Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3181

Appeal MA13-497

Deep River Police Services Board

April 7, 2015

Summary: The Deep River Police Services Board (the police) received a request for the employment contracts of two police employees, as well as the legal fees incurred by the police related to the drafting of the employment contracts. The police denied access to the responsive records on the basis of the exemptions in sections 6(1)(b) (closed meetings) and 14(1) (personal privacy). During the mediation of the appeal, the appellant raised the issue of the possible application of the public interest override in section 16 and the police's search for responsive records. In this order, the adjudicator finds that the majority of the records do not qualify for exemption under section 6(1)(b) and section 14(1) of the *Act*. The adjudicator orders the police to disclose the records to the appellant, with the exception of a portion of one of the employment contracts. She also finds that the public interest override in section 16 does not apply and upholds the police's search as being reasonable.

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), 16 and 17.

Orders and Investigation Reports Considered: MO-2470, MO-2499-I, MO-2964-I and MO-3130.

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of a decision made by the Deep River Police Services Board (the police) in response to a request

made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of any and all employment, personal service, severance or return to employment agreements between the police and two named individuals, during a specified time frame. In addition, the request included the total cost of legal fees paid by the police for negotiating and entering into the subject contracts.

[2] After locating responsive records, the police issued a decision to the requester, denying him access to two employment contracts, claiming the application of the discretionary exemption in section 6(1)(b) (closed meeting) of the *Act*. With regard to the total cost of legal fees, the police provided the appellant with a dollar figure relating to the legal fees associated with the employment contracts.

[3] The requester, now the appellant, appealed the police's decision to this office. In his appeal, the appellant submitted that the details regarding the remuneration of the two individuals should be a matter of public record. During mediation, the appellant advised the mediator that additional responsive records should exist. Specifically, the appellant noted that there should be a severance agreement relating to one employee and return to work documentation relating to the other. He advised that since the first employee retired early, there is a public interest in the circumstances surrounding his departure, particularly the amount of severance and any inducements he was offered to leave. With regard to the second employee, the appellant claims that he had previously terminated his employment with the police and, therefore, the police should have return-to-work records.

[4] In response to the appellant's concerns, the police conducted a second search for responsive records and advised the appellant that searches were conducted by the Town of Deep River's FOI Coordinator and Payroll Clerk. The police advised that no records exist in relation to a separate severance agreement for the retired employee and no return to work records relating to the second employee exist. The appellant advised the mediator that he is not satisfied with the search and submits that the records described above should exist. Consequently, reasonable search is at issue.

[5] With respect to the responsive records, the appellant confirmed that he continues to seek access to the employment agreements, in their entirety. The mediator notified the two individuals named in the request (the affected parties) to obtain their views regarding the disclosure of the records at issue. Both individuals objected to the release of the employment agreements. Section 14(1) (personal privacy) was added as an issue in this appeal because it appeared that the records may contain the personal information of the affected parties. The police confirmed the application of the exemption in section 6(1)(b) to withhold both the employment agreements and the legal invoices. The appellant confirmed to the mediator that he continues to seek access to the legal invoices at issue in this appeal.

[6] As no further mediation was possible, the appeal was transferred to the adjudication stage of the appeals process where an adjudicator conducts an inquiry. The adjudicator initially assigned to the appeal sought representations from the police, two affected parties and the appellant. The police, one affected party and the appellant submitted representations, which were shared in accordance with this office's *Practice Direction 7*. The Town of Deep River also provided representations to this office. The appeal was then assigned to me for final disposition.

[7] For the reasons that follow, I find that the majority of the records do not qualify for exemption under either section 6(1)(b) or section 14(1) of the *Act*. I order the police to disclose the records to the appellant, with the exception of a portion of one of the employment contracts. I find that the public interest override in section 16 does not apply, and I uphold the police's search as being reasonable.

RECORDS:

[8] The records at issue consist of two employment agreements and two invoices for legal services.

ISSUES:

A: Does the discretionary exemption at section 6(1)(b) apply to the records?

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

C: Does the mandatory exemption at section 14(1) apply to the information at issue?

D: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

E: Did the institution conduct a reasonable search for records?

DISCUSSION:

Issue A: Does the discretionary exemption at section 6(1)(b) apply to the records?

