Information and Privacy Commissioner,
Ontario, Canada

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

INTERIM ORDER MO-2964-I

Appeal MA11-73

City of Greater Sudbury

October 16, 2013

Summary: The city received six requests for the "current and any previous" employment contracts of six named city employees. The city granted access to portions of some of the records, but denied access to other portions on the basis of the exemptions in sections 6(1)(b) (closed meetings), section 14(1) (personal privacy) and section 15(a) (information published or available). The city also took the position that two responsive records fell outside the scope of the *Act* on the basis of the exclusionary provision in section 52(3) of the *Act*.

This interim order addresses access issues relating to the six current employment contracts of the six named employees. It finds that these employment contracts do not qualify for exemption under section 6(1)(b) of the *Act* as they do not reveal the substance of the deliberations of the closed meetings. This order also determines that the portions of these records that clearly contain "benefits" under section 14(4)(a) do not qualify for exemption under section 14(1), and orders that they be disclosed. Decisions regarding access to the remaining portions of the records are reserved.

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), 6(1)(b), 14(1), 14(4)(a).

Orders and Investigation Reports Considered: M-23, PO-1885, MO-2470, MO-2499-I, and MO-2536-I.

Cases Considered: *York (Police Services Board) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 6175 (Div. Ct.).

OVERVIEW:

[1] The City of Greater Sudbury (the city) received six requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the "current and any previous" employment contracts for six named employees of the city.

[2] After notifying six individuals whose interests may be affected by the request (the affected parties) as required by section 21 of the *Act*, the city issued a decision in which it identified 11 records responsive to the request. In the decision, the city indicated that access was granted, in part, to nine records, and access was denied in full to two records. It also identified that access was denied to the withheld records and portions of records on the basis of the exemptions in sections 6(1)(b) (closed meetings), 14(1) (personal privacy) and 15 (information published or available). In addition, the city indicated that the two records which were denied in full fell outside the scope of the *Act* on the basis of the exclusionary provision in section 52(3) of the *Act*.

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

[4] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process.

[5] I sent a Notice of Inquiry to the city and the six affected parties, initially, and received representations from the city and two affected parties.

[6] On my review of the city's representations, I noted that the city had indicated those portions of its representations which it consented to share with the appellant, and those portions which it argued were confidential. After reviewing the city's position on the sharing of its representations, I issued a ruling on the sharing of the city's representations. In that ruling, I found that certain portions of the city's representations, including general descriptions of certain information contained in the records, ought to be shared with the appellant in accordance with this office's *Code of Procedure*.

[7] In response to that ruling, the city sent a letter to me indicating its concerns regarding the sharing of certain portions of its representations. In particular, the city took the position that, because it claimed the exemption in section 6(1)(b) to all of the records, revealing any information contained in the records, including general descriptions of certain information, would reveal information that would be exempt under section 6(1)(b).

[8] In the circumstances, and based on both the nature of the records at issue in this appeal and the city's position that the discretionary exemption in section 6(1)(b) applies to the representations, and prohibits the sharing of portions of the city's confidential representations, I decided to invite the city to provide additional representations on a number of the issues in this appeal.

[9] In particular, I invited the city to provide specific, detailed representations on the following issues:

- whether section 6(1)(b) applies to a final, executed employment contract after the contract is negotiated with an employee and after it is executed by the parties;
- whether the exception to the section 6(1)(b) exemption, found in section 6(2)(b), applies in the circumstances, and
- whether the city properly exercised its discretion to apply the section 6(1)(b) exemption to all of the withheld portions of the records at issue.

[10] The city provided representations in response.

[11] After reviewing the city's representations, I decided to issue this interim order which addresses the application of the exemptions in sections 6(1)(b) and 14(1) to certain portions of some of the requested records.

Preliminary notes:

[12] As identified above, the request in this appeal is for the "current and previous employment contracts" of six named employees of the city.

[13] The city identified 11 responsive records. Those records include the six current employment contracts for the six named employees. They also include three former contracts and two ancillary documents.

[14] This interim order only deals with access issues relating to the six current employment contracts, and not the other five records (the three former contracts and two ancillary documents). I have decided not to address the ancillary documents in this interim order because the city takes the position that these two documents fall outside of the scope of the *Act* because of the application of the exclusion in section 52(3), and because the appellant has not had the opportunity to address the possible application of this exclusion. I have also decided not to address the three former employment contracts in this interim order, as different considerations may apply to these former contracts. In addition, I do not address the section 15(a) exemption claim in this order, as it is made only for certain portions of the records (which are not required to be disclosed in this order).

[15] I also note that the city has provided access to some portions of the employment contracts, as well as various job descriptions. In addition, the appellant has stated that he is not pursuing access to certain types of personal information which may be in these documents such as home addresses, etc. As a result, this interim order only deals with the withheld portions of the six current employment contracts which remain at issue, as described in more detail below.

[16] The city has maintained that certain descriptions cannot be referenced because the records qualify for exemption under section 6(1)(b). As a result, my discussion of some portions of the records at issue includes only general discussions about the nature of the information at issue. However, it will be clear to the city and the affected parties from the findings in this order which portions of the records are discussed in this order.

[17] Finally, because of the manner in which this appeal has proceeded, I have not invited the appellant to provide representations on the application of section 6(1)(b). I also find, below, that the city has not satisfied me that the third part of the three-part test has been established. I will, nevertheless, make preliminary findings on the first two parts of the test.

RECORDS:

[18] The six records at issue which are addressed in this interim order are the six current employment contracts of six named city employees. They are identified in the city's index as records 1, 3, 5, 8, 10 and 11.

[19] The portions of the records remaining at issue are all of the redacted portions of these contracts, except for the home addresses of the identified individuals.

DISCUSSION:

Issue A: Do the records qualify for exemption under section 6(1)(b) of the *Act*?

[20] The city takes the position that the records are exempt under section 6(1)(b). That section states:

> A head may refuse to disclose a record,
>
> > that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

[21] For this exemption to apply, the institution must establish that

1. a council, board, commission or other body, or a committee of one of them, held a meeting

2. a statute authorizes the holding of the meeting in the absence of the public, and

3. disclosure of the record would reveal the actual substance of the deliberations of the meeting[1]

[22] All three parts of the three-part test set out above must be established in order for the records to qualify for exemption under section 6(1)(b).

[23] The city provided detailed representations on all three parts of the test.

