Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2788

Appeal MA10-84

City of Vaughan

September 13, 2012

Summary: The appellant sought certain records from 2003 to 2008 relating to an identified municipal account, and to certain RRSP contribution payments made to municipal councillors. The city located some responsive records and provided partial access to them, denying access to portions of them on the basis of section 14(1) (personal privacy). The city also took the position that the appellant had removed certain records from the scope of the request. The appellant appealed the city's decision, and also claimed that he had not removed certain items from his request. This order confirms that the appellant had not removed the items from the request. It also determines that the information in the withheld portions of the records is the personal information of identifiable individuals, and that it qualifies for exemption under section 14(1). In addition, this order finds that the public interest override in section 16 does not apply.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 14(1)(a), 14(1)(c), 14(3)(f), 14(4)(a), 16 and 39(2). *Municipal Act, 2001*, S.O. 2001, c. 25, section 284.

Orders and Investigation Reports Considered: PO-1730, PO-2050, MO-2598.

OVERVIEW:

[1] The City of Vaughan (the city) received a three-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) which is summarized as follows:

> 1) details of any payments made by the City to the former and current Mayors, Regional Councillors and council members for the years 2003-2008 by issuing them a cheque. In particular, the amount of money the City has paid or pays yearly on account of contributions matched by the City for them in respect of RRSPs [Registered Retirement Saving Plans]. As well, a detailed summary of the account(s) where these payments have been expensed;
>
> 2) … a copy of each cancelled cheque provided to each of these individuals, for only the money paid to match their RRSP contribution, as well as a copy of all back-ups to these entries for the City's Financial Records and audit; and
>
> 3) any council report, memo, extracts, minutes, policy or by-law in respect of this matter, or authorizing the contributions, matching RRSP contributions for the Mayor and Members of Council.

[2] The city responded to the request by issuing an access decision (the first decision). In that decision, it indicated that access was granted to the responsive records, in part. Access to portions of the records was denied on the basis of the exemption in section 14(1) (personal privacy) of the *Act*. The city also identified for the requester the fees that were payable, and provided an index of the records. In addition, the city stated:

> Please be advised that [the city] ceased its practice of matching RRSP contributions … in 2002. The final set of payments made to match RRSP contributions were issued by [the city] in early 2003. Because of the cessation of this practice, [the city] does not have records related to RRSP matching … for the earning years 2003 – 2008. These records do not exist.

[3] The appellant filed an appeal of the city's decision. The appeal was eventually withdrawn, as the appellant had not filed his appeal within the time requirements set out in section 39(2) of the *Act*.

[4] Two months later, the appellant submitted a new, four-part request to the city under the *Act* (the new request). The first three parts of the request were identical to the appellant's earlier request, and the fourth part of the request was for:

> 4) a copy of the "Detailed Business Transactions Subtotal Object & Business Unit" for the corporate contingency account for the years 2003 to 2008 yearly, not combined, in its entirety.

[5] Approximately three weeks after submitting the new request, the appellant sent a follow-up email to the city, providing clarification of his new request. After exchanging additional emails which confirmed that the city had received the appellant's clarification, the city issued an access decision. In that decision, the city took the position that, because of the clarification, records responsive to items 1 to 3 of the new request, which was identical to the original request, were not at issue. The decision then stated that access was granted, in part, to records responsive to item 4 of the request, and that portions of the records were withheld on the basis of the exemption in section 14(1) (personal privacy) of the *Act*.

[6] The appellant appealed the city's decision.

[7] During mediation, the city indicated that it maintained the position set out in its first decision, that access was denied to portions of records responsive to items 1 to 3 on the basis of the exemption in section 14(1). The city also maintained that, as a result of his email clarification, the appellant had removed items 1 to 3 from the scope of his new request. The appellant did not agree, and the scope of the new request was therefore raised as an issue in this appeal.

[8] With respect to item 4 of the new request, the appellant confirmed that he was appealing the decision to deny access to the portions withheld under section 14(1) of the *Act*.

