

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-2927

Appeal MA13-37

Township of Minden Hills

July 31, 2013

**Summary:** The township received a request under the *Act* for access to records of payments made to an individual who worked for the township in a number of positions. The township denied access to the responsive records, which included invoices submitted to it, on the basis of the exemption in section 14(1) (personal privacy). This order finds that the information in the invoices is not "the personal information" of an individual within the definition of that term in section 2(1) of the *Act*. Further, even if the information was found to be "personal information," it would not be exempt under section 14(1) of the *Act*.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, sections 2(1) (definition of "personal information"), 14(1) and 14(4)(b).

**Orders Considered:** PO-2225, PO-3207 and MO-2363.

### OVERVIEW:

[1] The Township of Minden Hills (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "[a]ll records of payment from [the township] to [a named individual] for services rendered as Interim [Chief Administrative Officer (CAO)], Interim Community Services Director and otherwise."

[2] In response to the request, the township issued a decision advising that access to the records was denied on the basis of the exemption in section 14(1) (personal privacy) of the *Act*. The township also referred to the presumptions against disclosure in sections 14(3)(d) and 14(3)(f).

[3] The appellant appealed the township's decision.

[4] During mediation, the appellant referred to section 14(4)(b) of the *Act* in support of his position that the disclosure of "financial or other details of a contract for personal services between an individual and an institution" does not constitute an unjustified invasion of privacy. The appellant also referred to the factor in section 14(2)(a) (public scrutiny) of the *Act* as a factor favouring disclosure of the record.

[5] Also during mediation, an individual with an interest in the records (the affected party) confirmed that he did not consent to the disclosure of the requested information.

[6] As well, during mediation, the appellant confirmed that he was not pursuing access to the portions of the records that did not pertain to the request, but that he continued to pursue access to any responsive information contained in the records.

[7] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the township and the affected party, initially, inviting them to provide representations. The township provided representations in response, and these representations included the position taken by the affected party. In the circumstances, I decided that it was not necessary to seek representations from the appellant.

[8] I also note that, in the representations received from the township, which include information about the position taken by the affected party, the township and the affected party have now agreed to disclose certain portions of the records at issue (ie: the total amounts for each of the invoices). Although I acknowledge this interest in disclosing the totals, in the circumstances, I will review all of the information in the invoices in this order.

### ***Preliminary Note***

[9] As a preliminary matter, the records initially identified as responsive to the request for payment for "services rendered as Interim CAO, Interim Community Services Director and otherwise" included the invoices submitted to the township as well as portions of certain accounting records. In the Notice of Inquiry I sent to the township I asked it to identify the exact relationship between the amounts in the invoices and the information in the accounting records. In response, the township confirmed that it is only the invoices that really have relevance to the request, and that the accounting records are not responsive. Given the nature of the information in the

accounting records, I agree that they are not responsive, and they are removed from the scope of this appeal.

[10] The records that are responsive to the request are the identified invoices submitted to the township. I note that a number of these invoices include brief handwritten notations, some of which seem to relate directly to the amounts in the invoices, and others which appear to relate to administrative matters concerning the payment of the invoices. In the circumstances, and as the township has not raised any discretionary exemptions for this information, I will include these handwritten notations as records responsive to the request.

## **RECORDS:**

[11] The records remaining at issue consist of the invoices submitted to the township from an identified corporation.

## **ISSUES:**

A: Do the records contain "personal information" as defined in section 2(1)?

B: Does the personal privacy exemption in section 14(1) apply?

## **DISCUSSION:**

### **Issue A: Do the records contain "personal information" as defined in section 2(1)?**

[12] 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;

[13] 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.<sup>1</sup>

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

(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 (2.1) 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.

[15] 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

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<sup>1</sup> Order 11.

professional, official or business capacity will not be considered to be "about" the individual.<sup>2</sup>

[16] 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.<sup>3</sup>

### ***Representations***

[17] The township takes the position that the records contain "personal information" under paragraph (b) of the definition because they contain information relating to "financial transactions" in which the individual who submitted the invoices has been involved. The affected party appears to support the township's position.

[18] A number of orders have reviewed the issue of access to invoices provided by consultants or others for work done for an institution. In Order MO-2363 Assistant Commissioner Brian Beamish examined in detail the issue of access to information about an agreement and invoice information provided by an individual to the City of Ottawa. This information included details about the number of days for which the individual billed the city, and the per diem charged for those days. Assistant Commissioner Beamish stated:

... In determining whether information relating to a named individual is "personal information", the appropriate approach is to look at the *capacity* in which the individual is acting and the *context* in which their name appears. This was enunciated in Order PO-2225 where Assistant Commissioner Tom Mitchinson considered the definition of "personal information" and the distinction between information about an individual acting in a business capacity as opposed to a personal capacity. Specifically, the Assistant Commissioner posed two questions that help to illuminate this distinction:

Based on the principles expressed in these [previously referenced] orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? ...