[9] The police are claiming the application of the discretionary exemption in section 6(1)(b) to the employment agreements and the invoices for legal services. Section 6(1)(b) reads:

A head may refuse to disclose a record,

> that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

[10] 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]

[11] Previous orders have found that:

- "deliberations" refer to discussions conducted with a view towards making a decision;[2] and

- "substance" generally means more than just the subject of the meeting.[3]

[12] Section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting. For example, it has been found not to apply to the names of individuals attending meetings, and the dates, times and locations of meetings.[4]

[13] The first and second parts of the test for exemption under section 6(1)(b) require the institution to establish that a meeting was held by the institution and that it was properly held *in camera*.[5]

[14] With respect to the third requirement set out above, the wording of the provision and previous decisions of this office make it clear that in order to qualify for exemption under section 6(1)(b), there must be more than merely the authority to hold a meeting in the absence of the public. Section 6(1)(b) of the *Act* specifically requires that

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[1] Orders M-64, M-102 and MO-1248.
[2] Order M-184.
[3] Orders M-703 and MO-1344.
[4] Order MO-1344.
[5] Order M-102.

disclosure of the record would reveal the actual substance of deliberations which took place at the institution's *in camera* meeting, not merely the subject of the deliberations.[6]

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

[15] Addressing the first part of the three-part test in section 6(1), the police submit that meetings were properly held *in camera*. In particular, they state that *in camera* meetings were held on two identified dates. The police provided copies of the resolutions moving the meetings *in camera*, which state that the purpose of the meetings was to deal with "personal and/or intimate financial matters." The police also submit in their representations that the meetings were held *in camera* to protect the personal privacy of the affected parties.

[16] Based on the police's representations, I find that the Police Services Board held two *in camera* meetings 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

[17] Regarding the second part of the three-part test, the police submit that sections 35(4)(a) and (b) of the *Police Services Act* authorize the holding of meetings in the absence of the public, and that the procedures governing the holding of closed meetings is set out in the Deep River Police Services Board By-law No. 1-2010, a copy of which was provided to this office. The procedural by-law states that any business deemed to meet the conditions for excluding the public as outlined in section 35(4)(a) and (b) of the *Police Services Act* shall be conducted in an *in camera* meeting following a resolution of the Board to close the meeting to the public.

[18] In support of their position that this part of the three-part test is established, the police refer to section 35(4)(b) of the *Police Services Act*, which states:

> The board may exclude the public from all or part of a meeting or hearing if it is of the opinion that,
>
> (b) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that the desirability of avoiding their disclosure in the interest of any person affected or in the public interest outweighs the

[6] Orders MO-1344, MO-2389 and MO-2499-I.

> desirability of adhering to the principle that proceedings be open to the public.

[19] I am satisfied that section 35(4)(b) of the *Police Services Act* authorized the holding of the two meetings in the absence of the public, because the subject matter of the meetings were financial matters involving two employees of the police. Accordingly, I find that part 2 of the three-part test in section 6(1)(b) has been met.

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

[20] Concerning the third part of the three-part test, the police simply state:

> . . .[D]isclosure of the record would reveal the actual substance of the deliberations which took place at the in camera meeting.

[21] The votes that were carried after the *in camera* meetings were to support and approve the amended Employment Agreement related to one individual[7] and to have a by-law to appoint a Chief of Police be read and passed.[8] The police did not provide copies of the minutes of the closed meetings to this office.

[22] The affected party's representations do not address the application of section 6(1)(b) to the records.

[23] In his representations, the appellant states:

> The appellant notes that the *Police Services Act* does not authorize the Board to make any decisions in closed meetings. It is the appellant's position that closed meetings may be closed pursuant to the *Act* to facilitate discussion. Further, the *Police Services Act* does not expressly authorize the Board to make decisions, such as authorizing the entering into of an agreement in a closed session. Accordingly, such agreements may be discussed in closed session, but ultimately they must be authorized in an open public session and become public records upon formal adoption at such open sessions.
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> [emphasis added]

[24] As previously noted, part 3 of the three-part test requires that the disclosure of the record would reveal the actual substance of the deliberations of the closed meeting.

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[7] Following the first *in camera* meeting.
[8] Following the second *in camera* meeting.

[25] Recently, in Order MO-3130, Adjudicator Frank DeVries adopted the approach he had taken in Interim Order MO-2964-I, in which he reviewed the application of section 6(1)(b) to employment contracts which were deliberated upon in a closed meeting, but which were then executed by the parties. In that interim order, he reviewed Order MO-2499-I, an order of Adjudicator John Higgins, in which he discussed the meaning of the phrase "substance of the deliberations."

