Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3204

Appeals MA12-605 and MA13-306

Corporation of the City of Clarence-Rockland

May 29, 2015

Summary: The requester submitted a multi-part request under the *Act* for access to records relating to an affected party whose employment with the city had been terminated. The city granted partial access to the records, denying access to portions of them pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act.* The requester appealed the city's decision to withhold portions of the records. The affected party appealed the city's decision to disclose portions of the records. On appeal, the affected party also raised the issues of whether the Mayor of the city was in a conflict of interest position with respect to the access decision and whether the city had provided him with notification of the request in compliance with the *Act*.

In this order, the adjudicator partially upholds the city's decision, finding that the Mayor was not in a conflict of interest position with respect to the access decision; that the city's notification to the affected party was in compliance with the *Act*; that the records contain the personal information of the affected party; and, that the mandatory personal privacy exemption at section 14(1) applies to portions of the information at issue. The adjudicator orders the city to disclose to the portions of information that were not found to be subject to the section 14(1) exemption to the requester.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1)(d) and (f), 14(2)(a), (f) and (h), 14(3)(d), (f) and (g), and section 14(4)(a); *Municipal Conflict of Interest Act,* RSO 1990, c. M50; *Public Sector Salary Disclosure Act*, *1996* SO 1996, c. 1, Sch. A.

Orders and Investigation Reports Considered: Orders P-58, MO-1469, MO-1519, MO-2174, MO-2227, MO-2344, PO-2381, and PO-2641.

Cases Considered: *Wewaykum Indian Band v. Canada*, 2003 SCC 45 (CanLII); *Committee for Justice and Liberty v. National Energy Board et al.,* 1976 SCC 2 (CanLII); *Imperial Oil Ltd. v. Quebec (Minister of the Environment)* 2003 SCC 58 (CanLII); *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* 2002 CanLII 53259 (ON SCDC); *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)* 2004 CanLII 17632 (ON SCDC).

OVERVIEW:

[1] The Corporation of the City of Clarence-Rockland (the city) received a multi-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information relating to an affected party, including the termination of his employment with the city. Specifically, the requester sought access to the following information:

1. Copie de l'avis juridique suite à la résolution 2008-483, qui examine la possibilité d'un recours légal, à titre individuel, tout en utilisant les fonds publics;
2. Facture et preuve de paiement de la facture de l'avis juridique pour la résolution 2008-483
3. Rapport ADM 2208-01 adopté par la résolution 2008-607 le 10 novembre 2008;
4. Rapport de l'agent de communication remis à la réunion du 10 novembre 2008;
5. Copie des minutes du huis clos relativement à une question de litige, résolution 2009-49 du 2 février 2009, et une copie de la résolution HC04-09;
6. Facture et preuve de paiement de facture de(s) l'avis juridique(s) menant à la résolution 2009-49 et HC04-09;
7. Copie des minutes du huis clos de la réunion du 12 avril 2010;
8. Facture et preuve de paiement de facture de l'avocat présent au huis clos du 12 avril 2010;
9. Copie de toutes les factures reçues de la [firme nommée] et de la [firme nommée] pour étudier les possibilités de poursuite contre [journal nommé], [personne nommée] et [personne nommé];
10. Copie de toutes les lettres de la [firme nommée] et de la [firme nommée] relativement à l'entente d'indemnité (By-law 2010-74);
11. L'entente de départ, lettre de démission de [personne nommée] et lettre de recommandation à [personne nommée]
12. Liste des montants payés (ex. montant alloué pour By-Law 2010-74) en prime de départ à [personne nommée].

[2] The city located the responsive records and granted partial access to them, denying access to portions of the records pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.

[3] The requester appealed the city's decision to deny access to portions of the records and appeal MA12-605 was opened by this office.

[4] During the mediation of appeal MA12-605, the requester advised that he was specifically appealing the city's denial of access to the records responsive to items 9, 10, and 11 of his request. Subsequently, the city issued a revised decision letter in which it granted him partial access to additional records. In its decision, the city also advised that it was reviewing its decision with respect to some of the records responsive to item 11. At the conclusion of mediation of appeal MA12-605, the requester confirmed that he continues to seek access to all of the withheld portions of the records responsive to item 11 of his request.

[5] Pursuant to section 21 of the *Act*, the city notified an affected party who might have an interest in the disclosure of the records responsive to item 11 and, subsequently advised him of its decision to partially disclose them.

