

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2705

Appeal MA11-189

The City of Temiskaming Shores

March 23, 2012

**Summary:** The City of Temiskaming Shores received a request for access to a copy of the report considered by council during a closed session and a copy of the settlement agreements for several senior employees who resigned or were terminated by the city. The city withheld access to the records in full or in part pursuant to section 14(1) (personal privacy) of the *Act*. This order partially upholds the city's decision.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of personal information), 14(1), 14(1)(a), 14(4)(a), 14(3)(d) and (f), 14(2)(a), (f) and (h).

**Orders and Investigation Reports Considered:** Order MO-1469, MO-2318, MO-2344, PO-2050.

### OVERVIEW:

[1] The City of Temiskaming Shores (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to the following information:

1. A copy of the report considered by Council during your April 5, 2011 Closed Session deliberations.
2. A copy of the Settlement Agreements for the following employees:
  - a) [named individual], Chief Administrative Officer

- b) [named individual], Chief Administrative Officer
- c) [named individual], Chief Financial Officer/City Manager
- d) [named individual], Director of Corporate Services/Treasurer
- e) [named individual], Director of Public Works
- f) [named individual], Manager of Planning/Chief Building Official

3. If the Settlement Agreements are subject to a non-disclosure clause, than I wish to request the amount of settlement paid to the employees listed above.

[2] The city located the responsive records and granted partial access to them. Records were withheld in full or in part pursuant to section 14(1) (personal privacy) of the *Act*.

[3] The requester, now the appellant, appealed the city's decision.

[4] As mediation did not resolve the issues in this appeal, the file was transferred to adjudication. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, seeking the representations of the city. I also sent Notice of Inquiry's to the affected persons in the records for which the city had contact information. I did not receive representations from the city. Only some of the affected persons responded to the Notice of Inquiry. I sent a Notice of Inquiry to the appellant, seeking his representations. The appellant did not provide representations. When contacted by this office, the appellant confirmed that he was still interested in receiving disclosure of the information at issue.

[5] In this order, I partially uphold the city's decision.

## **RECORDS:**

[6] The records at issue in this appeal consist of:

- three termination of employment letters,
- a memorandum of settlement and release,
- two agreement and release documents
- the names of twenty employees who were terminated or resigned in a report entitled "Summary of Legal Fees and Employment Settlements December 4, 2006 to March 28, 2011".

[7] Attached to one agreement and release document are two pages related to one of the affected person's RRSP. Attached to one termination of employment letter is a

one page draft summary of payment. These three pages are not referred to in the agreement and letter and are not responsive to the appellant's request. Therefore, I will not be considering these pages in this order.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) apply to the information at issue?

## **DISCUSSION:**

### **A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[8] 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 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;

[9] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

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

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

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

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

[11] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225].

[12] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225 and MO-2344].

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

### ***Analysis/Findings***

[14] Based upon my review of the records and the confidential representations of the affected persons who responded to the Notice of Inquiry, I find that all of the records contain personal information of identifiable individuals other than the appellant. The records do not contain the personal information of the appellant.

[15] The personal information in the records consists of the affected persons' employment history, information relating to financial transactions in which they have been involved, the name of these individuals which appear with other personal information relating to them, along with these individuals' home addresses in accordance with paragraphs (b), (d), and (h) of the definition of personal information in section 2(1) of the *Act*.

[16] Although some of the information is about the affected persons in business capacity, this information reveals something of a personal nature about the affected persons concerning the termination of their employment with the city.

### **B. Does the mandatory exemption at section 14(1) apply to the information at issue?**

[17] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

[18] If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14.

[19] The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception is more complex, and requires a consideration of additional parts of section 14.

[20] In the circumstances of this appeal it appears that section 14(1)(a) may apply to some of the information at issue in this appeal. This section reads:

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;

[21] I have received the consent of one affected person who resigned to disclose her name in the "Summary of Legal Fees and Employment Settlements December 4, 2006 to March 28, 2011". I also received the consent of another affected person to disclose paragraphs (a) to (d) of his settlement agreement.

[22] For section 14(1)(a) to apply, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request [see Order PO-1723]. As section 14(1)(a) applies to one affected person's name and paragraphs (a) to (d) of another affected person's settlement agreement, I will order these portions of the records disclosed.

[23] With respect to the remaining information at issue, it appears that the only exception that could apply is paragraph 14(1)(f). This section reads:

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

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

[24] 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).

[25] If any of paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14.