[26] Adjudicator DeVries stated:

> In Order MO-2499-I, the former Senior Adjudicator referred to other decisions which reviewed that phrase. He referred to Order MO-1344, a decision of former Assistant Commissioner Tom Mitchinson, which stated:
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> > 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).
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> He also referred to a decision of the British Columbia Information and Privacy Commissioner, which addressed a section similar to section 6(1)(b)[9] at issue in this appeal as follows:
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> > 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 section 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. …
> >
> > 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

[9] Being section 12(3)(b) of the *Freedom of Information and Protection of Privacy Act* of British Columbia.

> 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. ...

Following these decisions, in Interim Order MO-2964-I, I reviewed the evidence provided by the institution in support of its section 6(1)(b) claim. That evidence included staff reports and background documents regarding the staffing decisions, specific evidence of what was discussed in-camera, and the minutes of the relevant meetings, which identified which clauses of the contracts were discussed and the positions taken by the various council members regarding their views of some of the terms. I then stated:

> … 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.

I then reviewed in detail two significant arguments made by the institution in that appeal in support of its view that disclosure of the records would reveal the substance of the deliberations. These two arguments were 1) that previous decisions of this office have found that disclosure of final agreements, discussed or approved at in-camera meetings, would reveal the substance of the deliberations of those meetings; and 2) that proper statutory interpretation supports a finding that section 6(1)(b) applies to final, executed employment agreements.[10] I rejected both of those arguments, and found in Interim Order MO-2964-I that section 6(1)(b) did

[10] The city in that appeal relied specifically on three grounds, which I reviewed in some detail. These grounds included: 1) The object of the *Act*, 2) the Legislative Intent and the Williams Local Government Report and 3) the statutory context of section 6(1)(b).

not apply to the final executed employment contracts at issue in that appeal.

With respect to the arguments that previous decisions of this office have found that disclosure of final agreements, discussed or approved at in-camera meetings, would reveal the substance of the deliberations of those meetings, I reviewed Order MO-1676 (the previous order cited by the institution in that appeal), as well as other orders which made similar findings. I noted that these orders all involved in-camera discussions about the minutes of settlement or terms of termination agreements negotiated or entered between municipal bodies and former employees, and that none of them addressed employment agreements entered into with individuals who then commence or continue employment with the municipal body in accordance with those employment agreements. I then stated:

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

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).

[emphasis added]

[27] In Order MO-3130, Adjudicator DeVries followed his decision and reasoning in Interim Order MO-2964-I and found that a proper statutory interpretation supported a finding that section 6(1)(b) does not apply to final, executed employment agreements. I agree with Adjudicator DeVries' findings in both of these orders and adopt them for purposes of this appeal. Two of the records at issue are employment agreements between the police and two individuals, which were executed by the parties after the first *in camera* meeting but before the second *in camera* meeting.

[28] As a result, I find that disclosure of the final adopted employment agreements at issue would not reveal the actual substance of the deliberations of the *in-camera* meetings at which these agreements were discussed. Accordingly, the records do not meet the third part of the test for section 6(1)(b), and do not qualify for exemption under that section.

[29] With respect to the two invoices for legal services, I note that they were created after the first *in camera* meeting, but prior to the second *in camera* meeting. Therefore, I conclude that they were not discussed at the first *in camera* meeting. Regarding the second *in camera* meeting, I am not satisfied that the police have met their burden of proof regarding the possible application of section 6(1)(b) to these invoices. In particular, the police have not provided details and sufficient proof as to how disclosure of these records would reveal the actual substance of the deliberations at the meeting, or even that they were the subject matter of the deliberations. Consequently, I find that the invoices for legal services are not exempt under section 6(1)(b) of the *Act*.

[30] 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 police's exercise of discretion. The possible application of the mandatory exemption in section 14(1) is also at issue with respect to the two employment agreements, which I will consider below. As no other exemptions have been claimed with respect to the invoices for legal services, I order the police to disclose them to the appellant.

Issue B: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[31] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the two employment agreements contain "personal information" and, if so, to whom they relate. 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;

[32] 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.[11]

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

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[11] Order 11.

> (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.

[34] 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.[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.[13]

[35] The police state that the employment agreements contain personal information because they include financial information about the affected parties. The affected party's and the appellant's representations did not address this issue.