Part 1 - a council, board, commission or other body, or a committee of one of them, held a meeting

[24] In support of its position that the records qualify for exemption under section 6(1)(b) of the *Act*, the city states that Council or a Committee appointed by Council held meetings to discuss the negotiation of senior management employment contracts. It provides details of those meetings, reviewing the six records and indicating who conducted the negotiations, states that at a meeting council or the committee either approved the agreement (1 record), council or the committee's direction was sought at a meeting (1 record) or council or a committee's direction and approval were sought (4 records).

[25] In the circumstances, and recognizing that the appellant has not had the opportunity to address the application of section 6(1)(b), for the purpose of this Interim Order, I am prepared to find that council or a committee of council, held a meeting, and that Part 1 of the three-part test under section 6(1)(b) has been met.

Part 2 - a statute authorizes the holding of the meeting in the absence of the public

[26] In support of its position that this part of the three-part test is established, the city refers to the specific meetings at which the agreements were discussed, and states that they were closed to the public under the provisions of sections 239(2)(b), (d) and/or (f) of the the *Municipal Act, 2001*. These sections read:

[1] Orders M-64, M-102, MO-1248.

> A meeting or part of a meeting may be closed to the public if the subject matter being considered is,
>
> > (b) personal matters about an identifiable individual, including municipal or local board employees;
> >
> > (d) labour relations or employee negotiations;
> >
> > (f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

[27] The city then reviews each of the meetings and the specific reasons why it proceeded in camera under section 239(2). In addition, the city refers to previous orders of this office which have held that a municipality was authorized to proceed in camera under sections 239(2)(b) and (d) to discuss employment-related matters.

[28] Again, in the circumstances, and recognizing that the appellant has not had the opportunity to address the application of section 6(1)(b), for the purpose of this Interim Order, I am prepared to find that section 239(2) of the *Municipal Act, 2011* authorized the holding of the meetings at issue in the absence of the public, because the subject matter of the meetings clearly pertain to personal matters involving prospective employees of the city. Accordingly, I find that Part 2 of the test under section 6(1)(b) of the *Act* has been established.

Part 3 - disclosure of the record would reveal the actual substance of the deliberations of the meeting

[29] Under Part 3 of the test set out above, previous orders have found that:

- "deliberations" refer to discussions conducted with a view towards making a decision[2]
- "substance" generally means more than just the subject of the meeting[3]

[30] The city's representations on this part of the test state that the records at issue contain information that would reveal the substance of the deliberations of the in-camera meetings. The city states:

> The CAO By-laws permit the CAO, on behalf of the City, to execute agreements with the Affected Persons once Council appoints the Affected

[2] Order M-184.
[3] Orders M-703, MO-1344.

Persons. This required Council to make decisions as to whether to appoint the Affected Persons.

In order to conduct this decision-making, closed meetings as described above were held wherein the CAO or HR&OD Director presented information relating to the employment negotiations, the substance of which was the CAO or HR&OD Director:

> i) seeking direction from Council (or the relevant committee, as it were) about the parameters of the negotiation which he would undertake with the candidate for employment;
>
> ii) seeking direction from Council (or the relevant committee, as it were) with regard to specific aspects of the negotiation process; or
>
> iii) seeking Council's appointment of the Affected Persons based on the employment terms negotiated.

In each meeting, the information about the proposed terms for the employment contract was provided to seek Council's direction to move the negotiation process forward in order to ensure that the terms of the employment contracts were acceptable to Council to the point that it was ready to appoint or re-appoint the Affected Persons.

The executed employment contracts, as the records that reflect the information upon which Council made its decisions to appoint the Affected Persons, are the documents that reflect the very deliberations which led to the appointment of the Affected Persons.

[31] As noted above, the city was asked to provide supplementary representations on, *inter alia*, whether the section 6(1)(b) exemption applies "to a final, executed employment contract after the contract is negotiated with an employee and after it is executed by the parties."

[32] The Supplementary Notice of Inquiry asked the city, when addressing the application of sections 6(1)(b) and 6(2)(b), to have reference to the publication: *Freedom of Information in Local Government of Ontario* ("Williams Local Government Report").[4] In particular, the city was asked to have reference to the following:

- In the Williams Local Government Report, the authors review a number of the issues that were being discussed in closed meetings. With respect to

[4] *Freedom of Information in Local Government of Ontario*, Research Publication 7 (May 1979).

a number of the issues which are discussed in closed session, the authors indicate that the purpose for the closed session is to allow open discussion on a particular decision. For example:

When discussing personal issues, the authors state:

> It is common practice not to give any details of the considerations which went into the decision and also not to let it be known if there was dissent on the decision which the council as a whole made. (p. 59)

When discussing contract negotiations, the authors state:

> Contract negotiations with employees are also discussed in closed meetings in order to protect the negotiating position of the municipality. Those people negotiating on behalf of the municipality … will report to the whole council periodically on the progress of negotiations and ask for guidelines on concessions which they should make. It was frequently explained to us that to hold these discussions in public sessions of council would make it impossible to arrive at the best possible agreement for the municipality since the council's adversaries (the employees) would know how far they could push the negotiators for the municipality. Once a contract had been tentatively reached, the employees will first ratify it in an open session of council. This ratification is a mere formality at this stage; it will not be discussed by the council members. …
>
> It can be seen that a number of municipalities see the need to discuss many personnel matters in private. The legitimacy of doing so … should be supported by provincial legislation and a municipal policy. It is important, however, that both the policy and the legislation point out that only when discussing specific contract negotiations and named employees should personnel matters be dealt with in private. … (pp. 61 – 62)

In addressing the purchase of property by a municipality, the authors state:

> …With respect to both purchases and sales of property, there is an added benefit that negotiations can proceed without the other party knowing the ultimate amount at which the municipality is willing to buy or sell. The

> municipality is, therefore, in a better bargaining position. The final purchase or sale occurs at a public meeting.
>
> It should be noted, however, that at the time the agreement is being discussed publically all reports and items received by council in private should be made public including reports on the appraisal of the properties, surveys of the property and any reports concerning its use. The reasons for confidentiality regarding price and bargaining are no longer applicable and all documents should be made public in order to facilitate the public's evaluation of the council's actions. … (p. 65)

In the section entitled "Access to Minutes and Documents of Private Meetings held Under the Exemptions," the authors state:

> Whenever a municipality makes a decision with respect to one of the above matters in private, legislation should require that it confirm that action in public …
>
> Legislation should require that minutes be kept of meetings held privately under the exceptions. The legislation should further require that all minutes and reports, with certain exceptions, discussed in private be available to the public when final action is taken. The reason for having the minutes and reports available is to allow the public to evaluate the actions of the body. Once deliberations are completed and an agreement on a decision is made in private, there is no need to maintain secrecy with respect to most deliberations or documents. (p. 108-109)

This Publication suggests that the purpose of open meeting legislation (including freedom of information) was to promote openness, but to protect legitimate confidentiality interests (such as the negotiating position during negotiations). The Publication also suggests that once decisions are made, material ought to be made public to allow the public to evaluate the body's actions.