[26] 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;

[27] This office has interpreted "benefits" to include entitlements, in addition to base salary, that an employee receives as a result of being employed by the institution. The following have been found to qualify as "benefits":

- insurance-related benefits,
- sick leave, vacation,
- leaves of absence,
- termination allowance,
- death and pension benefits,
- right to reimbursement for moving expenses, and
- incentives and assistance given as inducements to enter into a contract of employment [Orders M-23 and PO-1885].

[28] The term "benefits" does not include entitlements that have been *negotiated* as part of a retirement or termination package unless the information reflects benefits to which the individual was entitled as a result of being employed [Orders MO-1749, PO-2050, PO-2519 and PO-2641]. As Adjudicator Catherine Corban stated in Order MO-1970:

[T]he common thread in these orders appears to be that section 14(4)(a) applies to benefits negotiated as part of a retirement or termination agreement, so long as they are benefits the individual received while employed and are continuing postemployment.

[29] On my review of the records, I am satisfied that certain portions of the three termination of employment letters, the memorandum of settlement and release, and the two agreement and release documents contain classification, salary range, employment responsibilities and insurance-related, sick leave, vacation, leaves of absence, death and pension and moving expenses benefits to which the individual was entitled as a result of being employed. Accordingly, disclosure of this information does not constitute an unjustified invasion of personal privacy under section 14(1) and I will order this information disclosed.

[30] I am satisfied that the remaining information at issue in the records relate to matters that have been negotiated as part of a termination package that do not reflect benefits to which the individual was entitled as a result of being employed and do not qualify as "benefits" under section 14(4)(a) (Orders M-173, M-204, M-419, M-797, MO-1332 and MO-2174).

[31] Having found that the exception in section 14(4)(a) does not apply to the remaining information at issue, I will now consider whether the disclosure of any of the remaining information, which does not fall under section 14(4), represents a presumed unjustified invasion of privacy under section 14(3).

[32] In this case, the presumptions in sections 14(3)(d) and (f) may apply. These sections read:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (d) relates to employment or educational history;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[33] In Order PO-2050, Adjudicator Laurel Cropley examined the application of the presumption at section 21(3)(d) and (f) of the *Freedom of Information and Protection of Privacy Act* (the provincial equivalent to sections 14(3)(d) and (f) of the *Act*) to information in the context of severance agreements, finding:

Generally, previous orders have found that although one-time or lump sum payments or entitlements do not fall under the presumption found at sections 21(3)(f) or (d) [Orders M-173, MO-1184 and MO-1469], information such as start and finish dates of a salary continuation agreement fall within the presumption in section 21(3)(d) and references to the specific salary to be paid to an individual over that period of time fall within the presumption in section 21(3)(f) [Order P-1348].

In addition, information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has been found to fall within the section 21(3)(d) presumption [Orders M-173, P-1348, MO-1332, and PO-1885]. Contributions to a pension plan have been found to fall within the presumption in section 21(3)(f) [Orders M-173 and P-1348].

Previous orders have found, however, that the address of an affected party, releases, agreements about the potential availability of early retirement, payment of independent legal fees and continued use of equipment, for example, do not fall within any of the presumptions in section 21(3) [Orders MO-1184 and MO-1332]. In Order M-173, former Assistant Commissioner Irwin Glasberg found that much of the information in these types of agreements did not pertain to the "employment history" of the individuals for the purposes of section 14(3)(d) (of the municipal *Act*), but could more accurately be described as relating to arrangements put in place to end the employment connection.



[34] All of the records concern city employees who were terminated or resigned. I agree with the reasoning of Adjudicator Cropley in Order PO-2050 and find that information which reveals the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration come within the section 14(3)(d) presumption.

[35] As well, contributions to a pension plan and references to an affected person's actual salary, thus describing his income, fall within the presumption in section 14(3)(f).

[36] The termination of employment letters make reference to payment of salary after the termination date. This represents a notice period provided to an affected party named in the termination letter for not continuing to work for the city. As a result, given that an affected party who is subject to the termination letter with the city was over, the payment of his salary after termination is not "employment history". I find that section 14(3)(d) does not apply to this information.<sup>1</sup>

[37] I find that none of the presumptions in section 14(3) apply to the remaining information in the records, including information describing lump sum or one time payments relating to the affected persons' termination, including retirement allowances and arrangements put in place to end the employment connection.<sup>2</sup>

[38] If none of the presumptions in section 14(3) applies, the institution must consider the application of the factors listed in section 14(2), as they provide some criteria to consider in making a determination as to whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates.