[6] The affected party did not consent to the disclosure of any of the records responsive to item 11 of the original request and appealed the city's decision to partially disclose them. Appeal MA13-306 was opened.

[7] During the mediation of appeal MA13-306, the affected party advised that he is of the view that the Mayor of the city is in a position of conflict of interest with respect to the responsive records and should not have been permitted to make an access decision on behalf of the city. The affected party also submitted that the city did not follow the proper procedures under section 21 of the *Act* and disclosed the records at issue in the appeal prior to sending him a notice letter. Both of these issues fall within the scope of appeal MA13-306.

[8] As a mediated resolution could not be reached with either the requester or the affected party, both appeal MA12-605 and appeal MA13-306 proceeded to the adjudication stage of the appeal process for an inquiry. I conducted my inquiries into these two related appeals concurrently.

[9] I began my inquiry by sending a Notice of Inquiry setting out the facts and issues on appeal to the parties resisting disclosure, the city and the affected party, initially. With respect to the application of exemptions, the city was asked to provide representations on the portions of information that it claims are exempt from disclosure, as well as the information that it is prepared to disclose but that the affected party disputes. The city provided representations.

[10] Additionally, I requested representations from the affected party who disputes the disclosure of all portions of the records that are responsive to item 11 of the original request. In addition to requesting his position on the disclosure of the information, I asked the affected party to provide representations on his views on the issues of conflict of interest and notice. The affected party provided representations.

[11] I then sought representations from the requester, providing him with copies of the representations submitted by the city and the affected party in accordance with the principles outlined in this office's *Code of Procedure* and *Practice Direction 7.* The requester provided representations.

[12] Finally, as the requester's representations raised issues to which I believed that the other parties should be given an opportunity to respond to, I provided them with the opportunity to reply. Both the city and the affected party provided representations in reply.

[13] In this order I partially uphold the city's decision. Specifically, I find:

- the Mayor was not in a conflict of interest position with respect to the access decision;
- the city's notification to the affected party was in compliance with the *Act*;
- the records contain the personal information of the affected party; and,
- portions of the records are exempt from disclosure pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*.

RECORDS:

[14] The records at issue in this appeal are those which are responsive to item 11 of the original requester's request and consist of portions of a severance agreement entitled "Convention de Départ," a resignation letter that is identified as Appendix A to the severance agreement, a list of documents that are related to a legal action involving the affected party and the city identified as Appendix B, and, French and English versions of a reference letter that does not form part of the agreement.

[15] The city is prepared to disclose all of these records to the requester, with the exception of Appendix B to the severance agreement. The affected party objects to the disclosure of any of the responsive information.

ISSUES:

A: Is the Mayor of the city in a conflict of interest position with respect to the access decision?

B: Did the city notify the affected party of the request in compliance with section 21 of the *Act*?

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

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

DISCUSSION:

A: Is the Mayor of the city in a conflict of interest position with respect to the access decision?

[16] The affected party alleges that the Mayor of the city is in a position of conflict of interest with respect to the responsive records and should not have been permitted to make an access decision on behalf of the city.

[17] Previous orders have considered the issue of conflict of interest or bias with respect to individuals who decide the issue of disclosure.[1] In determining whether there is a conflict of interest, these orders posed the following questions:

(a) Did the decision-maker have a personal or special interest in the records?

(b) Could a well- informed person, considering all of the circumstances, reasonably perceive a conflict of interest on the part of the decision-maker?

[18] These questions are not intended to provide a precise standard for measuring whether or not a conflict of interest exists in a given situation. Rather, they reflect the kinds of issues which need to be considered in making such a determination.

[1] Orders M-640, MO-1285, MO-2073, MO-2605, and MO-2867.

Representations

[19] The city submits that the *Municipal Conflict of Interest Act*[2] does not apply as that *Act* is only referenced if a court application is commenced alleging a conflict of interest and there is no such application. It submits:

> As the matter does not involve a meeting before the Council or a local board where the release was discussed, and the Mayor does not have a direct or indirect pecuniary interest in the release of the subject document, there are simply no grounds to suppose that the *Municipal Conflict of Interest Act* applies.