[33] The city was asked to address the possible application of the exemption in section 6(1)(b) and the exception in section 6(2)(b) to the final agreements in this appeal, in light of the information set out above.

[34] The city provided lengthy supplementary representations in support of its position that the section 6(1)(b) exemption applies to the final executed employment contracts. It states:

> As the IPC indicated in its Supplementary Notice of Inquiry, there are few cases addressing the application of subsection 6(1)(b) of [the *Act*] to final executed employment contracts. However, Order MO-2536-I addressed the application of subsection 6(1)(b) to Minutes of Settlement between a municipality and former administrator which were found to be akin to a severance agreement. The IPC held that [the *Act*] applied to the Minutes as the Minutes were a negotiated agreement pursuant to subsection 52(4) of the *Act*.
>
> In Order MO-2536-I, the IPC found that the "agreement appears to have been arrived at following negotiations between the parties, and is executed by both of the parties."
>
> In the instant case, the records are agreements negotiated by the parties which were executed and implemented, as was the circumstance in Order MO-2536-I. In MO-2536-I, the executed nature of the agreement did not appear to be an issue with respect to the application of subsection 6(1)(b). The City maintains that the final executed nature of the employment contracts ("records") is not relevant to the question of whether subsection 6(1)(b) applies. The City maintains that the modern approach to statutory interpretation supports the inclusion of the records within the ambit of subsection 6(1)(b).

[35] The city then provides detailed representations in support of its position that the modern approach to statutory interpretation supports the inclusion of the records within the ambit of subsection 6(1)(b). It also addresses the portions of the Williams Local Government Report referenced above. I review and address these representations in detail below.

Analysis and Findings

[36] For the reasons set out below, I find that the disclosure of the six current executed employment contracts of the six named city employees would not reveal the substance of the deliberations of the in-camera meetings, in the circumstances of this appeal.

[37] To begin, as indicated above, under Part 3 of the test set out above, previous orders have found that:

- "deliberations" refer to discussions conducted with a view towards making a decision[5]
- "substance" generally means more than just the subject of the meeting[6]

[38] In Order MO-2499-I, former senior adjudicator John Higgins discussed in some detail the meaning of the phrase "substance of the deliberations." In one portion of that order he refers to an earlier order of former Assistant Commissioner Mitchinson[7] which addressed the application of part 3 of the test in section 6(1)(b) to the minutes of a closed meeting held by a school board. With respect to part 3 of the test, the former Assistant Commissioner stated:

> To satisfy the third requirement of the test, the Board must establish that disclosure of the record would reveal the actual substance of the deliberations of this *in camera* meeting. As I found in Order M-98, the third requirement would not be satisfied if the disclosure would merely reveal the subject of the deliberations and not their **substance** (see also Order M-703). "[D]eliberations" in the context of section 6(1)(b) means discussions which have been conducted with a view to making a decision (Orders M-184, M-196 and M-385). …
>
> It is clear from the wording of the statute and from previous orders that to qualify for exemption under section 6(1)(b) requires more than simply the authority to hold a meeting in the absence of the public. The *Act* specifically requires that the record at issue must reveal the substance of deliberations which took place at the meeting. The Board voices no concern that the actual negotiation strategy would be identified through disclosure of the record. In fact, the Board itself disclosed its strategy two days after adopting it at the November 9, 1998 meeting. Rather, the Board objects to the fact that disclosure of the record would reveal information not previously disclosed.

[5] Order M-184.
[6] Orders M-703, MO-1344.
[7] MO-1344.

[39] Also in Order MO-2499-I, former Senior Adjudicator Higgins refers to a decision of British Columbia Information and Privacy Commissioner addressing a section similar to section 6(1)(b) at issue in this appeal, as follows:

> Relevant considerations in assessing whether records would reveal the substance of deliberations in a particular case were canvassed by former British Columbia Information and Privacy Commissioner David Loukidelis in Order 00-14, which addressed the equivalent exemption in British Columbia's *Freedom of Information and Protection of Privacy Act*. The case involved the decision by a local Police Board to deny access to the entire minutes of certain *in camera* meetings. The former Commissioner stated:
>
> > Section 12(3)(b) does not necessarily allow the Board to refuse to disclose records because they "refer to matters discussed" *in camera*. Nor does s. 12(3)(b) allow a local public body to "withhold *in camera* records", whatever they may be. The section does not create a class-based exception that excludes records of, or related to, *in camera* meetings. …
> >
> > In this case, certainly, s. 12(3)(b) does not authorize the Board to refuse to disclose the meeting minutes in their entirety. The Board withheld every iota of information, right down to the names of the Board members attending each meeting, the dates and times of each meeting, the location of each meeting, and so on. Disclosure of the identities of those attending a meeting, or details as to its time and location, would not - absent evidence to the contrary in a given case - reveal the "substance" of the "deliberations" of the meeting.
> >
> > Nor would disclosure of the subjects dealt with at the Board meetings here in question - regardless of whether a matter was presented to the Board for information or for discussion and action - reveal the substance of the Board's deliberations on those subjects. There may be cases where disclosure of a subject of an *in camera* meeting would, of itself, reveal the substance of the deliberations of the governing body. It may be possible, for example, to combine knowledge of the subject matter with other, publically available, information, such that disclosure of the subject matter itself amounts to disclosure of the "substance of deliberations". The Board has not supplied any evidence

> or argument that would permit me to decide that this is the case here. ...

[40] In my view, the decisions cited by former Senior Adjudicator Higgins correctly establish that, in order to meet the third part of the three-part test, the record at issue must reveal the substance of deliberations which took place at the meeting.

