

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

INTERIM ORDER MO-2665-I

Appeal MA10-30

Municipality of Chatham-Kent

October 31, 2011

Summary: The appellant requested records relating to the 2007 compliance audit conducted into the election finances of a named mayoral candidate and current Mayor of the Municipality of Chatham-Kent. The municipality withheld certain portions of the records pursuant to sections 14(1) and 6(1)(b). I find that the records contain the appellant's personal information. I find further that only certain portions of the records contain the personal information of individuals other than the appellant, and that this information is exempt under section 38(b) of the *Act*. I find that the public interest override does not apply to the personal information in the records. I have deferred a portion of my decision regarding the application of section 6(1)(b) pending notification of an affected party. The municipality is ordered to disclose the portions of the records that do not contain the personal information of individuals other than the appellant and is further ordered to disclose the appellant's personal information.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1), 2(2.1), 14(1), 14(2), 14(3), 16, 38(b). *Municipal Act, 2001*, S.O. 2001, c. 25, s. 239(2)(b); *Municipal Elections Act, 1996*, S.O. 1996, c. 32, s.88(5).

BACKGROUND:

The appellant submitted a request to the Municipality of Chatham-Kent (the municipality) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for the following information:

[C]opies of all documents, audio recordings of interviews, statements, transcripts, receipts, submissions, and any other material collected by [a named consultant] pertaining to the 2007 compliance audit conducted into the election finances of [a named mayoral candidate and current Mayor].

The municipality issued a fee estimate and, after receiving a fee deposit, issued a decision advising that access was granted to 27 records which were provided by the named consultant. The copies of the records provided to the appellant contained numerous severances, although no exemption claims were made by the municipality.

The appellant appealed the municipality's decision.

During mediation, the appellant clarified the issues at appeal as follows.

- The appellant maintained that the fee was excessive.
- With respect to the municipality's access decision, the appellant indicated that he is pursuing access to the severed portions of the records, and that the search for all audio recordings of interviews conducted by the consultant, including his own, is at issue in this appeal. The appellant explained that he was not satisfied with the released transcripts of the three interviews, as his request was for the audio recordings of all interviews conducted by the consultant.
- The appellant took the position that there is a public interest in the disclosure of the requested records (in reference to section 16 of the *Act*), and that the requested information is relevant to a fair determination of his rights, raising the possible application of the factor favouring disclosure in section 14(2)(d) of the *Act*.

During mediation, the municipality agreed to reconsider its decision on the fee, and to conduct a further search for additional responsive records. As a result, the municipality located the audio recordings of four interviews conducted by the named consultant, including the appellant's interview. The municipality subsequently notified three affected individuals whose interests may be affected by the disclosure of the tape recorded interviews.

Following notification of the affected individuals, the municipality issued a revised decision dated April 27, 2010, in which it:

- granted access to the audio recording of the interview between the appellant and the named consultant, but withheld access to the tape recorded interviews with the other three individuals on the basis that they did not consent to disclosure;

- waived the balance of the fee owing for responding to the request;
- indicated that it was claiming the mandatory exemption in section 14(1) of the *Act* (personal privacy) to portions of the records.

After receiving the revised decision, the appellant indicated that the fee and the search for the audio recording of his interview with the named consultant are no longer at issue in this appeal. However, he confirmed that he was pursuing access to the remaining severed records, and also indicated that additional records should exist, namely, an audio recording of an interview between another named individual and the consultant, and invoices pertaining to the Mayor's campaign advertisements in a local newspaper.

In response, the municipality agreed to conduct a further search. It located an additional audio recording of an interview between the consultant and another individual. However, the municipality did not locate any invoices pertaining to the Mayor's campaign advertisements in the local newspaper, and advised that these specific invoices were not part of the compliance audit records submitted by the consultant.

Also during mediation, at the appellant's request, the municipality agreed to expand the scope of the appellant's request to include the Minutes of the August 17, 2007 Council Closed Session meeting. The municipality then issued a supplementary decision in which it:

- stated that the three recently located records (records 28, 29 and 30) had been added to the index of records;
- denied access to the audio recording of an interview between the consultant and the named individual (record 29) and an audio recording of the interviews of the other individuals (record 28) on the basis of the exemption in section 14(1), because the third parties objected to disclosure;
- denied access to the minutes of the August 17, 2007 meeting (record 30) on the basis of the exemption in section 6(1)(b) (closed meeting) of the *Act*, and
- granted access in full to two ads that were attached to record 18.