[20] The city acknowledges that although a conflict of interest can be recognized at common law, none is present in the circumstances of the current appeal. It submits that in Order MO-2227, Senior Adjudicator John Higgins addressed a situation where it was alleged that the Information and Privacy Commissioner/Ontario was in conflict of interest or was operating from a position of bias in adjudicating an appeal. In that order, Senior Adjudicator Higgins pointed to *Wewaykum Indian Band v. Canada*,[3] a decision of the Supreme Court of Canada concerning allegations of bias against an adjudicator where the Court commented on the grounds for disqualification for bias. In that decision, the Court stated:

> In Canadian law, one standard has now emerged as the criterion for disqualification. The criterion, as expressed by de Grandpré J. in *Committee for Justice and Liberty v. National Energy Board,* [1976 SCC 2 (CanLII)], is the reasonable apprehension of bias:
>
> > …the apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information. In the words of the Court of Appeal, that test is "what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think that it is more likely than not that [the decision maker], whether consciously or unconsciously, would not decide fairly.
> >
> > …
> >
> > *The grounds for this apprehension must, however, be substantial,* and I … refuse to accept the suggestion that the

[2] RSO 1990, c M.50.
[3] 2003 SCC 45 (CanLII).

> test be related to the "very sensitive or scrupulous conscience." [emphasis added]

[21] The city refers to two other orders. First, it points to Order MO-1519 and states that in that order, Adjudicator Laurel Cropley quoted and adopted the following comment of author Sara Blake in *Administrative Law in Canada*[4]*:*

> There is a presumption that a tribunal member will act fairly and impartially, in the absence of evidence to the contrary. **The onus of demonstrating bias lies on the person who alleges it … Mere suspicion is not enough…** [emphasis added in representations]

[22] Second, it refers to Order P-58, in which former Commissioner Sidney Linden stated:

> In my view, the head's exercise of discretion must be made in full appreciation of the facts of the case, and upon proper application of the applicable principles of law. It is my responsibility as Commissioner to ensure that the head has exercised the discretion that he/she has under the *Act*. While it may be that I do not have the authority to substitute my discretion for that of the head, I can and, in the appropriate circumstances, I will order a head to reconsider the exercise of his/her discretion if I feel it has not been done properly. I believe that it is our responsibility as the reviewing agency and mine as the administrative decision-maker to ensure that the concepts of fairness and natural justice are followed.

[23] The city submits that the Mayor, as designated head under the *Act*, reviewed the responsive records and made a decision in full appreciation of the facts of the appeal. It submits that the allegation of a conflict of interest is completely without foundation. It further submits that the affected party has failed to provide any facts or arguments in support of his position that the Mayor was in a conflict of interest position with respect to making an access decision addressing responsive records and has not demonstrated that he did not act fairly or impartially.

[24] The affected party submits that the Mayor and municipal council cancelled an agreement that he had with the city whereby it was paying his legal costs for a law suit against the requester for "certain actions" he allegedly committed against the affected party when the latter was an employee of the city. The affected party submits that the requester is a personal friend of the Mayor's "which is well documented in the local media and by the Mayor's own admission at several municipal council meetings."

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[4] (3rd. ed.), (Butterworth's, 2001), at page 106.

[25] The affected party submits that the Mayor has been questioned on several occasions during municipal council meetings by members of the pubic on his relationship with the original requester and its relation to the cancelling of the affected party's agreement and employment with the city. He submits that it is public knowledge that during that time period the Mayor and the requester were being investigated by the Ontario Provincial Police for breach of trust in respect to the affected party's termination and the cancelling of the indemnity agreement. He attached to his representations, a newspaper article from the *Ottawa Citizen* published on September 17, 2013, that states that the Mayor, two councillors and the requester are expected to be charged with breach-of-trust in an alleged criminal plot. The article further states that email exchanges suggest that the requester was encouraging the Mayor and councillors to oust the affected party as town manager and that the affected party was suing the requester for defamation. According to the affected party, the town agreed to pay for the civil suit. The affected party submits that subsequently, the requester was charged with breach-of-trust, along with the Mayor and two councillors.

[26] The affected party submits:

> [The Mayor] has been aware of the conflict that I have with [the requester] for a long period of time. [The Mayor], during his election campaign, referred to my indemnity agreement with the city at several occasions. Also, there were e-mails that were released publicly indicating that [the Mayor], three members of municipal council and [the requester] were conspiring in laying out the procedure to have me dismissed and cancel the indemnity agreement.

[27] The affected party submits that he wrote to the Mayor and the city's Chief Administration Officer reminding them that if the city receives any requests for information involving him "they must comply with legislation which also includes individuals that administer the process [must] not have any conflict of interest." He enclosed a copy of that letter with his representations.