[41] In this appeal, the city has provided substantial information concerning the in-camera meetings held during the various times that decisions were being made regarding the employment (including the employment terms) of the six affected parties. For a number of these employment contracts, certain general terms and, in some cases, specific terms of the contracts were discussed by council, both at the time that the contracts were being negotiated, and later at the point where council approved the contracts. In that regard, the city has provided minutes of the relevant in-camera meetings which identify with some precision which clauses of the contracts were discussed. The minutes also in some instances reflect the positions taken by the various council members regarding their views of some of the terms. The city has also provided affidavit evidence in support of this information.

[42] In addition, the city has provided background documents which include staff reports and presentations made at the in-camera meetings, relating to the staffing decisions at issue.

[43] In the circumstances of this appeal, these background documents or the minutes of the in-camera meetings would, in my view, be precisely the kind of records which would reveal the "substance of the deliberations" of the in-camera meetings. However, these minutes and documents are not the records at issue in this appeal. The records at issue are the six executed agreements entered into between the city and the six individuals. In my view, disclosure of these records would not reveal the substance of the deliberations. Rather, disclosure of the final executed contracts would reveal the *subject* or the "product" of the deliberations.

[44] In coming to this decision, I acknowledge the city's representations in support of its view that the section 6(1)(b) exemption should apply to the records (ie: the "product" of the deliberations). I note that the city has provided two significant arguments in favour of a finding that disclosure of the records would reveal the substance of the deliberations, and I will address each of these in turn.

City position 1: previous orders of this office

[45] The city has referred to previous decisions of this office which found that disclosure of final agreements, discussed or approved at in-camera meetings, would reveal the substance of the deliberations of those meetings. The city refers to Order MO-2536-I, which addressed the application of subsection 6(1)(b) to Minutes of

Settlement between a municipality and former administrator which were found to be akin to a severance agreement. That order determined that the final Minutes of Settlement reached between the Municipality of Meaford and an individual met the third part of the three-part test under section 6(1)(b).

[46] I note that, in the discussion about the third part of the three-part test, that order also referred to Senior Adjudicator John Higgins' Order MO-2499-I (referenced above) where he discussed the meaning of the phrase "substance of the deliberations." That order addressed the issue of whether various records relating to the departure of a board trustee, including correspondence with the trustee's counsel and documents that relate to decisions adopted by the board at an in-camera meeting, qualified for exemption. In that case Senior Adjudicator Higgins found the records would reveal the substance of the deliberations, and that they met the three-part test in section 6(1)(b). Portions of that order are referenced above; however, the Senior Adjudicator also stated:

> … previous orders of this office have consistently found that discussions about the termination of a person's employment or office properly considered at *in camera* meetings are exempt pursuant to section 6(1)(b) (see Orders M-184, M-196, MO-1269, MO-1248 and MO-1676). In Order MO-1676, Adjudicator Donald Hale stated:
>
> > In Orders M-184 and M-196, former Assistant Commissioner Irwin Glasberg reviewed the operation of section 6(1)(b) in situations where a board of education and a municipal council reviewed and approved proposed severance agreements with former senior employees at meetings held in the absence of the public. In each case, section 6(1)(b) was found to apply as the former Assistant Commissioner held that the disclosure of the record would "reveal the substance of deliberations" of the decision-making body.
> >
> > In the present appeal, the Police Services Board was charged with making a decision on whether to approve the Minutes of Settlement negotiated between counsel for the former Chief and the Police. I accept the evidence of the Police that, following a discussion, the Board accepted the financial terms of settlement reflected in the first four paragraphs of the Minutes and "signed off" on them. I agree with the characterization by the Police of the remainder of the Minutes as "boiler plate" and find that the substance of the deliberations of the Board focussed on those financial aspects of the settlement which are reflected in paragraphs 1 to 4. Insofar as the remainder of the Minutes is concerned, however, I am not satisfied that its

> disclosure would serve to "reveal the substance of the Board's deliberations", as is required by section 6(1)(b).
>
> Applying this approach and having regard to the evidence that is before me, I find that the disclosure of the records at issue would reveal the substance of the deliberations at the *in camera* meeting as they reveal a recommended course of action that was the very substance of the discussions that took place. Therefore, the third requirement for the application of section 6(1)(b) has been met.

[47] I note that the orders referenced by the city, and referred to by former Senior Adjudicator Higgins, all involve in-camera discussions about the minutes of settlement or terms of termination agreements negotiated or entered between municipal bodies and former employees. None of these orders address employment agreements entered into with individuals who then commence or continue employment with the municipal body in accordance with those employment agreements.

[48] I acknowledge that the orders referred to by the city found that the negotiated agreements at issue would reveal the substance of the deliberations of the in-camera meetings. However, I find that additional factors may be in play when municipalities enter termination agreements or minutes of settlement to settle litigation. There may be instances where simply disclosing the fact that a settlement agreement was entered into may reveal solicitor-client privileged information or other confidential information. These same concerns are not raised with respect to employment agreements ultimately executed by parties, which then result in the employment of the individuals.

[49] On this basis, I find that these previous orders are distinguishable on their facts, analysis and conclusions.

[50] Accordingly, to the extent that previous orders of this office have determined that disclosure of a final agreement would reveal the "substance of the deliberations" of an in-camera meeting for the purpose of the third part of the test in section 6(1)(b), I decline to follow those orders in the current circumstances, where the final agreement is an employment agreement entered between the municipality and an employee. Although disclosure may reveal the result of the in-camera deliberations, it would not reveal the substance of those deliberations for the purpose of section 6(1)(b).

City position 2: Statutory Interpretation Supports the Conclusion that Subsection 6(1)(b) Applies to the Records

[51] The city states:

> The Courts have recognized that the modern approach to statutory interpretation is to interpret the words of an Act in their entire context and

> in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[8]
>
> The City maintains that the modern approach to statutory interpretation supports a conclusion that the records be exempt under subsection 6(1)(b) because they would reveal the substance of deliberations of a closed meeting.

[52] The city then provides three arguments in support of its position that a proper statutory interpretation supports a finding that section 6(1)(b) applies to the records. These three arguments include references to the objects of the *Act*, the legislative intent and the Williams Local Government Report, and the statutory context of section 6(1)(b). I will review each of these arguments in turn.