[9] Mediation did not resolve the issues, and the appeal was transferred to the inquiry stage of the process. I sent a Notice of Inquiry identifying the facts and issues to the city, initially. I invited the city to address the application of section 14(1) to those portions of the records responsive to item 4 which were denied on that basis. I also invited the city to address the issue of the scope of the request. In addition, I indicated that, if I made a finding that the scope of the new request includes records responsive to items 1 through 3 of the request, the application of the section 14 exemption to those records would then be addressed in this appeal. I accordingly invited the city to provide representations, in the alternative, on the application of the section 14(1) exemption to records responsive to items 1 through 3, and to provide me with a copy of them.

[10] The city provided representations on all of the issues, including the application of section 14(1) to the withheld portions of the records responsive to items 1 through 3. It also provided me with a copy of the records responsive to items 1 through 3. In

addition, the city indicated that access to additional portions of the records responsive to item 4 was being provided to the appellant.

[11] I then sent a Notice of Inquiry, along with the non-confidential representations of the city, to the appellant, who also provided representations in response. I subsequently sent a Notice of Inquiry to seven parties whose interests may be affected by this appeal. Two of these affected parties provided representations in response.

Preliminary issue – Scope of the request

[12] As identified above, the scope of the request was raised as an issue in this appeal.

[13] The appellant submitted the new, four-part request to the city. Approximately three weeks after submitting the request, the appellant sent a follow-up email to the city, providing clarification of his new request. In this email, the appellant stated:

> This request is identical to my previous [Freedom of Information] request [identified file number] with the exception of item number four which I have added. I wanted to let you know that I have resubmitted this request … since I missed the 30 day appeal period.
>
> In continuing my clarification, the city has provided me with records for parts 1 to 3 … therefore I do not require these records or a fee estimate for these once again. However, if you will now provide me with the records without severing (as was done with cheque requisitions, cheques and printouts provided to me …) then please provide me with a fee estimate in this case. …
>
> To conclude I wish to reiterate that item four of my most recent request is the only new item that I have added [in comparison to my previous request].

[14] After exchanging additional emails which confirmed that the city had received the appellant's clarification, the city issued an access decision which stated, in part:

> You have indicated in your email [set out above] that, in reference to the records previously disclosed to you by [the first decision], you "do not require these records or a fee estimate for these." Those records are responsive to items 1 to 3 of your current access request. This access decision, accordingly, speaks only to item 4 of your request. …

[15] The decision proceeded to address only access issues relating to item 4 of the request.

[16] Upon receipt of the decision letter, the appellant wrote to the city and confirmed that his e-mail had been sent for clarification only, and that he was still seeking access to records responsive to parts 1 to 3 of his request. The city responded by confirming that it maintained its position with respect to the exemptions claimed for portions of records responsive to items 1 to 3, as set out in its first decision.

[17] In its representations on the scope of the appeal, the city supports its position by reviewing the history of this matter and stating:

- that the appellant had submitted an earlier request to the city for records responsive to items 1 through 3;
- that the city had issued an access decision in which it provided access to portions of the responsive records, and denied access to other portions on the basis of the exemption in section 14(1);
- that the appellant had attempted to appeal the city's earlier access decision, but had not filed his appeal within 30 days required under section 39(2) of the *Act*; and
- that shortly after, the appellant submitted the new 4-part request to the city.

[18] The city provides two main arguments in support of its position that the scope of the new request ought not to include items 1 through 3.

[19] The first argument made by the city is that the appellant should not be able to submit a new request for the same records in these circumstances. It argues that section 39(2) establishes a 30-day time period to file an appeal of an access decision, and that allowing a requester to simply file a new request if the 30-day time period is missed obviates the purpose of section 39(2). It also states that access requests are filed and processed with a view to providing access to "records", not with a view to reiterating previous decisions in the absence of records. Furthermore, the city states that it is "not aware of any provision in the *Act* that speaks to the filing of requests for the sole purpose of re-starting the appeal window provided for in section 39(2)".