[28] Finally, the affected party submits that until he received the Notice of Inquiry in this appeal, he was not aware of the complete access to information request submitted by the requester and that from that request, it is very clear that the requester is seeking access to documents pertaining to the affected party's law suit against him.

[29] He concludes his representations by submitting that "it is clear, that a well-informed person, considering all of the circumstances, can reasonably perceive a conflict of interest exists with the decision maker, [the Mayor]."

[30] The requester submits that he has "no financial interest whatsoever with [the Mayor], and never had such financial interest for the entirety of his term in office." He submits that he does not understand the accusation of conflict of interest or the

insinuation that he had a financial arrangement with the Mayor. He submits that he has not even spoken to the Mayor for "close to a year."

[31] In reply, the affected party submits that in his opinion, the Mayor "has a conflict of interest in administrating requests for information that relates to [him] because of the criminal charges of breach-of-trust" as those charges relate mainly to actions committed against him while he was Chief Administrative Officer for the city.

Analysis and finding

[32] In Order PO-2381, Adjudicator John Swaigen addressed whether the individual who made a decision to deny access to requested record was in a conflict of interest position in relation to the decision-making process. Following a discussion on the right to an unbiased adjudication in administrative decision-making and the need to demonstrate only a "reasonable apprehension of bias" when applying the Supreme Court of Canada's test for bias (quoted above in the city's representations citing Senior Adjudicator Higgins' discussion in Order MO-2227 citing *Wewaykum*) Adjudicator Swaigan stated:

> …[T]he requirement for impartiality in the actions of an administrator is not the same as for an adjudicator. To treat an administrator the same as an adjudicator "overlooks the contextual nature of the content of the duty of impartiality which, like that of all of the rules of procedural fairness, may vary in order to reflect the context of a decision-maker's activities and the nature of its functions." The obligations of such a decision-maker "are not equivalent to the impartiality that is required of a judge or an administrative decision-maker whose primary function is adjudication" *Imperial Oil Ltd. v. Quebec (Minister of the Environment)* [2003 SCC 58 (CanLII)].

[33] Adjudicator Swaigan applied this reasoning expressed by the Supreme Court of Canada and found that, in the appeal that gave rise to Order MO-2227, the decision-maker (the Chief Executive Officer of the institution) was not in a conflict of interest position despite the fact that at the time the access decision was made, the institution (represented by the CEO) was engaged in a legal dispute with the appellant. He stated:

> [I]n my view, the fact that the CEO has been personally involved in resolving the question of the disposition of these lands in his capacity as senior official of [the institution], including participating in exploring options other than sale to the appellant's company, combined with the fact that the [institution] and the appellant are in litigation over the appropriate disposition of these lands, is not sufficient to disqualify the CEO from exercising the statutory function of deciding access requests

> under the *Act*. These facts do not establish a conflict of interest or a reasonable apprehension of bias.
>
> In carrying out his functions under the *Act*, the CEO was not required to be impartial in the way that would be expected of an independent adjudicator. As set out in the *Imperial Oil* decision, the contextual nature may vary to reflect the content of a decision-maker's activities and the nature of his functions. The CEO was required to carry out certain functions and, in doing so, to comply with the procedural fairness obligations set out in the *Act* and to comply with other legislation governing the ORC. He was also required to exercise his discretion in good faith, taking into account all relevant considerations and disregarding irrelevant ones. I cannot conclude for the evidence before me that he did otherwise.

[34] I agree with the rationale expressed by Adjudicator Swaigan in that decision and apply it here.

[35] I acknowledge that the affected party has alleged in his representations that the Mayor and the requester have been involved in various types of wrong-doing with respect to municipal matters and more specifically, matters relating to his termination with the city. It is not within my jurisdiction to comment on such matters. What is within my jurisdiction is to determine whether there is sufficient evidence before me that, in acting as Head and making his access decision with respect to the disclosure of records or portions of records sought by the requester, the Mayor was in a conflict of interest position and, as a result, failed to comply with the procedural fairness obligations imposed above him by virtue of the *Act.*

[36] In my view, neither the manner in which the records have been severed nor the affected party's representations substantiate a finding that the Mayor did not carry out his duties as Head under the *Act* in a fair and impartial manner when making a decision with respect to the requester's access request. Notwithstanding that the requester is an individual who is alleged by the affected party to have a personal relationship with the Mayor, I have been provided with no evidence to suggest that the Mayor had a personal or special interest in the records or ignored the provisions of the *Act* with respect to the issuance of the access decision. In my view, a well-informed person, considering all of the circumstances, would not reasonably perceive a conflict of interest on the part of the Mayor, with respect to the processing of the access request under the *Act*.