In response, the appellant indicated that certain records or portions of records were no longer at issue in this appeal, including the severed portions of Record 27 (which is one of the transcripts made from Record 28). He also confirmed that although he is no

longer seeking the bank account and phone number severed from a copy of a cheque that was attached to record 22, he continued to pursue access to the signature and bank address severed from the cheque. In addition, the appellant indicated that the municipality's search for invoices pertaining to the Mayor's campaign was no longer at issue.

Mediation did not resolve this file, and it was transferred to the inquiry stage of the appeal process. During the inquiry into this appeal, I sought representations from the municipality, the appellant and two affected parties, which were shared between the parties in accordance with *Practice Direction 7* issued by this office.

RECORDS:

The records remaining at issue include portions of emails (portions of records 10, 12, 16, 18, 20), portions of a cheque (record 22), portions of the notes of a transcribed interview (record 26), two audio recordings (records 28 and 29), and the Minutes of a Council Closed Session meeting dated August 17, 2007 (record 30).

Preliminary issues:

Audiotape - copies

As a preliminary issue, I note that Record 28 consists of an audiotape of interviews with three identifiable individuals. This record is at issue in this appeal; however, I note that transcripts of all three of these interviews were made, and that these transcripts were largely disclosed to the appellant, with only small severances made to the interviews of two of these individuals.

The appellant has indicated that he wishes to have access to the audiotape at issue, notwithstanding that he has the bulk of the transcripts of the interviews in this audiotape.

Below, I will be reviewing the severances made to the interviews in the transcript (Record 26) to determine whether they qualify for exemption under section 14(1) of the *Act*. In the circumstances, I will not be separately reviewing the audiotape, but will apply my findings on the severances to the corresponding portions of the audiotape.

In addition, since the appellant removed Record 27 (the transcript relating to two individuals) from the scope of the appeal, any decision I make will reflect the severances that the appellant has not pursued.

Scope and Search issues

As noted above, the various issues raised by the appellant relating to the reasonableness of the searches conducted for responsive records were addressed in the mediation stage of the appeal, and this issue was no longer extant at the time this file was transferred to adjudication.

However, in his representations the appellant again raises certain questions relating to the reasonableness of the searches conducted by the municipality. Under a heading in his representations which he titles "Misleading and incomplete information," the appellant refers to certain records he has received, and sets out the reasons why he believes these records support his view that additional records exist. The appellant also raises questions about the involvement of another affected party, and provides information about his understanding of this party's involvement in the events which preceded the incidents resulting in the investigation. In addition, the appellant identifies how certain actions by various parties have negatively impacted him. He then states:

Therefore, the appellant requests that the scope of this appeal be expanded to make sure that any relevant information is disclosed, including documents that the municipality said do not exist when they clearly do.

I shared this portion of the appellant's representations with the municipality, and invited it to address the scope and search issues raised by the appellant.

With respect to the scope of the request, the municipality states that it did not unilaterally define the scope of the request. It also states:

The scope of the request was to provide copies of all documents, audio recordings of interviews, statements, transcripts, receipts, submissions, and any other materials pertaining to the compliance audit. Despite the generality of the final category ("... any materials pertaining to the compliance audit"), the municipality feels it has exhausted all avenues in attempts to fulfill the request.

The municipality also reviews in a general way the nature of the searches conducted for responsive records, and maintains that the searches conducted were reasonable.

Analysis and findings

In determining this issue, I have considered the issues of the scope of the request and the nature of the searches, raised by the appellant in this appeal, as well as the

background to this appeal, the extensive mediation that occurred, and the nature of the issues remaining at the conclusion of mediation.

With respect to the questions raised by the appellant in his representations concerning the search issue, and his questions about the possible existence of additional records, as a preliminary observation, I note that the appellant does identify some specific questions about additional records that may exist or may have existed. For example, he refers to the portions of the transcripts he received which refer to other documentation that was to be provided, and which does not appear to be at issue in this appeal. However, I also note that these transcripts were provided to the appellant immediately in response to his request, that the search issue was discussed extensively during the mediation stage of this appeal, with the appellant identifying precisely the records which he believed ought to exist, and the municipality conducting a number of further searches for responsive records during mediation. As a result of the mediation that was conducted, the appellant agreed that the reasonableness of the search was no longer an issue at the end of mediation.