[20] I do not accept the city's position on this point. Although section 39(2) of the *Act* clearly establishes a 30-day window of time in which to file an appeal, there is nothing in the *Act* that precludes an individual from making a subsequent request for the same records. There can be many reasons why an individual may decide to make a new request for records previously requested (for example, a sudden public interest in the records which may affect access, or changed circumstances where possible harms from disclosure no longer exist). In my view, and in the absence of circumstances where a request may be considered frivolous or vexatious (which would trigger the application of section 20.1 of the *Act*), there is nothing in the *Act* prohibiting a requester from making a new request for records previously requested under the *Act*. I note that the wording of the city's representations refer obliquely to the possibility that the appellant's second request is frivolous or vexatious, however, in the absence of

specific representations on that issue, and in the absence of any other evidence suggesting the possible application of section 20.1, I will not consider this issue further.

[21] The second argument made by the city is that it acted reasonably in interpreting the appellant's clarification as meaning that he was not pursuing access to items 1 through 3 in his new request. The city refers to the appellant's clarification which states that "the city has already provided me with the records for parts 1 to 3 … therefore I do not require these records … again" and "… however if you will now provide me with the records without severing. ... then please provide me with a fee estimate in this case."

[22] I do not accept the second argument made by the city. It is clear that the city was aware of the appellant's earlier attempt to appeal the earlier decision, but that the appellant could not do so because of the time restriction in section 39(2). The new request, resulting in this appeal, is for the four identified items. Although the appellant sent a "clarification" of the new request to the city, the clarification read:

> This request is identical to my previous [Freedom of Information] request [identified file number] with the exception of item number four which I have added. *I wanted to let you know that I have resubmitted this request … since I missed the 30 day appeal period*.
>
> In continuing my clarification, the City has provided me with records for parts 1 to 3 … therefore I do not require these records or a fee estimate for these once again. *However, if you will now provide me with the records without severing* (as was done with cheque requisitions, cheques and printouts provided to me …) then please provide me with a fee estimate in this case. [emphasis added]

[23] In my view, a reasonable interpretation of the appellant's clarification is that he was seeking access to the records responsive to all four items in the request, but that he was not interested in access to records relating to items 1 through 3 which he had already received in response to his earlier request. I find that the city's interpretation of the clarification to read that the appellant is no longer pursuing access to the withheld portions of records responsive items 1 through 3 is taking a very narrow and strict interpretation of the clarification.

[24] Previous orders have established that institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Adjudicator Fineberg also made the following general statement regarding the approach an institution should take in interpreting a request, which was cited with approval by Commissioner Ann Cavoukian in Order PO-1730:

> ... the purpose and spirit of freedom of information legislation is best served when government institutions adopt a liberal interpretation of a request.

[25] Furthermore, previous orders have stated that, generally, ambiguity in the request should be resolved in the requester's favour.[1]

[26] I adopt these principles, and find that they also apply to the written clarification in the circumstances of this appeal.

[27] Accordingly, I find that the scope of the new request includes the records responsive to items 1 through 3. As the city has provided me with these records and with representations on the application of the section 14(1) exemption to the withheld portions of these records, I will consider them in this order.

RECORDS:

[28] The information at issue in this appeal consists of the following:

- the exact amounts of the matching RRSP contributions made by the city for seven named city councillors for the year 2002 (the names have been disclosed); and
- the names of the individuals who received identified settlement amounts from the city (one in 2002, four in 2003 and one in 2006).

[29] The information is contained in the following records:

1) The withheld portions of the records responsive to items 1 through 3 of the request. These portions contain the exact amounts of the matching RRSP contributions made by the city for seven named municipal councillors for the year 2002, or information which would reveal these exact amounts. These portions also contain information relating to the RRSP contribution availability for each individual councilor, based on each councillor's non-taxable earnings from the city for 2002. These amounts are severed from various records including lists of payments from accounts, cheque requisitions, and memoranda.