1) The Objects of the Act

[53] The city refers to the two purposes of the *Act* which are set out in section 1 as follows:

> The purposes of this Act are,
>
> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (i) information should be available to the public,
>
> (ii) necessary exemptions from the right of access should be limited and specific, and
>
> (iii) decisions on the disclosure of information, should be reviewed independently of the institution controlling the information; and
>
> (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

[54] The city then states that "the purposes of [the *Act*] contemplate that there may be exemptions to the right of access as long as they are limited and specific. Furthermore, [the *Act*] obliges the protection of privacy." It then states:

---

[8] *Toronto District School Board v. Ontario (Information and Privacy Commissioner)*, [2002] O.J. No. 4631 (Div. CL) at para. 13.

> The final nature of the records [at issue] as harbingers of the City's bargaining position …, in addition to the substantial privacy considerations associated with the records (as outlined in the City's Submissions …), would indicate that this is one of the times when a limited and specific exemption to access would be proper.

Analysis

[55] On my review of the city's submissions, I do not accept that the objects of the *Act* support the conclusion that section 6(1)(b) applies to executed employment agreements entered into between a municipality and an employee. To the contrary, I find that these objects support my finding that the exemption in section 6(1)(b) does not apply to the executed employment agreements. The purposes of the *Act* clearly state that information should be available to the public, and that the exemptions from the right of access should be limited and specific. This is particularly relevant in circumstances where public expenditures are at issue.

[56] Furthermore, the purposes include the protection of the privacy of individuals with respect to their personal information. The *Act* provides significant direction to assist in determining what is personal information (section 2(1)), and what to consider in determining whether any such information ought to be disclosed (section 14). The *Act* specifically states that certain information, although considered to be the personal information of identifiable individuals, ought to be disclosed. For example, section 14(4)(a) specifically states that 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;

[57] The arguments made by the city in support of its view that the purposes or objects of the *Act* support its position refer directly to two concerns. These are its "substantial privacy concerns" and its concern that the disclosure will reveal its "bargaining position" and may affect future bargaining. As noted, the privacy concerns are addressed by the mandatory exemption in section 14(1). Furthermore, the city's concerns about disclosure revealing its bargaining position are precisely the type of concerns that are addressed by the discretionary exemption in section 11, which the city did not claim.

2) Legislative Intent and the Williams Local Government Report

[58] The city relies on the Williams Local Government Report (referenced above) in support of its position that the legislative intent supports a finding that the records qualify under section 6(1)(b). It states:

Findings and recommendations made [in the Williams Local Government Report], part of the provincial commission that provided the recommendations upon which Ontario's first access to information legislation was based, support the conclusion that a final executed employment contract should be exempt under subsection 6(1)(b) of [the *Act*]. Although the authors maintain that there is a need for openness in local government, the authors recognized that there are limits to openness in relation to disclosing information about individual staff members. The authors maintained that exemptions to the open meeting rule for personnel matters, including the negotiation and discussion of the appointment of employees, were valid exemptions to the general right of information.[9]

The [Williams Local Government Report] found that:

> Contract negotiations with employees are also discussed in closed meetings in order to protect the negotiating position of the municipality. Those people negotiating on behalf of the municipality (sometimes a committee of the council and sometimes senior administrative staff [the personnel director, the chief administrator, the municipal solicitor]) will report to the whole council periodically on the progress of negotiations and ask for guidelines on concessions which they should make. It was frequently explained to us that to hold these discussions in public sessions of council would make it impossible to arrive at the best possible agreement for the municipality since the council's adversaries (the employees) would know how far they could push the negotiators for the municipality.[10]

Noting this need for protection of the public interest in employee contract negotiations, the Williams Local Government Report recommends that personnel matters be exempt from the open meeting requirement recommended in the Report and further recommended that a parallel exception be included in the exceptions to access information to legislation which the authors recommended in the Report.[11]

The authors of the Williams Local Government Report did not recommend an exclusion to the closed meeting exemption based on the final nature of employee contracts. The City maintains that this is because the need to

[9] Williams Local Government Report, at 16 and 65.
[10] *Ibid*. at 60-61
[11] *Ibid*. at 106-107 and 116.

> protect the City's negotiating position does not end once a contract is executed because future negotiations could also be jeopardized by releasing the records.[12]

[59] The city then refer to the following statement by the authors of the Williams Local Government Report:

> It is common practice not to give any details of the considerations which went into the decision and also not to let it be known if there was dissent on the decision which the council as a whole made. It is generally understood that, even if there were strong disagreement within the closed session of the members of council, there will be a unanimous vote at the council meeting. On the rare occasion where dissent is carried to the extent of being expressed at an open meeting, there is a very strong opposition to such action from other council members who feel that a basic trust has been broken. Generally, the public has not appeared to express disagreement with this manner of operation.[13]

[60] The city then states:

> As such, the authors of the Williams Local Government Report recommended that there should be an exemption to the open meeting requirement for personnel matters where a named employee or possible employee is involved in order to protect reputations of employees.[14]
>
> The City maintains that the need for trust and Council unanimity contemplated in the Williams Local Government Report remains as necessary today as it was in 1979 to ensure a united front with respect to supporting the management of the municipality.
>
> The [Williams Local Government Report] authors recommended that the practice of not making personnel files available except to the person who is the subject of the file should continue and reinforced this idea in recommending that there should be an exception to any right of access to information for personnel files to ensure the protection of individual privacy.[15]
>
> As described in [the City's Submissions], the records form part of the personnel file. The City maintains that they are an essential part of this

[12] *Ibid.* at 106-107 and 116.
[13] *Ibid.* at 59.
[14] *Ibid.* at 106-107.
[15] *Ibid.* at 89 and 116.

> file and that they should remain private as envisioned by the authors of the [Williams Local Government Report] and also by the legislature in enacting [the *Act*] which was based on the recommendations in the Report. The final nature of the records makes them no less private than they were during the negotiation of the records.

[61] The city then identifies some of the harms which may flow from disclosure of the records.

Analysis

[62] The excerpts from the Williams Local Government Report above clearly confirm that the Report supports a finding that the negotiations and information relating to the negotiating process ought not to be disclosed through the *Act*. However, I am not satisfied that these references from the Report support a finding that the final contracts entered into between the municipality and its employees in this appeal ought not to be disclosed under section 6(1)(b). The references in the Report regarding the confidentiality of these negotiations refer to the concerns about the possible harms to the negotiating position of the municipality which may result from disclosure, or the concerns about the disclosure of personal information. As indicated above, these concerns are addressed in other exemptions in the *Act*. I also note that the exemption in section 6(1)(b) simply requires that the information meet the three parts of the test; it does not incorporate a "harms" test.