[36] Previous orders of this office have found that information about individuals in employment contracts generally constitutes their personal information for purpose of the definition of personal information in section 2(1) of the *Act*.[14] However, this office has also determined that certain information in employment contracts does not constitute an individual's personal information because it either relates to management rights, such as the rights of the police as the employer of the individual, or are generic clauses about a non-personal matter, such as the laws that govern the interpretation of the contract.[15]

[37] Having reviewed the records, I find that most of the information in these agreements constitutes the personal information of the affected parties, as they contain information about the specific benefits and salary information of these individuals. However, I also find that some of the information in these records does not qualify as the personal information of these individuals for the purpose of section 2(1) of the definition. In particular, I find that the dates the agreements were signed, the signature of the Board members, the signature of the witnesses, the relevance of another Act to the contract in section 5 and the general information in sections 7.1, 7.2, 7.3, 7.4 and 7.5 of both agreements do not qualify as personal information and cannot be exempt from disclosure under section 14(1) of the *Act*. I will now determine

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[12] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[13] Orders P-1409, R-980015, PO-2225 and MO-2344.
[14] Orders M-173, P-1348, MO-1184, MO-1332, MO-1405, MO-1622, MO-1749, MO-1970, MO-2318, PO-2519 and PO-2641.
[15] Orders PO-1885, MO-2470 and MO-3044.

whether the remaining portions of the records, which consists of the personal information of the affected parties, qualifies for exemption under the personal privacy exemption in section 14(1) of the *Act*.

Issue C: Does the mandatory exemption at section 14(1) apply to the information at issue?

[38] 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.

[39] The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14. Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure. Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[40] In other words, if any of the paragraphs in section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1). Section 14(4) reads, in part:

> 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;

[41] None of the parties provided specific representations on whether some portions of the employment contracts at issue consist of information that falls within section 14(4)(a). I will review the remaining portions of the records at issue which contain this type of information.

Employment responsibilities

[42] The duties of the positions of the affected parties are set out in Appendices A of the employment agreements, and the position descriptions are set out in Appendices B of the employment agreements. In addition, sections 3.1 and 3.2 of each agreement set out the length of time the affected parties will be carrying out their employment responsibilities. I find that this information constitutes "employment responsibilities" for the purpose of section 14(4). In addition, I find that the disclosure of this information

in each of the Appendices and in sections 3.1 and 3.2 of the two agreements would not reveal other personal information about the affected parties. Therefore, the disclosure of this information would not constitute an unjustified invasion of privacy, and it does not qualify for exemption under section 14(1).

Benefits

[43] 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.[16]

[44] 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.[17]

[45] In addition, in Order MO-2470, Adjudicator Colin Bhattacharjee reviewed the terms of two employment agreements between the Essex Police Services Board and its 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,

[16] Orders M-23 and PO-1885.
[17] Orders MO-1749, PO-2050, PO-2519 and PO-2641.

> 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).

[46] Applying the approach taken to the term "benefits" as set out in the previous orders, I find that the following clauses of the two employment agreements clearly constitute "benefits" for the purpose of section 14(4) of the *Act*:

- Sections 4 and 6 of the agreements; and
- Sections 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23 of Appendix A of both agreements.

[47] I also find that the disclosure of the "benefits" in each of these employment agreements at issue would not reveal other personal information about the identifiable individuals. Having found that these identified sections of the employment agreements constitute "benefits" for the purpose of section 14(4)(a), I find that their disclosure would not constitute an unjustified invasion of privacy, and that they do not qualify for exemption under section 14(1).

Classification and Salary range

[48] The remaining information at issue in the employment agreements are the signatures of the affected parties, sections 1 and 2 of the employment agreements, section 5 of Appendices A and, in the case of one of the agreements, Appendix C.

[49] I find that sections 1 and 2 of the employment agreements and the signatures of the affected parties contain information about the classification of individuals who is or was formerly an employee of an institution for the purpose of section 14(4)(a). I also find that section 5 of Appendix A of one of the employment agreements relates not only to a specific salary, but also identifies possible salary increases, as well as possible additional increases, collectively constituting a "salary range" for the particular position for the purpose of section 14(4)(a). Section 5 of Appendix A of the other employment agreements refers to the salary for a particular position, but it too identifies a range of possible salary increases, which I find also constitutes a "salary range" for the purpose of section 14(4)(a).

[50] Conversely, I find that Appendix C, which forms part of only one of the employment agreements is exempt under section 14(1) of the *Act*. This Appendix does not describe employment responsibilities, benefits, or classification and salary range information. Therefore, it does not fit within the exception in section 14(4)(a). The appellant argues that the factor in section 14(2)(a) applies, which is that disclosure of the records is desirable for the purpose of subjecting the activities of the institution to

public scrutiny. I do not agree, and find that the disclosure of Appendix C would not subject the activities of the Police Services Board to public scrutiny. As section 14(1) is a mandatory exemption and as I find there are no factors in section 14(2) favouring disclosure that apply to this portion of the record, I find that Appendix C is exempt from disclosure under section 14(1).