2) The withheld portions of the records responsive to item 4 of the request, which are six lists of payments from the corporate contingency account for the calendar years 2003 – 2008 (the lists of payments). Access is granted in full to the lists of payments for the years 2005, 2007 and 2008. Access is granted in part to these records for the other years. The withheld portions of the lists of payments relate to two categories of payments:

[1] Orders P-134 and P-880.

a) Eight entries contained in the 2003 list, identifying the exact amount of the RRSP matching contributions made in 2002 for the seven named councillors, and
b) Six entries contained in the lists of payments for 2003, 2004 and 2006 (one payment in 2003, four in 2004 and one in 2006) which consist of the names of identified individuals who received settlement amounts. The amounts of the settlements are disclosed, but the names are withheld.

ISSUES:

A. Do the withheld portions of the records contain "personal information" as defined in section 2(1)?

B. Would disclosure of the personal information constitute an unjustified invasion of personal privacy under the mandatory exemption under section 14(1)?

C. Does the public interest override in section 16 apply?

DISCUSSION:

Issue A. Do the withheld portions of the records contain "personal information" as defined in section 2(1)?

[30] 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;

[31] 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.[2]

[32] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[3]

[33] The city takes the position that the exact amounts of the matching RRSP contributions made by the city, as well as the RRSP contribution availability for the seven named councillors for 2002, constitutes the personal information of those councillors. The city states that the redacted figures are calculated based on each of the councillor's RRSP contribution limits, which is determined through the use of a publicly available formula that has been released to the appellant. The city identifies that the formula uses an individual's taxable income to determine their RRSP contribution availability, and that the redacted figures (determined by using the formula and the individual's taxable income) relate to the individuals in a personal, rather than a professional, capacity. It states that providing the formula and the redacted figures will facilitate the calculation of the individual's taxable income, which is not necessarily identical to the councillor's remuneration from the city. The city also states that the councillors' 2002 remuneration and expenses have been made public as required under other legislation (the *Municipal Act, 2001*).

---

[2] Order 11.

[3] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[34] The appellant states:

> The information in the records requested does not contain information about a person in a personal capacity. The information contained in the records are clearly of individuals in their official or business capacity and since all individuals are members of council [who] received the "RRSP" benefit or income, the information doesn't reveal something of a personal nature about the individual ….

[35] I find that the matching RRSP contributions made by the city for seven named councilors, as well as the RRSP availability for these councillors, constitute their personal information. Previous orders, including the ones referred to by the appellant, have found that information relating to income and benefits constitute the personal information of the recipient.

[36] With respect to the names of individuals who received identified settlement amounts from the city, the city states that these amounts were contained in settlement agreements entered between the city and the named individuals. I find that the names of the individuals who received settlements amounts, taken with the fact that they have entered settlements agreements with the city, and identifying the specific settlement amounts which they received, qualifies as their personal information within the meaning of paragraph (h) of the definition of that term in section 2(1).

Issue B. Would disclosure of the personal information constitute an unjustified invasion of personal privacy under the mandatory exemption under section 14(1)?

[37] 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).

[38] The appellant takes the position that the exceptions in sections 14(1)(a), (c) and/or (f) apply. Those sections read:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

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

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[39] With respect to section 14(1)(a), the appellant states that this exception applies to the information identifying the exact amount of the matching RRSP contributions for the councillors for 2002 because the councillors, by publicly passing the by-law authorizing the payment of the matching RRSP contributions, consented to the disclosure of the information at issue.

[40] I do not accept the appellant's position that section 14(1)(a) applies. For section 14(1)(a) to apply, there must be prior written consent by the individual to disclose the specific personal information at issue. I find that the passing of the councillor remuneration bylaw in the past does not constitute consent for the disclosure of the specific information at issue in this appeal.

[41] With respect to section 14(1)(c), the appellant states that this section applies because "the information is collected and maintained for the purposes of maintaining a public record particularly since this is an entitlement in addition to base salary."