In light of the events that occurred during the mediation stage of this appeal, and particularly given the appellant's agreement that the reasonableness of the search was no longer an issue at the close of mediation, I will not require the municipality to conduct further searches in response to the request. Although I accept that the appellant raises some legitimate questions about certain records, given the mediation and agreements that occurred during that period, and in light of the specific wording of the request (material collected by a named consultant pertaining to the compliance audit), I will not order the municipality to conduct further searches for the records referred to in the questions raised by the appellant.

With respect to the appellant's interest in "expanding the scope of the request," previous orders have clearly stated that "the need for an institution to determine which documents are relevant to a request is a fundamental first step in responding to the request" (Order PO-880). Furthermore, previous orders have established that the request itself sets out the boundaries and circumscribes the records which will be identified as being responsive to the request (Order MO-1483). I agree with these statements. In the circumstances of this appeal, the municipality identified the nature of the request and the responsive records, and this appeal has proceeded on that basis. The scope of the request was not raised as an issue earlier in this appeal, and I will not "expand" the scope of the request at this stage of this appeal.

If the appellant continues to seek additional records, he is not precluded from submitting a separate request for specific records he now believes may exist.

Notification of affected party

Record 30

Record 30 consists of the in-camera minutes of an identified council meeting. The Municipality has claimed the application of section 6(1)(b) for this record, in its entirety.

Section 6 – closed meeting

Section 6(1)(b) of the *Act* 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.

Previous orders have held that, for this exemption to apply, the municipality 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]

With respect to part 2 of the test, that *a statute authorizes the holding of the meeting in the absence of the public*, the municipality states that the meeting was held in the absence of the public under the authority of section 239(2)(b) of the *Municipal Act*. Section 239(1) of the *Municipal Act* requires meetings to be open to the public; however, section 239(2) provides certain exceptions to this. Section 239(2)(b) states:

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

- b) personal matters about an identifiable individual, including municipal or local board employees;

Although the municipality did not take the position that this record qualifies for exemption under section 14(1) or 38(b) of the *Act* (personal privacy), it has claimed that meeting involved "personal matters" under section 239(2) of the *Municipal Act*. This raises the issue of whether the subject matter of the meeting involves "personal information."

In order for me to determine whether section 6(1)(b) applies in the circumstances of this appeal, I must first determine whether the record contains personal information. Record 30 relates to the retainer agreement with the auditor. In light of the definition of personal information in section 2(1) and 2(2.1) of the *Act* (discussed below), the representations of the municipality and consistent with previous orders of this office¹, it would appear that the information contained in Record 30 is not the personal information of any identifiable individual, and that therefore the subject matter being considered is not "personal matters" as required by section 239(2)(b) of the *Municipal Act*.

However, I note that although the auditor is aware of the request resulting in this appeal, he has not been notified as a possible affected party in the appeal. I have decided, in light of the recent decision of the Divisional Court in *Northstar Aerospace v. Ontario (Information and Privacy Commissioner)*², that I will provide the auditor with the opportunity to make representations on this issue to me, prior to issuing a decision on the application of section 6(1)(b) to Record 30.

As a result, I will not address the possible application of section 6(1)(b) to Record 30 further until this party has had the opportunity to be heard on this issue.

ISSUES:

Issue A: Do the records contain personal information?

Issue B: Would disclosure of the records that contain personal information constitute an unjustified invasion of personal privacy?

Issue C: Is there a compelling public interest in disclosure of the personal information at issue in this appeal?

¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225

² *Northstar Aerospace v. Ontario (Information and Privacy Commissioner)*, 2011 ONSC 2956.

DISCUSSION:

Issue A: Do the records contain 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 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.³

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.⁴

Sections 2(2.1) and 2(2.2) also relate to the definition of personal information. Section 2(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(2.2) 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).

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.⁵

Analysis and findings

I must determine whether the records at issue contain "personal information," as that term is defined in section 2(1) of the *Act* and, if so, to whom it relates.

In this appeal the municipality takes the position that all of the information remaining at issue, with the exception of Record 30, contains the personal information of identifiable individuals other than the appellant, and that the information is therefore exempt. Furthermore, two of the four affected parties have provided representations regarding their information contained in the withheld records.