[63] The Williams Commission Report also expresses concern about the disclosure of documents that would reveal divergent views taken by members of Council or one of its committees during their deliberations. In my view, disclosure of the end product of in-camera negotiations reflects (at least the appearance of) unanimity among Council members, which suggests that the disclosure of such a document would not undermine the negotiating position of Council or the ability of Council to deliberate openly on the matters for which it went into closed session.

[64] I also note that the city has referred to the option the legislature had to exclude employment contracts from the scope of the *Act*. I address this issue below.

[65] In the circumstances, I am not satisfied that the legislative intent and the Williams Local Government Report support the position taken by the city. As noted above, the William Commission Report strongly advocated that once the negotiations have been completed, and decisions made, the material relating to these in-camera deliberations should be made public to allow the public to evaluate the Council's actions.

3) Statutory Context

[66] The city provides lengthy representations in support of its position that the statutory context supports a finding that the records qualify for exemption. It states:

> *Section 6 of [the Act] in its Grammatical and Ordinary Sense*
>
> Section 6(1)(b) of [the *Act*] is drafted broadly to include "a record" that reveals the substance of deliberations of a meeting and includes the final executed employment contracts. A contextual analysis of subsection 6(1) supports this position. There is no wording in subsection 6(1)(b) which acts to limit the records to which subsection 6(1)(b) applies but for the qualification that the records must reveal the substance of deliberations of a closed meeting.
>
> *Contextual Analysis*
>
> Subsection 6(1)(b) is worded differently than subsection 6(1)(a) which limits the kinds of records to which subsection 6(1)(a) applies. Subsection 6(1)(a) applies to drafts, implying that final drafts of by-laws or private bills would not be captured within the ambit of subsection 6(1)(a). There is no parallel implication in subsection 6(1)(b). The difference in the wording suggests that subsection 6(1)(b) is broader in nature than 6(1)(a) allowing us to conclude that any recording revealing the substance of deliberation may be exempt under that subsection.
>
> The exceptions to subsection 6(1), as set out in subsection 6(2), indicate that the legislature turned its mind to the records to which subsection 6(1) should not apply. None of these exceptions include records of a final nature, although other provisions of [the *Act*] do draw such a distinction (subsections 7(2)(h) and (k) and subsections 11(e), (f) and (g)) thereby signalling that finalized records were considered by the legislature.
>
> It would appear that the nature of the records was addressed by the legislature by including an age limit on records to which subsection 6(1) applies. The City maintains that we can reasonably infer that by including this age limit the legislature chose to allow the exemption to be applied to records until they became such an age that they would presumably no longer jeopardize subject matters deliberated upon in closed meetings instead of addressing the finality of the records.
>
> The City also maintains that the manner in which [the *Act*] was amended by Bill 7 lends support to the conclusion that the legislature intended to

include final executed employment contracts in the application of subsection 6(1)(b).

The amendments to [the *Act*] arising from Bill 7 were specifically intended to address the confidentiality of labour relations information.

[67] The city then refers to the following excerpt from Order PO-2639:

… consideration of the underlying purpose of the jurisdictional exclusion in [section 52(3)] of the *Act* offers useful context for its analysis. As described by the legislators who drafted it, [section 52(3)] of the *Act* was enacted

> As part of "An Act to restore balance and stability to labour relations and to promote economic prosperity and to make consequential changes to statutes concerning labour relations": Bill 7, 1st Session, 36th Legislature, 1995; "[a]lso, we propose to amend the *Freedom of Information and Protection of Privacy Act* ... to ensure the confidentiality of labour relations information": Hon. David Johnson (Chair of Management Board of Cabinet), Official Report of Debates, October 4, 1995.

[68] The city then states:

The legislature had turned its mind to employment matters and yet did not expressly exclude final executed employment contracts from the ambit of section 6(1)(b), although the legislature did choose to subject negotiated agreements to the application of [the *Act*] as provided by subsection 52(4).

The City maintains that the effect of this inclusion was to make the negotiated agreements subject to [the *Act*] only and not to exclude them from the application of the exemptions under [the *Act*].

All of these factors weigh heavily in favour of the conclusion that subsection 6(1)(b) applies to final executed employment contracts. Reference to [the *Act*'s] parallel statute, [*The Freedom of Information and Protection of Privacy Act* (FIPPA)], supports this conclusion as well.

[69] The city then reviews certain sections of FIPPA as follows:

The legislature has turned its mind to limiting the scope of the closed meeting exemptions in other instances. In [FIPPA], the provincial

> equivalent to [the *Act*], subsection 18.1(1) of FIPPA is drafted so that the application of the closed meeting exemption applies only to records revealing the substance of deliberations of meetings where the subject matter of the meeting is a draft by-law, resolution or legislation or litigation or possible litigation.
>
> Section 12 of FIPPA limits access to records revealing the substance of deliberations of the Executive Council or its committees.
>
> The difference in wording between section 18.1 of FIPPA and sections 12 of FIPPA and subsection 6(1) of [the *Act*] signals the different intentions of the legislature with respect to the closed meeting provisions and indicates that the legislature turned its mind to limiting the application of the closed meeting exemption in some provisions but not in others. Section 18.1 of FIPPA is narrow in its application because it applies only to certain kinds of records or subject matters. Subsection 6(1)(b) of [the *Act*] has more breadth applying to any records revealing the substance of deliberations of a closed meeting of council or a committee which is similar to section 12 of FIPPA. The different wording of the exemptions supports the idea that the legislative intent was different in the different provisions supporting the conclusion that subsection 6(1)(b) was intended to be more broadly applied to include the records.

[70] Lastly, the city states:

> *The Final Action Reduces the Need for the Final Executed Record to be Released*
>
> Acknowledging that there was a need to ensure "the protection of privacy on matters listed while providing public knowledge of those decisions", the authors of the Williams Local Government Report recommended that a municipality's actions on matters which it recommended to be exempt from the open meeting requirement be confirmed in public.[16]
>
> As described [above], a Council member rose and reported the developments of the closed meetings to ensure some level of transparency and accountability in the process and it is open to a person concerned about the conduct of that closed meeting to complain to the Ombudsman if there is a concern that a meeting was improperly held.
>
> Furthermore, as described [above], the appointments of the Affected Individuals to their positions with the City were conducted in open

[16] Page 108.