[42] Previous orders have established that section 14(1)(c) only applies to information collected specifically for the purpose of creating a record available to the public, and does not apply to other information on file with the institution pertaining to the same matter, but not collected for the purpose of creating a public records.[4] In the current appeal, the information relating to the amounts of the matching RRSP contributions and RRSP availability are contained in lists of payments, cheque requisitions and memos. These records were created to administer the matching contribution amounts for 2002. The information was not collected for the purpose of creating a record available to the public. Accordingly, I find that section 14(1)(c) does not apply.

[43] The only remaining 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."

Section 14(1)(f)

[44] 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,

[4] See Order P-1111.

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.[5]

[45] Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[46] If none of the presumptions against disclosure contained in section 14(3) apply, the city 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.[6]

Exact amounts of matching RRSP contributions for 2002

[47] The city takes the position that the redacted information relating to the exact amounts of the matching RRSP contributions, as well as the RRSP contribution availability for the identified councillors for 2002, is similar to information relating to contributions to a pension plan. It then refers to Orders M-173, P-1348 and PO-2050, which have found that contributions of this nature fall within the presumption in section 14(3)(f).

[48] The city also states that the annual remuneration of the named councillors is subject to reporting under section 284(1) of the *Municipal Act, 2001*, and has been released to the appellant. The city then states that those amounts reflect the councillor's total annual remuneration, not their taxable income. As set out above, the city argues that providing the redacted amounts will facilitate the calculation of the individual councillor's taxable income, which may be different than the councillor's remuneration from the city.

[49] The appellant takes issue with the city's position that the information falls within the presumption in section 14(3)(f), and disputes the city's claim that disclosure would reveal an individual's income or describe their finances. He also argues that the release of the redacted information would not permit one to calculate an individual councillor's taxable income. He states:

> … The individuals or members of council often have other businesses and possible other employment that the City has not be made aware of. Therefore, the City is only using income from the City. Further, the individuals may be making contributions or receiving pension benefit from other sources. In summary, a release of the 50% contribution amount and salary will not describe the individual's finances.

---

[5] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.
[6] Order P-99.

[50] The appellant also states that none of the factors in section 14(2) apply; however, a number of his representations suggest that the factor favouring disclosure in section 14(2)(a) (public scrutiny) applies to this information.

[51] In addition, the appellant argues that the release of this information, which relates to benefits paid to councillors, ought to be disclosed as the public ought to know what these amounts are. The appellant also takes the position that these amounts are like pension benefits, and therefore constitute "benefits" for the purpose of the *Act*. In that regard, the appellant refers to section 14(4), which provides that "benefits" ought to be disclosed in certain instances.

Findings

[52] Section 14(3)(f) reads:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[53] Previous orders have found that contributions to a pension plan fall within section 14(3)(f).[7]

[54] In my view, the information relating to the exact amounts identified councillors contributed to an RRSP, regardless of whether or not these amounts were matched by the city, are similar in nature to contributions to a pension plan. Accordingly, following the previous orders referenced above, I find that this information fits within the presumption in section 14(3)(f).

[55] 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.[8]

---

[7] See Orders M-173, P-1348 and PO-2050.
[8] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

[56] The appellant takes the position that section 14(4)(a) applies to the information, as the information contains "benefits" for the purpose of that section, and the city councillors are officers or employees of the city. Section 14(4)(a) reads:

> Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> > discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution; or

[57] I have carefully considered whether section 14(4)(a) applies to the information at issue. I agree with the appellant that the exact matching amount of RRSP contributions paid by the city can be considered a "benefit;" however, as identified by the appellant, the exception in section 14(4)(a) applies only to "officers or employees" of an institution.

[58] Previous orders of this office have determined that municipal councillors are not employees of an institution.[9] Furthermore, previous orders have also found that, except in unusual circumstances which are not present in this case, municipal councillors are not officers of an institution.[10] Based on the records provided in this appeal, it is clear that all of the matching contribution amounts were paid by the city in accordance with the councillor remuneration bylaw authorizing this payment. In my view, because the municipal councillors are neither employees nor officers of the institution, section 14(4)(a) does not apply in these circumstances.

