of the *Act*. The affected party objected to the disclosure of the signature line information.

The city wrote to the requester and the affected party advising of its decision to grant access to the signature line in the agreement. Accordingly, the original requester's appeal was resolved.

However, the affected party, now the appellant, appealed the city's decision. In its appeal letter, the appellant raised the application of a number of discretionary and mandatory exemptions.

During mediation, the appellant confirmed that it objected to the disclosure of the signature line and was relying on the mandatory exemptions in sections 10(1)(b) and (c) (third party information), and 14(1) (personal privacy) with reference to the factors in sections 14(2)(e), (f) and (h) of the *Act*.

As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. During the inquiry, I sought representations from the city and the appellant. I received representations only from the appellant.

## **RECORDS:**

The information at issue consists of the signature portion of the indemnity agreement, specifically, the actual signature, the name of the signing authority and his/her title.

## **DISCUSSION:**

### **THIRD PARTY INFORMATION**

The appellant submits that sections 10(1)(b) and (c) apply to the signature and signature line information in the record, which state:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or

Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions [*Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.)], leave to appeal dismissed, Doc. M32858 (C.A.)]. Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace [Orders PO-1805, PO-2018, PO-2184, MO-1706].

For section 10(1) to apply, the appellant must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

### **Part 1: type of information**

The appellant submits that the signature line information and signature contain commercial information. Commercial information has been defined in past orders as:

*Commercial information* is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises [Order PO-2010]. The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information [P-1621].

I adopt this definition for the purposes of this appeal.

The appellant states that the "...the information in question in this matter is "commercial" in nature as it relates to the retention and exchange of services, and the Requestor's authentication of an agreement, and thereby satisfies the first element of the three-part test.

I disagree. The information at issue contains the name of the signing authority, his/her signature and his/her title. I find that this information does not relate to the buying, selling or exchange of merchandise or services. This information relates only to the identity of the appellant's signing authority. Even within the context of the record, an indemnity agreement, the information at issue does not relate to the buying, selling or exchange of merchandise or services. As the information at issue does not consist of one of the types of information protected under section 10(1), I find that the appellant has failed to meet the first part of the test under section 10(1). As each part of the section 10(1) test must be met in order for this exemption to apply I find that section 10(1) does not apply to the undisclosed information in the record.

### **PERSONAL INFORMATION**

I will now consider the application of the mandatory exemption in section 14(1). In order to determine if this section of the *Act* applies, it is first necessary to decide whether the record contains "personal information" and, if so, to whom it relates. The appellant submits that the information at issue is personal information as contemplated within paragraphs (c) and (h) of the definition of that term in section 2(1). These paragraphs state:

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

- (c) any identifying number, symbol or other particular assigned to the individual,
- (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].

Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

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 and 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 and MO-2344].

The appellant submits:

A signature, which appears above a name of a signing officer, constitutes personal information...

Point (c) of the above cited list of examples provides that “any identifying number, symbol or other particular assigned to the individual” is considered to be personal information as defined by the *Act*. A signature falls under this example. A signature is a person’s special mark or symbol, and is used with the intention of authenticating a document. It can perform this function since it is unique to a specific individual.

...

In the present circumstances, the release of the Signature would match the identifiable individual’s name in the Signature Line to the accompanying confidential details contained in the Agreement. The release of the Signature would, in connection to the other information contained on the record, allow the Requester to determine significant portions of confidential information about the Signator provided in confidence to the Institution. By releasing the Signature, it reveals something of a personal nature about this individual...

In Order PO-2632, Adjudicator Daphne Loukidelis in dealing with the similar issue of whether the signatures of Ontario Power Generation corporate officers, employees of the affected parties and the former Minister of Energy, Science and Technology (as that position was then known) constituted their personal information held:

The final type of information to be considered under this heading is the signatures of OPG corporate officers, employees of the affected parties and the former Minister, which OPG has purported to withhold under section 21(1) of the *Act*. As with the other types of information discussed above, I must first determine whether or not these signatures constitute personal information for the purposes of the definition in section 2(1) of the *Act*.

For assistance in this determination, I considered that previous decisions of this office have drawn a distinction between an individual's personal, and professional or official government capacity. For example, information associated with an individual in her professional or official government capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" [Orders P-257, P-427, P-1412, P-1621, MO-1550-F, PO-2225].