I will review the portions of the records remaining at issue to determine whether they contain "personal information" for the purpose of the *Act* and to whom that personal information relates.

Record 10 (page 16)

This record consists of an email from the auditor to a lawyer. This email has been disclosed in full, except for the lawyer's name and email address.

³ Order 11

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344

The municipality states that the solicitor's name was withheld as disclosure would be an unjustified invasion of personal privacy.

This type of information is directly referred to in section 2(2.1) of the *Act*. Consequently, I find that it is not the personal information of the lawyer, as it is this individual's name in his professional capacity. Similarly, the email address is the professional contact information of this individual. Accordingly, I find that the severed information is not personal information, and I will order that it be disclosed.

Record 12 (page 20)

This record consists of an email chain from the auditor's office to a notary public. This email has been disclosed in full, except for the notary's name and email address, and the Auditor's staff member's email address.

The municipality states that the identifiers were withheld as disclosure would be an unjustified invasion of privacy.

The types of severances on this page are similar to those made on Record 10 and for the same reasons I find that it is not the personal information of the notary, as it is this individual's name in his professional capacity. Similarly, the email address of the notary and of the staff member is the professional contact information of these individuals. Accordingly, I find that the severed information is not personal information, and I will order that it be disclosed.

Record 16 (page 32)

This record consists of an email from a lawyer to one of the affected parties. The bulk of this email was disclosed, except for the name and contact information of the sender of the email, the name and email address of the recipient affected party, references to the name of a lawyer in the body of the email, and a reference to the appellant.

The municipality states that the content of the email was reviewed and edited to remove personal names, with the balance of the email disclosed.

For the same reasons noted above, I find that the withheld information is not the personal information of the sender nor the lawyer mentioned in the email, as these individuals are involved in this matter in their professional capacity. Similarly, I find that the name and email address of the recipient is also not this individual's personal information, as the contact information appears to be in a representative capacity.

However, I find that the reference to the appellant is his personal information, but since it is not the personal information of any other identifiable individual, this information ought to be disclosed to the appellant.

Accordingly, I find that this record does contain the personal information of any identifiable individual other than the appellant, and I will order that it be disclosed.

Record 18 (page 34)

This record consists of an email chain, including an email from one lawyer to another lawyer, and a further email from a lawyer to his client. This email chain has been disclosed in full, except that the names and contact information of the lawyers has been severed from the record.

The municipality states that the names were removed as disclosure would be an unjustified invasion of personal privacy.

As with the previously mentioned records, I find that this record does not contain the personal information of the lawyers, as it refers to these individuals in their professional capacity. The other severed information is the professional email address and contact information of these individuals. Accordingly, I find that the severed information is not personal information, and I will order that it be disclosed.

Record 20 (pages 36-37)

This record consists of an email from an affected party to the auditor (copied to a number of individuals and organizations), which attaches a copy of a letter from the affected party to the auditor. The email and letter were disclosed in full, except that the email address of the sender, and the name and contact information of identified lawyers were removed.

The municipality states that the names and contact information were removed as disclosure would be an unjustified invasion of personal privacy.

Section 2(2.1) of the *Act* clearly applies to this information. Accordingly, I find that the name and email address of the sender is not this individual's personal information, as the contact information appears to be in a representative capacity. In addition, I find that the name and contact information of the lawyers is not the personal information of these individuals, as they are involved in this matter in their professional capacity. Accordingly, I find that the severed information is not personal information, and I will order that it be disclosed.

Record 22 (page 39)

This record consists of a copy of the cheque paid to a company by a named organization. All of the information on the cheque was disclosed except for the bank

account number, an identified telephone number, the address of the bank branch and the signature of the signatory of the cheque.

The appellant has confirmed that he is not pursuing access to the severed telephone number or the bank account number. Accordingly, the only information remaining at issue from this record is the bank branch address and the signature of the person who signed the cheque.

The municipality states that the bank address and the signature on the cheque were edited to remove personal information as the disclosure would be an unjustified invasion of personal privacy.