[39] I have found above that the personal information that consists of benefits as they deal with health, insurance and pension benefits and expenses to which the affected persons were entitled as a result of being employed and, therefore, meet the exception listed in section 14(4)(a). I have also determined that the affected persons' salary paid after termination should be disclosed. In addition, I have found that references to the affected persons' employment termination date and years of service, meets the presumption at section 14(3)(d), which would result in disclosure of that information representing a presumed unjustified invasion of privacy. I also found that contributions to a pension plan and references to an affected person's actual salary, thus describing his income, fall within the presumption in section 14(3)(f).

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<sup>1</sup> Order MO-2344.

<sup>2</sup> Order MO-2536-I.

[40] Section 14(2) reads as follows:

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,

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

(b) access to the personal information may promote public health and safety;

(c) access to the personal information will promote informed choice in the purchase of goods and services;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

(g) the personal information is unlikely to be accurate or reliable;

(h) the personal information has been supplied by the individual to whom the information relates in confidence; and

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[41] The factors weighing in favour of disclosure are found in sections 14(2)(a), (b), (c) and (d) and the factors favouring non-disclosure are found in sections 14(2)(e), (f), (g), (h) and (i).

[42] I will now consider whether any of the listed factors found in section 14(2), as well as all other considerations that are relevant in the circumstances of this appeal, apply to the remaining information in the records.

***Section 14(2)(a): subjecting the activities of the institution to public scrutiny***

[43] This section contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny [Order P-1134].

[44] The public has a right to expect that expenditures of employees of government institutions during the course of performing their employment-related responsibilities are made in accordance with established policies and procedures, carefully developed in accordance with sound and responsible administrative principles [Orders P-256 and PO-2536].

[45] In order for this section to apply, it is not appropriate to require that the issues addressed in the records have been the subject of public debate; rather, this is a circumstance which, if present, would favour its application [Order PO-2905].

[46] Simple adherence to established internal procedures will often be inadequate, and institutions should consider the broader interests of public accountability in considering whether disclosure is desirable for the purpose outlined in section 14(2)(a) [Order P-256].

[47] Previous orders have reviewed the application of the factors in section 14(2) to agreements similar to the one at issue in this appeal. In Order MO-1469, Adjudicator Donald Hale stated:

It has been well-established in a number of previous decisions that the contents of agreements entered into between institutions and senior employees represent the sort of records for which a high degree of public scrutiny is warranted (Orders M-173, M-953). Based on this, and the appellant's desire to scrutinize how the Municipality compensated a senior management employee upon his termination, I find that section 14(2)(a) is a relevant consideration in the circumstances of the present appeal. I further find that this is a significant factor favouring the disclosure of the information contained in the record.

Previous orders issued by the Commissioner's office have identified another circumstance which should be considered in balancing access and privacy interests under section 14(2). This consideration is that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution" (Orders 99, P-237, M-129, M-173, P-1348 and M-953).

The severance agreement which forms the record at issue involved a significant expenditure of public funds on behalf of a senior employee.

Further, the climate of spending restraints in which these agreements were negotiated placed an obligation on the Municipality's officials to ensure that tax dollars were spent wisely. On this basis, I conclude that the public confidence consideration also applies in the present circumstances.

[48] I adopt the approach outlined in Order MO-1469 for the purposes of the present appeal. I find that the consideration under section 14(2)(a) favouring the disclosure of the remaining financial information at issue in the records is a relevant and significant factor. Disclosure of this information is desirable for the purpose of shedding some light on the details of the severance agreements entered into by the city with the affected persons.

[49] The information at issue in the "Summary of Legal Fees and Employment Settlements December 4, 2006 to March 28, 2011",<sup>3</sup> as well as the non-financial information in the remaining records, does not relate to the amount of money paid to the city's former employees or to other expenses and costs. Disclosure of this information is not desirable for the purpose of subjecting the activities of the institution to public scrutiny.

***Section 14(2)(b): promote public health and safety***

***Section 14(2)(c): promote informed choice in the purchase of goods and services***

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

[50] There is nothing in the records to indicate that these factors are relevant in this appeal.

***Section 14(2)(e): unfair exposure to pecuniary or other harm***

[51] In order for this section to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved.

[52] Based upon my review of the records and the representations from the affected persons who responded to the Notice of Inquiry, I find that disclosure could not reasonably be expected to result in present or foreseeable harm that would be "unfair" to the affected persons. Therefore, this factor does not apply.