In Order MO-1194, former Assistant Commissioner Tom Mitchinson discussed this office's treatment of handwriting and signatures appearing in different contexts, as follows:

**In cases where the signature is contained on records created in a professional or official government context, it is generally not "about the individual" in a personal sense, and would not normally fall within the scope of the definition.** (See, for example, Order P-773, [1994] O.I.P.C. No. 328, which dealt with the identities of job competition interviewers, and Order P-194 where handwritten comments from trainers were found not to qualify as their personal information.) [emphasis added]

In situations where identity is an issue, handwriting style has been found to qualify as personal information. (See, for example, Order P-940, [1995] O.I.P.C. No. 234, which found that even when personal identifiers of candidates in a job competition were severed, their handwriting could identify them, thereby bringing the records within the scope of the definition of personal information).

Order M-585, [1995] O.I.P.C. No. 321, involved both handwritten and typewritten versions of a by-law complaint. Former Inquiry Officer John Higgins found that the typewritten version did not qualify as personal information of the author, but that there was a reasonable expectation that the identity of the author could be determined from the handwritten version, and that it qualified as the complainant's personal information.

In my view, whether or not a signature or handwriting style is personal information is dependent on context and circumstances.

I agree with the context-driven approach of the former Assistant Commissioner in Order MO-1194. I am also mindful of Assistant Commissioner Beamish's exhortation in Order PO-2435 to ask if there is something about the specific information that, "if disclosed, would reveal something of a personal nature about the individual?"

In the circumstances of the present appeal, I do not accept that disclosure of the signatures of corporate officers would reveal something that is inherently personal in nature. Nor do I accept that disclosure of the signature of the former Minister of Energy, Science and Technology (as that position was then known) would reveal something of an inherently personal nature. The signatures appear in records created in an official government context, that is, the signing of contracts between OPG and the Company or other affected parties for the provision of information technology services. The signature of the former Minister appears on the incorporation documents. This is not an appeal where there is any question, concern, or relevance to the identity of the corporate officers, or the former Minister.

In the circumstances of this appeal, I find that the signatures contained in the records do not fall within the definition of personal information in section 2(1) of the *Act*. Accordingly, the signatures cannot be exempt under the personal privacy exemption in section 21(1). Since no other exemptions were claimed for this information, I will order OPG to disclose it.

I adopt the approach taken by Adjudicator Loukidelis in Order PO-2632 for the purposes of this appeal. In the records at issue, the context in which the signature line and signature appear is that of an indemnity agreement between the appellant and the city. I find this to be a business and professional context, rather than personal one. Further, in the present appeal, I find it unlikely that the identity of the appellant's signing authority would be at issue or of concern to the requester. The appellant's name already appears in the portion of the indemnity agreement already disclosed to him.

Next, I must consider whether, if the specific information is disclosed, it would reveal something of a personal nature about the individual. The appellant alleges the individual identified in the signature line would be connected with the details of the indemnity agreement. I do not accept this argument. The indemnity agreement is between the appellant, a business corporation and the city. The individual who signed the agreement on behalf of the affected party did so only in order to bind the corporation to the agreement. The individual who signed the agreement did not do so in his/her personal capacity such that he/she personally was liable under the agreement. In my view, disclosure of his/her signature and the signature line would only reveal the individual's name and his/her job title. As set out above, section 2.1 of the *Act* contemplates that personal information does not include an individual's name and job title. Accordingly, I find that the information at issue is not personal information for the purposes of the *Act*. As it does not qualify as personal information, it cannot be exempt from disclosure under the mandatory personal privacy exemption in section 14(1).

As no further discretionary exemptions were claimed for this information and the mandatory exemptions in section 10(1) and 14(1) do not apply, the information should be disclosed to the original requester.

**ORDER:**

1. I uphold the city's decision to disclose the remaining information in the record and order it to do so by **May 13, 2011** but not before **May 9, 2011**.
2. In order to verify compliance with Order Provision 1, I reserve the right to request the city to provide me with a copy of the record provided to the original requester.

Original Signed By: \_\_\_\_\_

April 8, 2011 \_\_\_\_\_

Stephanie Haly  
Adjudicator