[59] Although section 14(4)(a) requires the disclosure of information such as the salary range and benefits of "officers and employees" of a municipal institution, I also note that section 284 the *Municipal Act, 2001*, which was referred to by the city, similarly requires disclosure of the remuneration and expenses of municipal councillors. The relevant portions of section 284 of that Act read:

> (1) The treasurer of a municipality shall in each year on or before March 31 provide to the council of the municipality an itemized statement on remuneration and expenses paid in the previous year to,
>
> > (a) each member of council in respect of his or her services as a member of the council or any other body, including a local board, to which the member has been appointed by council or on which the member holds office by virtue of being a member of council;

[9] See, for example, Order MO-1264.
[10] See Orders M-813, MO-1403 and MO-1800.

> (b) each member of council in respect of his or her services as an officer or employee of the municipality or other body described in clause (a); and
>
> (c) each person, other than a member of council, appointed by the municipality to serve as a member of any body, including a local board, in respect of his or her services as a member of the body.
>
> (3) If, in any year, any body, including a local board, pays remuneration or expenses to one of its members who was appointed by a municipality, the body shall on or before January 31 in the following year provide to the municipality an itemized statement of the remuneration and expenses paid for the year.
>
> Public records
>
> (4) Despite the *Municipal Freedom of Information and Protection of Privacy Act*, statements provided under subsections (1) and (3) are public records.

[60] The combination of section 284(1)(a) and 284(4) require that the remuneration and expenses of municipal councillors be made public. As identified above, the city has confirmed that the annual remuneration of the named councillors has previously been disclosed to the appellant pursuant to section 284(1) of the *Municipal Act, 2001*. Despite my finding that section 14(4)(a) does not apply to this information, therefore, the public disclosure of remuneration paid to municipal councillors is specifically addressed under the *Municipal Act, 2001*.

[61] Because of my findings that the presumption in section 14(3)(f) applies and that section 14(4)(a) does not apply in these circumstances, I find that the information relating to the exact amounts of matching RRSP contributions for 2002 for each of the seven named councillors is exempt under section 14(1).

[62] The appellant has also argued that there is a public interest in the disclosure of the information. I will review below whether the public interest override in section 16 applies to this information relating to benefits paid to municipal councillors for the year 2002.

Settlement information

[63] The city takes the position that the release of the names of the individuals in connection with the settlement amounts paid to them would constitute an unjustified invasion of personal privacy, as the information describes an individual's finances or

income under the presumption in section 14(3)(f) referred to above. The appellant's position appears to be that these amounts ought to be disclosed, as they are contained in lists of payments from a corporate contingency account. I note that the amounts of the settlement payments have been disclosed, and it is only the names of the individuals who entered these agreements that have been withheld.

[64] In a recent order issued by this office, Adjudicator Hale addressed the issue of the disclosure of the names of individuals who had entered settlement agreements with an institution. He found that the individual names, in connection with the specific settlement amounts, constituted their personal information and that the disclosure of this information would constitute an unjustified invasion of their personal privacy. As a result, he determined that the information was exempt under section 14(1) and ought not to be disclosed, as there were no factors favouring disclosure.[11]

[65] I agree with the approach taken by Adjudicator Hale in Order MO-2598. I have found above that the names of the individuals, in connection with the amounts of the settlement agreements they entered into, is the personal information of those individuals. As identified above, where the record contains *only* the personal information of other individuals, 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. I find that none of those sections apply, and that the disclosure of the names of the individuals, in connection with the specific settlement amounts, would constitute an unjustified invasion of the personal privacy of those individuals under section 14(1).

Issue C. Does the public interest override in section 16 apply?

[66] The appellant takes the position that there is a public interest in the information relating to the exact amounts of matching RRSP contributions made to named municipal councillors for 2002. He states that these amounts ought to be disclosed because they come out of the "public purse," and also refers to an interest in reviewing whether certain identified processes were followed. By making these arguments, the appellant raises the possible application of the public interest override at section 16 of the *Act*.