> meetings of Council where Council passed by-laws appointing such persons.
>
> The City maintains that these actions, in keeping with the Williams Local Government Report recommendations, as well as the information that was provided to the Appellant, and in addition to the requirements of the *Public Sector Salary Disclosure Act*, provide the appropriate amount of transparency required of final executed employment contracts thus achieving the proper balance required to facilitate democracy and maintain accountability as intended by [the *Act*].

Analysis and findings

[71] I do not accept the city's position that the statutory context supports a finding that the records qualify for exemption in the circumstances of this appeal. Many of the city's arguments under this section are made in support of its view that final, executed agreements between the city and its employees fall within the scope of the *Act*, and that exemptions might apply to them. I agree with the city on this point. However, in this appeal I must determine whether the records qualify for exemption under section 6(1)(b) and, in this appeal, I find that they do not qualify for exemption under that section.

[72] With respect to section 52(3) (and the exceptions in section 52(4) of the *Act*), this amendment to the *Act* was clearly intended to address specific employment-related matters involving an institution and its workforce. Even so, the Legislature recognized that final contracts should not be excluded from the *Act*,[17] which is consistent with the purposes of the *Act* in ensuring transparency and accountability of public institutions with respect to the expenditure of public funds.

[73] Further, I am not persuaded that the inclusion of section 18.1 in FIPPA is relevant to this issue. It is apparent that, in enacting section 18.1, the Legislature was addressing specific concerns regarding these provincial institutions, which do not refer to section 239 of the *Municipal Act*. The circumstances between provincial and municipal institutions in this regard are different. I find that the fact that the Legislature took a selective approach regarding hospitals and educational institutions subject to FIPPA does not necessarily mean it intended that section 6(1)(b) be "more broadly applied to include the records," meaning final executed employment contracts.

[74] Similarly, the types of documents covered by sections 6(1)(a) and (b) are qualitatively different, despite being included in the same exemption claim, and I find that it is not possible to interpret the meaning to be given to one based on the other. In particular, I am not persuaded that restricting section 6(1)(a) to draft documents

[17] Section 52(4).

necessarily means that section 6(1)(b) should be broad enough to capture "any recording." Nor does the distinction between these two subsections suggest that final executed agreements should fall within section 6(1)(b).

[75] With respect to section 6(2)(b), this part of section 6 only applies where a record is found to fall within section 6(1)(b). The fact that it does not refer to final executed agreements does not, in itself, mean that the Legislature intended that these types of documents be protected.

[76] Finally, I am not persuaded that because sections 7 and 11 contain references to finalized records, this means that the Legislature turned its mind to these types of documents and deliberately refrained from including reference to them in section 6(1)(b). In my view, the wording of section 6(1)(b) has been left open to include any record that would reveal the substance of deliberations of Council or one of its committees in order to ensure that the substance of the deliberations of Council or one of its committees would not be unintentionally disclosed in circumstances where Council is authorized to go into closed session.

[77] After taking into account all of the arguments and evidence put forth by the city, previous orders of this office and the records at issue, I conclude that disclosure of the records at issue in this discussion would not reveal the substance of the deliberations of council (or the committee) on matters to which the records relate.

[78] Having found that the records do not qualify for exemption under section 6(1)(b), it is not necessary for me to review whether the exception in section 6(2)(b) applies. It is also not necessary for me to review the city's exercise of discretion.

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

[79] I have found that the records do not qualify for exemption under section 6(1)(b). The city has also claimed that the mandatory personal privacy exemption in section 14(1) applies to the records. This exemption only applies if the information at issue constitutes the "personal information" of an identifiable individual.

[80] 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;

[81] 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.[18]

[82] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[19]

---

[18] Order 11.
[19] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[83] The city states that the information remaining at issue constitutes the personal information of the individuals to whom it relates. The city states:

> Previous orders … have considered the contents of employment contracts and have consistently held that information about the individuals named in the agreements, which include their name, dates of termination and terms of settlement, concerns these individuals in their personal capacity and thus qualify as personal information. …
>
> The majority of the clauses in the employment contracts are personal in nature. The severed information appears in the context of each Affected Person privately contracting with the City in the circumstance of accepting employment with the City. This information reflects the compensation, benefits and other negotiated terms under which the Affected Persons, as private individuals, have engaged in this employment.

[84] The city then provides detailed representations referring to the specific provisions of the employment contracts, and in support of its position that this information is the personal information of the affected parties.

[85] The two affected parties who provided representations also take the position that the records relating to them contain their personal information.

[86] On my review of the representations (and recognizing that the appellant has not had the opportunity to provide representations), for the purposes of this Interim Order, I am satisfied that the employment contracts contain the personal information of the affected parties.

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

Introduction

[87] I have found that the records do not qualify for exemption under section 6(1)(b). The only other exemption referred to by the city is the mandatory personal privacy exemption in section 14(1).

[88] As identified above, the city's representations have not been shared with the appellant, and he has not had the opportunity to address the possible application of the exemption in section 14(1) to the records. Accordingly, I reserve my decision on the application of section 14(1) to some portions of the records at issue. However, in my view, because the nature of the information at issue and on the basis of previous decisions of this office and the courts, I find that some of the information at issue, by

definition, does not qualify for exemption under section 14(1). This information consists of the portions of the employment agreements which identify the "benefits" of the six named employees.[20]

Section 14(1)

[89] 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).

[90] The 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."

[91] 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, 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.[21]

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

> (4) Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> > (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

[93] The parties appear to acknowledge that the six named individuals are "employees" for the purpose of this section. I also note that the city has disclosed to the appellant the employment responsibilities of the six named individuals.

---

[20] My findings on these issues address only the portions of the records which, *prima facie*, constitute "benefits." To the extent that any other information in the records may also constitute "benefits," or would otherwise fit within the exceptions in section 14(4), I reserve my findings on those other portions of the records.