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<sup>3</sup> Which consists of former employees' names.

***Section 14(2)(f): highly sensitive***

[53] Previous orders have established that, for this factor to apply there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>4</sup>

[54] The affected persons who did provide substantive representations did not specifically refer to this factor.

[55] The records at issue consist of a list of employees who were terminated or resigned, five severance agreements and one minutes of settlement containing terms of severance. In Order MO-2344, Assistant Commissioner Brian Beamish considered the application of the factor in section 14(2)(f) in relation to a Minutes of Settlement and Release regarding the severance of the City of Guelph's Director of Finance/Treasurer. In Order MO-2344, Assistant Commissioner Beamish stated that:

...disclosure might cause the affected party some personal distress, given that the record contains information relating to his departure from City staff. However, I note that it is well known by the public that severance agreements are negotiated with senior officials should they depart prior to the end of their employment contracts. In my view, the terms negotiated by the affected party are relatively standard. In these circumstances, any "sensitivity" arises more from the fact that the affected party left his employment early rather than from the disclosure of the actual terms of his severance package.

[56] In this appeal, all of the records are about staff previously employed by the city. Except for information at issue in the "Summary of Legal Fees and Employment Settlements", which lists only the names of employees who were terminated or resigned, all of the records contain details about the settlements reached between the city and its senior staff (the affected persons).

[57] Like the Assistant Commissioner Beamish concluded in Order MO-2344, I also find that disclosure of the information remaining at issue in the records might cause the affected persons some personal distress, given that they contain information relating to their departure from city staff. However, adopting the reasoning of Assistant Commissioner Beamish in Order MO-2344, I find that any "sensitivity" arises more from the fact that the affected persons left their employment early rather than from the disclosure of the actual terms of his severance package.

[58] Accordingly, I am satisfied that information at issue in the records cannot be considered to be "highly sensitive." Therefore, this factor does not weigh against disclosure of the personal information in the records.

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<sup>4</sup> Orders PO-2518 and MO-2344.

*Section 14(2)(g): inaccurate or unreliable*

[59] Based upon my review of the records and the affected persons' representations, I find that disclosure of the personal information would not result in disclosure of information that is unlikely to be accurate or reliable. Therefore, this factor does not apply.

***Section 14(2)(h): supplied in confidence***

[60] This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation [Order PO-1670].

[61] In order for section 14(2)(h) to be a relevant consideration, the information in question must have been "supplied" by the affected party. In this case, the information contained in the records was the result of negotiations with, rather than supplied by, the affected persons. Section 14(2)(h), accordingly, has no application.

[62] Although the severance agreements and minutes of settlement contain a confidentiality clause, as outlined in Order MO-2318, while parties to an agreement may agree, as between themselves, to keep the agreement confidential, they are not able to unilaterally agree to remove the records from the scope of the *Act*. A non-disclosure clause agreed to by an institution covered by the *Act* and an employee must be analyzed in that context.<sup>5</sup>

[63] Taking into account the findings in Order MO-2318, and based upon my review of the records and the representations from the affected persons who provided substantive representations in response to the Notice of Inquiry, I find that that the personal information in the records has not been supplied by the individual to whom the information relates in confidence. Therefore, this factor does not weigh against disclosure of the personal information in the records.

***Section 14(2)(i): unfair damage to reputation***

[64] The applicability of this section is not dependent on whether the damage or harm envisioned by the clauses is present or foreseeable, but whether this damage or harm would be "unfair" to the individual involved [Order P-256].

[65] Based upon my review of the records and the representations from the affected persons who provided substantive representations in response to the Notice of Inquiry,

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<sup>5</sup> Order MO-2344.

I find that that disclosure of some of the remaining information at issue could reasonably be expected to unfairly damage the reputation of certain individuals referred to in the records as it indicates that certain individuals were terminated by the city as opposed to resigning. Therefore, this factor weighs against disclosure of the personal information in the records.

***Other factors/relevant circumstances***

[66] In previous orders, a relevant consideration that has been found to apply to severance agreements includes ensuring public confidence in an institution.<sup>6</sup>

[67] In Order MO-2344, Assistant Commissioner Beamish found that the integrity of a government institution is based on the principles of openness, transparency and accountability for the expenditure of taxpayer dollars. He found that severance agreements may involve significant expenditures on the part of government institutions and that taxpayers have a right to review these expenditures in order to determine whether the institution has acted prudently with respect to their money. Assistant Commissioner Beamish stated:

The integrity of a government institution is based on the principles of openness, transparency and accountability for the expenditure of taxpayer dollars.