[67] Section 16 states:

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

[11] Order MO-2598.

[68] In order for section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[69] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government.[12] Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, 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.[13]

[70] The word "compelling" has been defined in previous orders as "rousing strong interest or attention."[14] Furthermore, any public interest in non-disclosure that may exist also must be considered.[15] If there is a significant public interest in the non-disclosure of the record then disclosure cannot be considered "compelling" and the override will not apply.[16]

[71] A compelling public interest has been found *not* to exist where a significant amount of information has already been disclosed and this is adequate to address any public interest considerations.[17]

Findings

[72] I have considered the appellant's representations as they relate to the public interest in the exact amounts of matching RRSP contributions paid for 2002, which I have found qualifies for exemption under the *Act*. I accept that there is a public interest in information relating to remuneration paid to public officials. The existence of legislation requiring certain information of this nature to be made public confirms this (for example, the disclosure provisions in section 284 of the *Municipal Act, 2001*, the *Public Sector Salary Disclosure Act*, etc.). Indeed, in this appeal the city itself confirms that remuneration for councillors has been made public in accordance with the *Municipal Act*.

[73] Furthermore, certain sections of the *Act*, such as sections 14(4) and 52(4), also confirm the public interest in the disclosure of information relating to amounts paid from the public purse to government officials.

---

[12] Orders P-984, PO-2607.
[13] Orders P-984 and PO-2556.
[14] Order P-984.
[15] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[16] Orders PO-2072-F and PO-2098-R.
[17] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

[74] However, I must review the information at issue in this appeal to determine whether there is a sufficient public interest in the disclosure of this information to override the purposes of the section 14(1) exemption.

[75] To begin, I note that the information relating to the matching RRSP amounts only relates to payments made for the 2002 calendar year, and that the matching RRSP contribution is no longer being provided to municipal councillors. As set out above, the city identified why the matching amounts for 2002 were the only responsive amounts when it stated that it ceased its practice of matching RRSP contributions in 2002, and that the final set of these payments were issued by the city in early 2003, for the 2002 calendar year.

[76] Furthermore, I note that the appellant received the complete list of payments made from the contingency account in 2003 except for the amounts of the 2002 matching RRSP contributions. Included in this list is the total amount of payments made for 2003 from that account. As a result, the total combined amounts the city paid to the seven councillors for the matching RRSP contributions for 2002 can easily be calculated. In these circumstances, where the total amount paid by the city for this benefit is known, the concern raised by the appellant regarding the amounts paid out of the public purse is, in my view, largely addressed.

[77] I also note that the names of the seven councillors who received matching RRSP contributions for 2002 have been disclosed. The city has also confirmed that, in accordance with the requirements of the *Municipal Act, 2001*, the remuneration and expenses paid to the municipal councilors in 2002 has been disclosed.

[78] In addition, although the appellant indicates his interest in these amounts, he has not provided any evidence suggesting that there is any current public interest in these specific amounts which were paid for the 2002 calendar year.

[79] In light of the above, I am not satisfied that there exists a sufficiently compelling public interest in the disclosure of this information to override the exemption claimed. The information relates to payments made for the 2002 year, and the appellant's concerns about the amount paid out of the "public purse" are adequately addressed by the city's disclosure of the total amount paid. Furthermore, the appellant has not provided sufficient evidence to support a finding that there exists a public interest in the exact amounts paid to each individual councillor for 2002. Accordingly, I find that the public interest override provision in section 16 does not apply to the personal information remaining at issue in this appeal.

ORDER:

1. I find that the scope of the request includes the records responsive to items 1 through 3 of the request.

2. I find that the severed portions of the records qualify for exemption under section 14(1).

3. I find that the public interest override in section 16 does not apply to the information remaining at issue.

Original signed by: September 13, 2012
Frank DeVries
Adjudicator