[21] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

Benefits

[94] 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.[22]

[95] More recently, in Order MO-2470, adjudicator Colin Bhattacharjee reviewed the terms of two employment agreements between the Essex Police Services Board and their Chief and deputy Chief. He found that the following terms constituted "benefits" for the purpose of section 14(4)(a):

> … I am satisfied that the information under the following headings in the Chief's employment contract qualifies as "benefits" for the purposes of section 14(4)(a): court time, other assignments, clothing and equipment, professional development, legal indemnification, vacations, holidays, sick leave, life insurance, workplace safety and insurance, health and welfare, bereavement leave, survivor's pension, separation, incidental expense allowance, membership and participation in professional associations.
>
> Similarly, I am satisfied that the information under the following headings in the Deputy Chief's employment contract qualifies as "benefits" for the purposes of section 14(4)(a): court time, other assignments, uniforms, equipment, clothing and cleaning allowances, professional development, legal indemnification, vacation, holidays, sick leave, life insurance, workplace safety and insurance, health and welfare, bereavement leave, survivor's pension, separation, membership fees, physical fitness, home office expense, and Appendix B (memorandum of understanding with respect to the Deputy Chief's pension).

[96] The city provides representations (some of which are confidential) on whether some portions of the employment contracts at issue constitute "benefits" for the purpose of section 14(4)(a). One of the affected parties directs their representations to specific portions of the relevant agreement, and does not address the "benefits"

[22] Orders M-23 and PO-1885.

identified in section 14(4)(a). The other affected party identifies concerns about other personal information relating to them which may be revealed by disclosing the "benefits." I have considered these positions in making my findings below.

[97] Applying the approach taken to the term "benefits" as set out in the previous orders, I find that the following terms in the six employment contracts at issue clearly constitute "benefits" for the purpose of section 14(4)(a):

Record 1: Page 2 - portions of paragraphs one and two, and paragraph four in full.
Page 3 - a portion of the first full paragraph, and paragraph six in full.

Record 3: Page 2 - all of the first full paragraph, and a portion of the third.
Page 3 - the second full paragraph.

Record 5: Page 2 - the first and second paragraphs in full.
Page 3 - the first paragraph in full.

Record 8: Page 2 - a portion of the first paragraph.
Page 4 - the third paragraph in full.

Record 10: Page 2 - a portion of the first paragraph, and the full second paragraph.
Page 3 - the fourth paragraph in full.

Record 11: Page 2 - the fifth paragraph in full.
Page 3 - all of the third full paragraph.

[98] I also find that the disclosure of these "benefits" does not reveal other personal information about the identifiable individuals.

[99] Having found that these identified terms of the contracts constitute "benefits" for the purpose of section 14(4), I find that they do not qualify for exemption under section 14(1). The city has not claimed that section 15(a) applies to these portions of the records. As these portions of the records do not qualify for exemption under the *Act*, I will order that they be disclosed.

[100] I reserve my decision on the application of section 14(1) (including the possible application of section 14(4)(a)) to the other portions of the agreements remaining at issue).

Additional Note: Salaries

[101] As a final matter in this Interim Order, I note that the records at issue contain exact salaries and do not contain a "salary range" for the purposes of the section 14(4). The salaries of the six named individuals have not been disclosed.

[102] In Order MO-2563, a recent decision of this office, adjudicator Bernard Morrow had to determine access issues relating to the exact salaries (including prospective salaries) of identified employees. In that order, the adjudicator considered a number of factors and determined that, based on the nature of the information at issue and the fact that the named individual employees were subject to the *Public Sector Salary Disclosure Act*[23] (the PSSDA), the exact salary information in the employment contracts ought to be disclosed. He found that there existed a compelling public interest in the disclosure of the information. With respect to whether the public interest clearly outweighed the purpose of the section 14(1) exemption, adjudicator Morrow stated:

> In my view, the compelling public interest in disclosure of the withheld portions of the records at issue clearly outweighs the purpose of the section 14 exemption in this case. The public has a right to know to the fullest extent possible how taxpayer dollars have been allocated to public servants' salaries, and this has particular force with respect to public servants at senior levels who earn significant amounts of money paid out of the public purse. Certainly, the PSSDA is one important tool for ensuring such openness and transparency. However, in my view, to limit disclosure to only those amounts that are disclosed under the PSSDA seems incongruent with the government's commitment to openness and transparency and, in turn, accountability for the allocation of public resources. In my view, when an individual enters the public service he/she accepts that his/her salary may be exposed to public scrutiny. In this case, the amounts at issue exceed the PSSDA $100,000 threshold and the impact on the affected parties' privacy is limited to the amounts provided for pay for performance in 2009, which can be extrapolated from a comparison of the base salary amounts in the records with the salaries published under the PSSDA for that year. In my view, the need for complete transparency in this case outweighs the limited privacy interests of the affected parties.
>
> In short, I find that the public interest override in section 16 of the *Act* applies to the withheld portions of the records at issue. Consequently, with the exception of those portions that have been removed from the scope of the appeal, the remaining information that has been withheld by the Police (the specific salary amounts for the Deputy Chiefs for 2009 through 2012 and the specific salary amounts for the Chief for the period December 12, 2008 through December 11, 2009, along with the percentage increase over the previous period, and for the period December 12, 2009 through December 11, 2010) must be disclosed to the appellant.

[23] S.O. 1996, c. 1.

[103] The Divisional Court upheld adjudicator Morrow's decision.[24]

[104] In material provided to this office in the course of this appeal, the appellant has indicated his position that the public ought to have access to records relating to the employment contracts of public employees, thus raising the possible application of the "public interest override" in section 16 of the *Act*. I will be inviting the parties to address this issue and the possible impact of order MO-2563 as it relates to the remaining information, including the salary information contained in the records at issue in this appeal.

ORDER:

1. I find that the six records at issue do not qualify for exemption under section 6(1)(b) of the *Act*.

2. I order the city to disclose to the appellant the portions of the records which I have found to constitute "benefits" for the purpose of section 14(4)(a) of the *Act*, as identified in paragraph **96**, above. For greater certainty, I have attached a copy of Records 1, 3, 5, 8, 10 and 11 to the order provided to the city, with the portions that should be disclosed highlighted in green. I order the city to disclose the green highlighted portions of these records to the appellant by **November 21, 2013** but not before **November 15, 2013**.

3. I remain seized of the issues in this appeal pending final determination of all outstanding issues.

Original Signed By: October 16, 2013
Frank DeVries
Adjudicator

[24] *York (Police Services Board) v. Ontario (Information and Privacy Commissioner),* 2012 ONSC 6175 (Div. Ct.).