[68] Assistant Commissioner Beamish relied on the findings of Adjudicator Donald Hale in Order MO-1469, where Adjudicator Hale stated:

The severance agreement which forms the record at issue involved a significant expenditure of public funds on behalf of a senior employee. Further, the climate of spending restraints in which these agreements were negotiated placed an obligation on the Municipality's officials to ensure that tax dollars were spent wisely. On this basis, I conclude that the public confidence consideration also applies in the present circumstances.

[69] In Order MO-2344, Assistant Commissioner Beamish determined that public confidence in the integrity of an institution was a relevant consideration found to apply in appeals involving requests for severance agreements which weighs significantly in favour of disclosure.

[70] I adopt the reasoning in Orders MO-1469 and MO-2344 and find that public confidence in the integrity of an institution is a relevant factor favouring disclosure in the circumstances of this appeal. Accordingly, I find that this factor applies and weighs

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<sup>6</sup> Orders M-129, P-237, P-1014 and PO-2657.

significantly in favour of disclosure of the financial information remaining at issue in this appeal.

*Conclusion*

[71] I have found above that the records contain personal information consisting of information about health, insurance and pension benefits and expenses to which the affected persons were entitled as a result of being employed. I conclude that this information represents a benefit for the purposes of the exception to section 14(1) listed in section 14(4)(a). As a result, I will order the disclosure of this information.

[72] I will also order the disclosure of paragraphs (a) to (d) of the agreement and release document pertaining to the one affected person who consented to disclosure.

[73] I have also determined that an affected persons' salary paid after termination should be disclosed.<sup>7</sup>

[74] In addition, I have found that references to the affected persons' employment termination date and years of service meets the presumption at section 14(3)(d) and the disclosure of that information would result in a presumed unjustified invasion of privacy under section 14(1). As well, contributions to a pension plan and references to an affected person's actual salary which describes his income fall within the presumption in section 14(3)(f). This information is also exempt under section 14(1).

[75] Weighing the factor favouring non-disclosure in section 14(2)(i) against the factors favouring disclosure in section 14(2)(a) and the unlisted factor described as public confidence in the integrity of an institution, I find that the factors favouring disclosure significantly outweigh those favouring non-disclosure with respect to the financial information remaining in the records which is not subject to one of the presumptions in section 14(3). Disclosure of this remaining financial information in the three termination of employment letters, the memorandum of settlement and release, and the two agreement and release documents would not constitute an unjustified invasion of the affected persons' personal privacy. The exception to the exemption in section 14(1)(f) applies, and this information is not exempt under section 14(1). I will, therefore, order the remaining financial information in the records to be disclosed, subject to my findings with respect to the presumptions under sections 14(3)(d) and (f).

[76] The "Summary of Legal Fees and Employment Settlements December 4, 2006 to March 28, 2011", does not contain any of the details of any settlements reached between the city and the twenty employees listed therein who were terminated or who resigned. The information that remains at issue in this record is not about the amount

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<sup>7</sup> Order MO-2344.



of money paid to the city's former employees; nor does it relate to other expenses and costs incurred by the city. None of the factors in favour of disclosure apply.

[77] Disclosure of the names of the employees in "Summary of Legal Fees and Employment Settlements December 4, 2006 to March 28, 2011" and disclosure of the remaining information in the other records does not serve to subject the activities of the city to public scrutiny or ensure public confidence in the city. Accordingly, I will uphold the city's decision to withhold the information at issue in the "Summary of Legal Fees and Employment Settlements December 4, 2006 to March 28, 2011", except for the name of the employee who resigned and who consented to disclosure of her name in this record. I will also uphold the city's decision to not disclose the information that I have found subject to the presumptions in sections 14(3)(d) and (f) of the *Act* and to not disclose the remaining non-financial information in the other records.

**ORDER:**

1. I order the city to disclose to the appellant **by May 1, 2012 and not before April 25, 2012** the information in the records that I have found not subject to section 14(1). For ease of reference I have enclosed a copy of the records with the copy of this order sent to the city that highlights the portions that should be disclosed in compliance with this provision.
2. I uphold the city's decision to withhold the remaining information in the records.
3. In order to verify compliance with this order, I reserve the right to require a copy of the records disclosed by the city pursuant to order provision 1 to be provided to me.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ March 23, 2012