The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal*

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<sup>2</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

*nature about the individual*? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

I applied Assistant Commissioner Mitchinson's analysis in my previous Order PO-2435, which dealt with consulting service agreements and consultants' per diem charges, among other information. I also adopt it for purposes of this appeal.

[19] Assistant Commissioner Beamish then reviewed the records at issue before him, and was satisfied that they refer to the individual in his professional, rather than his personal, capacity. He stated:

... The context in which the name, per diem and number of hours worked appear is not inherently personal, but is one that relates exclusively to the professional responsibilities and activities of the affected party, and the professional services that he rendered to the City. As evidenced by the contents of the records themselves, the individual is acting as a consultant in a professional business capacity. For example, on the face of Records 1 and 2, the individual is identified as a consultant to the City. ...

Similar to the business context present in Orders PO-2225 and PO-2435, the professional context in which the individual's name appears here removes it from the personal sphere. In addition, there is nothing about the name, per diem or hours worked that, if disclosed, would reveal something of a personal nature about this consultant.

[20] As a result, Assistant Commissioner Beamish concluded that the information contained in the records did not meet the definition of "personal information" under section 2(1) of the *Act*.

[21] Senior Adjudicator Sherry Liang conducted a similar analysis and reached a similar conclusion in Order PO-3207, where she had to determine whether the total amounts paid by a hospital to a lawyer for work done constituted the lawyer's "personal information." After also reviewing previous order PO-2225, she stated:

I find the reasoning in the above order to be applicable to the circumstances before me. The information at issue arises out of the appellant's professional activities as a lawyer. If the appellant had chosen to incorporate his law practice and the legal fees were paid to the corporation, there is no question the amount of those fees would not be personal information. The same would apply if the appellant had entered into a partnership that received the fees. The appellant states that he carries on his profession in his "personal capacity" but it is more accurate

to describe his choice of business structure as a sole proprietorship, in which payments to the appellant are made in the name of his sole proprietorship.

The fact that the appellant carries out his law practice through a sole proprietorship, instead of through another business framework, does not alter the nature of his activities. In all cases, it is the same professional services as a lawyer that gives rise to the fees paid.

[22] Applying the above analysis to the invoices at issue in this appeal, I find that these invoices do not contain personal information as defined by section 2(1) of the *Act*. As noted above, the records remaining at issue consist of invoices submitted to the township from an identified corporation. On their face, these records do not contain personal information; rather, they are invoices received from a corporate entity. However, even if I were to find that the corporate entity related to an identifiable individual, I find that the context in which the individual is involved with the township, including the per diem, number of hours worked, and total on the invoices, is not inherently personal, but is one that relates exclusively to the professional services that the individual rendered to the township. The individual is acting as a consultant in a professional business capacity. In addition, there is nothing in the records that, if disclosed, would reveal something of a personal nature about the individual.

[23] As a result, I find that the information in the invoices is not "personal information" as defined in section 2(1) of the *Act*.

**Issue B: Does the personal privacy exemption in section 14(1) apply?**

[24] As I have found that the information is not personal information, it is not exempt from disclosure under the personal privacy exemption in section 14(1). However, even if I had found the information to constitute the personal information of an individual, I am satisfied the exemption would not apply.

[25] In Orders MO-2363 and PO-3207 (referenced above), the adjudicators found in the alternative that even if information similar to that at issue in this appeal constituted "personal information," it would not be exempt from disclosure because of section 14(4)(b), which states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (b) discloses financial or other details of a contract for personal services between an individual and an institution...

[26] In this appeal, the township and the affected party have identified certain concerns relating to the disclosure of certain portions of the records, including specific amounts and dates.

[27] As indicated above, Order MO-2363 addressed issues regarding access to invoices containing the number of days for which a consultant billed the institution, and the per diem charged for those days. The Assistant Commissioner found that the records:

...disclose financial or other details which clearly derive from a contract for personal services between the affected party and the City, and therefore fall squarely within the parameters of section 14(4)(b) ....

[28] I see no distinction between the circumstances in Order MO-2363 and the issue before me in this appeal. Although I am not specifically aware of any agreement or contract that may exist between the township and the party submitting the invoices, it is implicit that the amounts billed to the township and paid by it, as reflected in the records, must have been based on a contractual arrangement between these parties. As a result, even if the information in the records did constitute "personal information," I am satisfied that any such information would disclose the "financial or other details of a contract for personal services," and that the records would not be exempt from disclosure under the mandatory exemption in section 14(1) because of the application of section 14(4)(b).

**ORDER:**

I order the township to disclose the invoices at issue in their entirety to the appellant no later than **September 6, 2013** but not before **August 30, 2013**.

Original signed by: \_\_\_\_\_  
Frank DeVries  
Adjudicator

\_\_\_\_\_ July 31, 2013