[37] Moreover, I also adopt the reasoning expressed in Order MO-1519 mentioned above. In that order, Adjudicator Cropley adopted the position of author Sara Blake in *Administrative Law in Canada* that the onus of demonstrating bias lies on the person who alleges it and mere suspicion is not enough. In the circumstances of this appeal, I

find that the affected party has not discharged that onus. In my view, he has not provided me with sufficient evidence to demonstrate that, as a result of the Mayor's alleged personal relationship with the requester, there is reason to believe that in responding to the request the Mayor exercised his obligations as decision-maker under the *Act* in an inappropriate manner.

[38] Accordingly, I find that there is no conflict of interest in the Mayor's decision regarding the responsive records in these appeals.

B: Did the city notify the affected party of the request in compliance with section 21 of the *Act*?

[39] The affected party alleges that the city's notice to him was not in accordance with section 21 of the *Act*.

[40] The relevant portions of section 21 provide:

> (1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates before granting a request for access to a record,
> …
>
> (b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14(1)(f).
>
> (2) The notice shall contain,
>
> (a) a statement that the head intends to disclose a record or part of a record that may affect the interest of the person;
>
> (b) a description of the contents of the record or part of that relate to the person; and
>
> (c) a statement that the person may, within twenty days after the notice is given, make representations to the head as to why the record or part should not be disclosed.
>
> …
>
> (5) Where a notice is given under subsection (1), the person to whom the information relates may, within twenty days after the notice is

given, make representations to the head as to why the record or part should not be disclosed.

…

(7) The head shall decide whether or not to disclose the record or part and give written notice of the decision to the person to whom the information relates and the person who made the request within thirty days after the notice under subsection (1) is given, but not before the earlier or,

(a) the day the response to the notice from the person to whom the information relates is received; or

(b) twenty-one days after the notice is given.

(8) A head who decides to disclose a record or part under subsection (7) shall state in the notice that,

(a) the person to whom the information relates may appeal the decision to the Commissioner within thirty days after the notice is given; and

(b) the person who made the request will be given access to the record or part unless an appeal of the decision is commenced within third days after the notice is given.

(9) A head who decides under subsection (7) to disclose the record or part shall give the person who made the request access to the record or part within thirty days after notice is given under subsection (7), unless the person to whom the information relates asks the Commissioner to review the decision

…

Representations

[41] The city submits that it complied with section 21 of the *Act.* It states that once the decision was made to release part of the responsive records, notice was sent to the affected party before releasing the documents. The city enclosed a copy of the notice letter dated June 18, 2013 with its representations, as well as a subsequent letter dated February 5, 2014. It submits that as the affected party objected to the disclosure of the responsive records, the records were not released and have not been released to this

date. The city submits that it will not disclose a copy of the records unless I order them to be disclosed.

[42] The affected party submits that he did not receive the notice required by section 21(1) of the *Act*. He submits that the only notice that he received from the city was on June 18, 2013 which was after the city had already made a decision on the request. He submits that he should have been given notice prior to the city's decision to the requester, dated December 11, 2012. He submits that he has been denied the opportunity to provide the city with the reasons as to why he does not wish the information relating to him to be disclosed.

Analysis and findings

[43] In the circumstances of the current appeal, the city initially reviewed the information relating to the affected party and, in its decision of December 11, 2012, denied access to it, in its entirety. I note that, pursuant to section 21(1), the obligation to notify an affected party only exists if the city makes a decision to disclose the requested information.[5] As a result, in my view, there was no need for the city to notify the affected party prior to issuing its decision letter of December 11, 2012.

[44] I find that the city's obligation to notify the affected party only arose once the original requester appealed the city's decision not to disclose portions of the requested records and the city agreed to revisit its decision not to disclose any of the information relating to the affected party. At that time, the city followed the notification procedure, as set out in *Act,* and by letter dated June 18, 2013, notified the affected party of the request, thereby providing him with an opportunity to make known his views regarding the potential disclosure of information relating to him. The affected party did so, objecting to the disclosure of the information, by letter dated June 26, 2013.