The severed information on this record is somewhat different from that in the above-noted records. Nevertheless, I find that the signature and bank branch address do not constitute personal information for the purpose of the *Act*. The cheque emanates from an organization, and the address of the bank branch where this organization banks is not, in my view, personal information of any identifiable individual. Similarly to my findings regarding the previous records, the name of the person signing the cheque on behalf of the organization is not that individual's personal information, as it is being done on behalf of the organization. Accordingly, I find that the severed information is not personal information, and I will order that it be disclosed.

Record 26 (9 pages)

This record consists of a typed transcript of an interview by the auditor of a named affected party. Almost all of this record was disclosed to the appellant, with only brief severances made to portions of pages 1, 3 and 8. I find that this record does contain the personal information of the appellant, as it refers to him in some portions of the record. The municipality takes the position that the severances were made to edit personal information.

After reviewing the severed portions of this record, I make the following findings:

- page 1 (first three severances): the first three severances on page 1 of this record refer to certain lawyers by name. I find that this information is the professional information of these lawyers, and does not contain their personal information.
- page 1 (fourth severance): this severance is of the exact age of an identified individual. I find that this information is the personal information of this individual in accordance with paragraph 2(1)(a) of the definition of "personal information" in the *Act*.

- page 3 (first severance): this severance refers to two individuals by name, and identifies certain activities that the interviewee states they were engaged in. One of these individuals is the appellant, and the other is another named individual. I find that the reference to these individuals is their personal information in accordance with paragraph 2(1)(h), as disclosure of the name would reveal other personal information about these individuals. However, I find that the name of the appellant is his personal information, but not the personal information of any other identifiable individual. Accordingly, the appellant's name ought to be disclosed to him. In the context in which it is found, the name of the other named individual is that individual's personal information for the purpose of the *Act*.
- page 3 (second severance): this severance is of a date relating to the interviewee's work history. I find that it is information relating to the employment history of the individual, and fits within the definition of personal information found in paragraph 2(1)(b) of the *Act*.
- page 3 (third severance): this severance is of the amount a certain job pays. It is not tied to a particular individual, and I find that it is not personal information for the purpose of the *Act*.
- page 3 (fourth severance): this severance is of an amount relating to the financial status of the interviewee. I find that disclosure of this information would reveal other personal information about the individual, and fits within the definition of personal information found in paragraph 2(1)(h) of the *Act*.
- page 8 (first three severances): these severances refer to the interviewee's views and opinions, or refer to other identifiable individuals and their actions or reactions. I find that these severances contain the personal information of the interviewee and the two identified individuals, and that they fit within the definition of personal information found in paragraph 2(1)(h) of the *Act*.
- page 8 (fourth severance): this severance refers to the age of the appellant. I find that it is the personal information of the appellant in accordance with paragraph 2(1)(a); however, it is not the personal information of any other identifiable individual and, accordingly, ought to be disclosed to him.

Record 29 (audiotape)

This record consists of an audiotape of an interview by the auditor with a named affected party (affected party A).

The municipality confirmed that this affected party did not consent to the release of the information. Affected party A also provided representations opposing release of the

information and stating that the information concerns a personal, private and confidential matter.

To begin, I note that the appellant is referred to in the record, and the record therefore contains his personal information.

In addition, on my review of the audiotape that is Record 29, I note that the first portion of this audiotape (from 0.00 to 4.08), as well as the final statement on it (from 9.01 to 9.04), addresses specific health matters relating to affected party A. As a result, I am satisfied that this information is the personal information of affected party A.

With respect to the other portion of the audiotape (from 4.09 to 9.00), I find that this portion relates solely and directly to the matter being reviewed by the auditor. In that respect, affected party A is involved in this matter in a professional, rather than personal capacity. As a result, I find that this information is not personal information, and I will order that it be disclosed.

Summary

In summary, I find that the withheld portions of Records 10, 12, 16, 18, 20 and 22, and certain portions of Records 26 and 29, do not contain the personal information of identifiable individuals. As no other exemptions have been claimed for these portions of the records, I will order that they be disclosed. I have also found that Records 26 and 29 contain the personal information of the appellant, and that some portions of those two records also contain the personal information of individuals other than the appellant.

I will now determine whether the withheld portions of Records 26 and 29 qualify for exemption under section 38(b) of the *Act*.

Issue B: Would disclosure of the records that contain personal information constitute an unjustified invasion of personal privacy?

I have found above that Records 26 and 29 contain the personal information of the appellant as well as the personal information of other identifiable individuals.