[51] In sum, I find that all of the information in the employment agreements and their appendices, with the exception of Appendix C, fall within the exception in section 14(4)(a) and that disclosure of this information does not constitute an unjustified invasion of privacy. These records, or portions thereof are, therefore, not exempt under section 14(1) of the *Act*. As no other exemptions have been claimed with respect to them, I order the police to disclose them to the appellant.

Issue D: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

[52] Section 16 states:

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

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

[54] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.[18]

[55] The appellant submits that the employment situations of the affected parties are matters of compelling public interest. In particular, the appellant argues that the amount of money allegedly paid to one of the affected parties is significant to the police services budget. The police submit that there was a public budget meeting held to receive comments and answer questions, but the appellant did not attend. In addition, the police advise that the appellant has been personally invited to attend Police Services

[18] Order P-244.

Board meetings, but has not attended. The affected party did not comment on this issue.

[56] As previously stated, the only information that I have found to be exempt under section 14(1) is Appendix C of one of the employment agreements. I am satisfied that the information I have ordered disclosed is sufficient to shed light on the operations of the police as regards the terms of the employment agreements. I am not persuaded that there is a compelling public interest that outweighs the purpose of the personal privacy exemption in the disclosure of Appendix C. Therefore, I find that the public interest override in section 16 is not applicable in this instance.

Issue E: Did the institution conduct a reasonable search for records?

[57] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[19] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[58] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.[20] To be responsive, a record must be "reasonably related" to the request.[21]

[59] A reasonable search is one in which an experienced employee, knowledgeable in the subject matter of the request, expends a reasonable effort to locate records which are reasonably related to the request.[22]

[60] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[23]

[61] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[24]

[62] The appellant submits that he believes further records exist. In particular, he is of the view that records exist concerning one affected party's return to work and

[19] Orders P-85, P-221 and PO-1954-I.
[20] Orders P-624 and PO-2559.
[21] Order PO-2554.
[22] Orders M-909, PO-2469 and PO-2592.
[23] Order MO-2185.
[24] Order MO-2246.

possible financial inducements offered by the police to the other affected party by way of a severance agreement. The appellant also argues that the staff member who performed the searches is a junior city employee who would not have access to confidential records involving "inducements" made to senior staff.

[63] The police submit that the only record in existence for one of the affected parties is the employment agreement, and that there is no separate severance agreement. The police also submit that the second affected party did not return to work, as he never left work and hence, "return to work" records do not exist. Lastly, the police state that a second search was conducted by the Secretary of the Police Services Board and the Town of Deep River's Payroll Clerk during the mediation of this appeal, which yielded no further records.

[64] The affected party states that there are no "return to work" records because he did not terminate his employment with the police at any time. In addition, the Town of Deep River sent a letter to this office stating that there are no records regarding inducement payments to the other affected party because no such payments were made.

[65] I have carefully reviewed the representations of all the parties and I am satisfied that the police have conducted reasonable searches for responsive records, taking into account all of the circumstances of this appeal. A reasonable search is one in which an experienced employee expends a reasonable amount of effort to locate records which are reasonably related to the request.[25]

[66] The police provided evidence in its representations, explaining the nature and extent of the searches conducted in response to the request, and also the additional search conducted during the mediation of this appeal. Although the second search did not uncover additional information, I am satisfied that the nature and extent of these searches were reasonable in the circumstances. In addition, the appellant has not provided sufficient evidence of a reasonable basis for concluding that further records exist. On the contrary, evidence was provided from the affected party that no return-to-work records exist because he did not terminate and then re-start his employment with the police. As well, the Town of Deep River provided evidence that no records relating to inducement payments allegedly made to the other affected party exist, because no such payments were made.

[67] Further, the appellant argues that the individual who conducted the searches did not possess sufficient knowledge of the subject matter of the request to conduct an adequate search, or was not privy to the information he sought. I disagree. The individual who conducted the search is the Secretary of the Police Services Board and would have knowledge of the subject matter of the request and would be privy to the

[25] Order M-909.

information requested by the appellant. Consequently, I uphold the police's search as being reasonable.

[68] In sum, I do not uphold the application of the exemption in section 6(1)(b) to any of the records. I uphold the application of the exemption in section 14(1), only in part. I find that the public interest override in section 16 does not apply, and I find that the police's search for responsive records was reasonable.

ORDER:

1. I order the police to disclose the records to the appellant, with the exception of Appendix C by **May 12, 2015** but not before **May 7, 2015.**

2. I reserve the right to require the police to provide this office with copies of the records that I order disclosed to the appellant.

Original Signed By: April 7, 2015
Cathy Hamilton
Adjudicator