[45] From my review of the file, there is no indication that when the city issued its notice on June 18, 2013, it had already made its decision with respect to the disclosure of the information relating to the affected party. More importantly, there is no indication that the city had already granted access to the records relating to the affected party or portions of those records prior to giving him an opportunity to respond. A revised decision addressing the partial disclosure of that information was issued on February 5, 2014, after the affected party had been provided with an opportunity to make his views

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[5] (1) A head shall give written notice in accordance with subsection (2) to the person to whom the information relates **before granting a request for access to a record**,

…

(b) that is personal information that the head has reason to believe might constitute an unjustified invasion of personal privacy for the purposes of clause 14(1)(f).

known, and had done so. At the time the decision letter dated February 5, 2014 was issued, the affected party had already initiated an appeal with this office. Therefore, no records were ultimately disclosed to the requester as they formed part of the records at issue in the two appeals that gave rise to this order.

[46] Based on the documentation in the file, I find that the affected party was notified of the request and provided with an opportunity to make his views known regarding the disclosure of the information in the records prior to it being disclosed. The records have not been disclosed to this date. He was given an opportunity to respond to the city's notification of potential disclosure, made on June 18, 2013 under section 21 of the *Act*, which he did so on June 26, 2013. Accordingly, I find that the city's notice to the affected party with respect to records relating to him was appropriate and in accordance with section 21 of the *Act*. This issue is, therefore, dismissed.

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

[47] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,

> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[48] 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.[6]

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

> (2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.
>
> (2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[50] 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.[7] 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.[8]

[51] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.[9]

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[6] Order 11.
[7] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[8] Orders P-1409, R-980015, PO-2225 and MO-2344.
[9] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Representations

[52] In its final decision letter, which was appealed by the affected party, the city advises that it is prepared to disclose the two letters, in their entirety, as well as the majority of the severance agreement, withholding under the mandatory exemption at section 14(1) of the *Act*, only Appendix B to that agreement. In its representations, the city submits that it has nothing further to submit with respect to its position on the disclosure of the responsive records and that it is "satisfied to leave the various representations up to the [requester and the affected party] without further expressing its arguments."

[53] The affected party objects to the disclosure of all the information at issue and submits that "there are several parts of the agreement that contain personal information." Specifically, he submits that the agreement contains information that relates to his employment history and financial transactions as contemplated by paragraph (b) of the definition of "personal information" set out in section 2(1) of the *Act*. He submits that the agreement "refers to employment dates along with specific monetary amounts which I will receive as a result of this agreement." He further submits that "this is personal information that should not be shared with the public." The affected party does not specifically address whether the letters at issue contain his personal information.

[54] The requester did not specifically address whether the records contain "personal information," as that term is defined in section 2(1) of the *Act*.

Analysis and findings

[55] Previous orders of this office have consistently held that information about individuals named in employment contracts or settlement and/or severance agreements, including name, address, terms date of termination and terms of settlement, concern these individuals in their personal capacity and, therefore, qualifies as their personal information.[10]

[56] I am satisfied that the same considerations apply in the circumstances of this appeal. Both the letters and the severance agreement contain the name of the affected party, along with other personal information about him (paragraph (h) of the definition in section 2(1) of the *Act*), including his employment history with the city and information relating to financial transactions in which he has been involved (paragraph (b)).

[57] As such, I find that the information contained in the records at issue falls within the scope of the definition of personal information in section 2(1) of the *Act* as the

[10] Orders M-173, P-1348, MO-1184, MO-1332, MO-1405, MO-1622, MO-1749, MO-1970, PO-2519, MO-2174, MO-2298 and MO-2536-I.

personal information of the affected party, to whom the severance agreement and letters relate. The records do not contain the personal information of any other identifiable individuals.

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

[58] 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.

[59] In the circumstances of this appeal, the requester's representations indicate that he is of the view that the exception at section 14(1)(d) might apply. Also, section 14(1)(f) appears as if it might apply. Those sections read:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> (d) under an Act of Ontario or Canada that expressly authorizes the disclosure;
>
> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

14(1)(d): another Act

[60] In order for section 14(1)(d) to apply, there must either be specific authorization in the statute for the disclosure of the type of personal information at issue, or there must be a general reference to the possibility of such disclosure in the statute together with a specific reference to the type of personal information to be disclosed in a regulation.[11]

Representations

[61] Although the requester submits that he wants disclosure of the entire severance agreement, he submits that the affected party's salary is subject to the *Public Sector Salary Disclosure Act*, *1996* [*PPSDA*] and should, therefore, be disclosed.