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exceptions to this general right of access, including section 38(b). Section 38(b) introduces a balancing principle that must be applied by institutions where a record contains the personal information of both the requester and another individual.

In determining whether the exemption in section 38(b) applies, sections 14(1), (2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 14(2) provides some criteria for the municipality to consider in making this determination; 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. In addition, if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy under section 38(b).

Section 14(1)(a)

Section 14(1)(a) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

In this case the appellant takes the position that the release signed by election candidates permitting public access to personal information is still binding and applicable during a compliance audit into election activities. The appellant states that these releases would be on file with the municipality, and "would satisfy the prior written consent requirements of section 14(1)(a)" for two identified individuals.

I have considered the appellant's position, and do not accept that section 4(1)(a) applies to the withheld information at issue. Previous orders have established that in order to meet the requirement in section 14(1)(a), the consenting party "must provide a written consent to the disclosure of his or her personal information in the context of an access request".⁶ In this appeal, none of the parties provided a written consent to disclose the specific information at issue. As a result, I find that section 14(1)(a) does not apply to the information remaining at issue.

Section 14(1)(c)

Section 14(1)(c) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

⁶ see Order PO-1723

personal information collected and maintained specifically for the purpose of creating a record available to the general public;

The appellant argues that a compliance audit is performed under the authority of the *Municipal Elections Act* and that the information is collected to create a record available to the general public. He also states that nothing in the *Municipal Elections Act* or the *Public Inquiries Act* suggests that records are not to be made available to the public, and that the dominant policy favours full disclosure. The appellant then refers to section 88(5) of the *Municipal Elections Act*.

In my view, the personal information remaining at issue was not "collected and maintained specifically for the purpose of creating a record available to the general public." The information was collected in the course of conducting a compliance audit. Section 88(5) of the *Municipal Elections Act*, referred to by the appellant, only applies to the public availability of "documents and materials filed with or prepared by the clerk or any other election official" under that *Act*. I have not been provided with evidence to support a finding that the records at issue fit within section 88(5) and, as a result, I find that section 14(1)(c) does not apply.

Section 14(1)(d)

Section 14(1)(d) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

under an Act of Ontario or Canada that expressly authorizes the disclosure;

In support of his position that this section applies, the appellant states:

Subsection (d) also favours granting full disclosure since the general purview of both Acts under which the compliance audit is governed promote maximum transparency, accountability and public disclosure.

In order for section 14(1)(d) to apply, there must either be specific authorization in the statute for the disclosure of the type of personal information at issue, or there must be a general reference to the possibility of such disclosure in the statute together with a specific reference to the type of personal information to be disclosed in a regulation.⁷ Although the appellant refers to the general purview of both acts, he has not identified

⁷ Orders M-292, MO-2030, PO-2641 and MO-2344

any specific section or regulation authorizing the disclosure of the information at issue. As a result, I find that section 14(1)(d) does not apply.

Unjustified invasion of privacy

The municipality takes the position that disclosure of the information at issue would be an unjustified invasion of the privacy of the affected parties. The appellant refers to the factor in section 14(2)(d) in support of his position that the information ought to be disclosed. On my review of the information at issue, I note that the presumption in section 14(3)(a) might apply to some of the information at issue. These sections read:

- (2) 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;
- (3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
 - (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

Section 14(3)(a)

With respect to the application of the presumption in section 14(3)(a), I have found above that the information severed from the audiotape that is Record 29 addresses specific health matters relating to the affected party A. I find that this presumption applies to the information severed from Record 29, as the personal information relates to a medical history, diagnosis or condition.

Section 14(2)(d)

The appellant takes the position that the factor in section 14(2)(d) applies to the withheld information. 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 hearing⁸

The appellant states that the personal information being requested is significant to the determination of his rights. He refers to specific civil proceedings in which he is involved, and also refers to the effects certain actions have had on him. He then states that "the requested material speaks directly and dominantly to [his] rights concerning the litigation."

Analysis and findings

I have found that the following information constitutes the personal information of identifiable individuals:

- the withheld portions of the tape recording which constitutes record 29, which relate solely to specific health matters relating to affected party A;
- the following portions of the interview of an identified individual, which is record 26:
 - o the fourth severance on page 1, which contains the exact age of an individual;
 - o the first severance on page 3, which refers briefly to an individual by name and identifies an activity that the interviewee states this individual was engaged in;
 - o the second severance on page 3, which is a date relating to the interviewee's work history;
 - o the fourth severance on page 3, which is an amount relating to the financial status of the interviewee;
 - o the first three brief severances on page 8, which refer to either the interviewee's views and opinions, or to other identifiable individuals and their actions, reactions and/or age.