[62] In reply, the affected party submits that he does not dispute that his salary was subject to the *PPSDA* but submits that the *PPSDA* stipulates "when the disclosure is made and the content of the disclosure." He submits that "[n]owhere in [the *PPSDA*] does it state that the employer must make available a "Convention de depart."

[11] Orders M-292, MO-2030, PO-2641 and MO-2344.

[63] Also in reply, the city submits:

> [T]he *Public Sector Salary Disclosure Act, 1996* sets out what must be disclosed, the time-limits for disclosure, the time the information must be disclosed to the public and the remedy for failure to disclose salary and benefits. In addition that act prevails over any other act unless another Act specifically refers to the provisions of the *Public Sector Salary Disclosure Act*, 1996 and provides otherwise. There are no such provision in *MFIPPA* [the *Act*].

[64] The city also concurs with the affected party that the *PPSDA* does not require that the terms of a severance agreement be made public.

Analysis and finding

[65] Previous orders have established that the *PPSDA* expressly authorizes the disclosure of salary and benefit amounts and this authorization meets the requirements of section 21(1)(d), the provincial equivalent provision to section 14(1)(d).[12] In Order PO-2641, former Assistant Commissioner Brian Beamish (current Commissioner Beamish) stated:

> I observe that the *PPSDA* authorizes public availability of salary and benefit information by the employer, and in this case, the employer that is directed to make disclosure under the *PSSDA* is also the institution. This is analogous to the situation under the *Municipal Elections Act* (as addressed in *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* [2002 CanLII 53259 (ON SCDC)]). Under section 3 of the *PPSDA*, I find that the University itself *is* both "obligated ad authorized" to make the information pubic under the *PSSDA*. As well, I find that this situation does not resemble the facts in *Municipal Property Assessment Corp. v. Ontario (Assistant Information and Privacy Commissioner)* [2004 CanLII 17632 (ON SCDC)], where public disclosure of the requested information by MPAC itself was not authorized under the *Assessment Act*. I therefore adopt the approach in *Gombu* and I conclude that the *Municipal Property Assessment Corp.* case is distinguishable.
>
> Accordingly, I find that section 3(1) of the *PSSDA* "expressly authorizes the disclosure" of the "salary" and "benefit" amounts of the President of the University. Section 3(1) of the *PSSDA* indicates that the obligation to disclose the "salary" and "benefit" information lies with the employer. It prescribes with specificity the manner in which the information should be

[12] Orders PO-2641 and MO-2344.

> disclosed, and states that disclosure should be made to members of the public. Salary is defined in section 2 of the *PSSDA*, in part, as follows:
>
> > "salary" means the total of each amount received by an employee that is,
> >
> > (a) an amount required by section 5 of the Income Tax Act (Canada) to be included in the employee's income from an office or employment.
>
> In these circumstances, I find that the exception to the personal privacy exemption created by section 21(1)(d) applies to the President's "salary" in Article 3.1 of the REA. As I have already found that information that relates to the President's benefits should be disclosed pursuant to section 21(4) of the *Act*, it is not necessary for me to consider the application of section 21(1)(d) to that information. Accordingly, I find that the salary referenced in Article 3. 1 of the REA should be disclosed to the appellant as it falls within the exception created by section 2(1)(d) of the *Act*.

[66] I adopt the analysis of Commissioner Beamish in Order PO-2641 and find that the affected party's salary which is referred to in paragraph 2 of the severance agreement is required to be disclosed in accordance with the *PSSDA.* Accordingly, the exception at section 14(1)(d) to the section 14(1) exemption applies to the salary amount, and I will order the annual salary be disclosed to the requester.

[67] With respect to the affected party's "benefits," as I find below that they should be disclosed pursuant to the exception at section 14(4)(a), it is not necessary for me to consider the application of section 14(1)(d) to that information.

14(1)(f): unjustified invasion of personal privacy

[68] Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[69] The facts and presumptions in sections 14(1)(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 (d) of 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): Not an unjustified invasion of personal privacy.