⁸ 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.).

On my review of the information remaining at issue and the representations of the parties, I am not persuaded that the information contained in these severances is relevant to a fair determination of rights affecting the appellant.

The severances from record 29 refer to the health matters of an identified individual and appear to be unrelated to the matters involving the appellant as he identified them above. In my view, this affected party's privacy concerns in the information are significant. The brief severances from the transcript of record 26 relate to discrete bits of information concerning individuals other than the requester, and largely relate to individuals not involved in the civil actions referred to by the appellant. I note that the appellant has already received the majority of this record. To the extent that some of the brief portions of severed information do concern an individual involved in the civil actions, I find that this information is not relevant to a fair determination of rights affecting the appellant. I have not been provided with sufficient evidence to satisfy me that any of the severances made to Records 26 and 29 are relevant to the fair determination of rights affecting the appellant.

In summary, I find that the presumption in section 14(3)(a) applies to the severances in record 29, and that none of the factors favouring disclosure apply to any of the information which I have found constitutes the personal information of individuals other than the appellant. As a result, I uphold the decision of the municipality to deny access to these portions of information on the basis of sections 14(1) and 38(b).

Issue C: Is there a compelling public interest in disclosure of the personal information at issue in this appeal?

The appellant has taken the position that the "public interest override" at section 16 of the *Act* applies in the circumstances. Section 16 reads:

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

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.⁹

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

⁹ 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.).

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.

If a compelling public interest is established, it must 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. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption. [See Order P-1398]

The appellant refers to a number of reasons why he believes the public interest override applies in this appeal. He identifies the public interest in municipal elections and in the compliance audit conducted, and refers to the media interest in these issues. He also indicates that, in addition to significant media interest, the public interest in the compliance audit also resulted in editorials, letters to the editor, and call-in radio programs devoted to the topic. In addition, the appellant states that the audit predominantly involves a democratic election and the activities of municipal government, and that disclosure will result in added accountability and transparency.

Findings

The portions of records which I have found to be exempt from disclosure consist of the severed portions of the records that contain the personal information of identifiable individuals other than the appellant. I have found that the disclosure of these portions of the records would constitute an unjustified invasion of privacy. I note that the vast majority of the requested information was disclosed to the appellant, and the portions which were withheld consist of very brief severances to Record 26, and the portion of Record 29 which deals exclusively with an individual's medical information.

Although I accept the appellant's position that there is a public interest in the subject matter of this appeal and the municipal election and compliance audit generally, based on the information provided to me, I am not persuaded that the evidence provided supports a finding that a public interest exists in disclosure of the withheld information. In my view, disclosure of the severed portions of personal information in the records would not "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". As a result, I am not persuaded that there is a compelling public interest in the disclosure of these portions of the records.

Accordingly, I find that section 16 does not apply to the withheld information.

ORDER:

1. I uphold the municipality's decision to withhold the following personal information in Record 29: the first portion of this audiotape (from 0.00 to 4.08), as well as the final statement on it (from 9.01 to 9.04); and the following severances on Record 26: page 1 – fourth severance; page 3 – first severance relating to the individual other than the appellant; page 3 – second severance; page 3 – fourth severance; page 8 – first three severances.
2. I order the municipality to disclose to the appellant by **December 5, 2011**, the withheld portions of Records 10, 12, 16, 18, 20 and 22, and the remaining portions of Records 26 and 29.
3. I order the municipality to disclose to the appellant Record 28 by **December 5, 2011**, in accordance with my decision regarding Record 26 (in order provisions 1 and 2) and in accordance with the severances that were made to Record 27, which was removed from the scope of this appeal.
4. I remain seized of the issues relating to Record 30 and the application of section 6(1)(b) to that record pending notification of the auditor.
5. In order to verify compliance with this interim order, I reserve the right to require the municipality to provide me with a copy of the records disclosed to the appellant pursuant to order provisions 2 and 3.

Original signed by: _____
Laurel Cropley
Adjudicator

_____ October 31, 2011