[70] As section 14(1) is a mandatory exemption and, in my view, section 14(4)(a) might apply to some of the information at issue, I will first turn to consider whether any of the information in the records falls within the exception in section 14(4)(a). If it

does, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1). Section 14(4)(a) reads:

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

[71] Having reviewed the records at issue, I find that none of them contain the classification or salary range of the affected party. However, I find that limited portions of the records contain information that can be described as "employment responsibilities" or "benefits." Accordingly, I find that disclosure of that information is deemed not to amount to an unjustified invasion of personal privacy as a result of the application of section 14(4)(a).

[72] Contemplating first the issue of employment responsibilities, I note that paragraph 2 of the reference letter, in both languages, describes the affected party's employment responsibilities with respect to his position with the city. As a result, I find that section 14(4)(a) applies to permit the disclosure of this information. However, I also find that none of the remaining information in the letters or the information in the other records at issue, contains information that can be described as "employment responsibilities."

[73] With respect to whether the records contain information that amounts to "benefits," this office has interpreted that term to include entitlements, in addition to base salary, that an employee receives as a result of being employed by the institution. More precisely, 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.[13]

[74] 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.[14]

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

[75] Applying these principles to the records before me, I find that they contain some information that qualifies as "benefits" belonging to the affected party. Specifically, I find that clause 2 of the severance agreement discloses a termination allowance that is to be paid to the affected party, clause 3 describes insurance benefits and pension benefits, clause 4 discusses vacation and sick leave, and clause 5 discusses reimbursement for an ongoing legal matter involving the affected party for which the city had been incurring legal costs. In my view, all of this information qualifies as "benefits" that the affected party received while employed, and are continuing post-employment. Therefore, because section 14(4)(a) applies to this information, its disclosure is not considered to be an unjustified invasion of personal privacy under section 14(1)(f) and the section 14(1) exemption does not apply. Therefore, I find that this information is not exempt under section 14(1) and I will order it disclosed.

[76] I am satisfied that the remaining information contained in the severance agreement (which includes various releases, agreements and undertakings), including both appendices to that agreement, and the reference letter, do not qualify as "benefits' under section 14(4)(a). In my view, all of this information was negotiated as part of the termination agreement between the affected party and the city and section 14(4)(a) does not apply to it. Accordingly, I must now consider whether the disclosure of any of this remaining information which does not fall under section 14(4), is presumed to represent an unjustified invasion of the affected party's privacy under any of the presumptions at section 14(3).

Section 14(3): Presumptions against disclosure

[77] 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(1). 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.[15] I have already determined which portions of the records are subject to section 14(4) and the "public interest override" provision at section 16 was neither raised, nor does it appear to apply in this appeal.

[78] In the circumstances, the presumptions at sections 14(3)(d), (f), and (g) might apply. Those sections read:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (d) relates to employment or educational history;

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

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
(g) consists of personal recommendations or evaluations, character references or personnel evaluations.

[79] Applying these exemptions to the information contained in the records at issue, I find that a limited amount of information contained within them fall within these presumptions.

14(3)(d): employment or educational history

[80] Previous orders have established that information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used, and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has been found to fall within the section 14(3)(d) presumption.[16]

[81] From my review of the records, clauses 1, 2, 3, and 4 of the severance agreement all contain references to the date of the affected party's last day worked, as well as other dates which, if disclosed, would reveal the affected party's last day worked. Additionally, the date of the agreement and the date that it was signed by various parties might also reveal the affected party's last day worked. Similarly, the affected party's resignation letter that is Appendix A to the agreement, identifies his last day worked and, in my view, the date of the letter itself would also reveal that date. Finally, both versions of the reference letter clearly identify the affected party's number of years of service with the city.

[82] In keeping with previous orders issued by this office as identified above, I find that all references to the last day worked by the affected party and his number of years of service qualify as "employment history" as described in section 14(3)(b) and their disclosure is presumed to amount to an unjustified invasion of the his personal privacy.

14(3)(f): finances

[83] To qualify under this section, information about an asset must be specific and must reveal, for example, its dollar value or size.[17] However, lump sum payments that are separate from an individual's salary have consistently been found not to fall within

[16] Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050. See also Orders PO-2598, MO-2174 and MO-2344.
[17] Order PO-2011.

section 14(3)(f).[18] Additionally, contributions to a pension plan have been found to fall within section 14(3)(f).[19]

[84] Although the severance agreement reveals a lump sum payment to be paid to the affected party for independent legal fees relating to the termination of his employment with the city, previous orders have found that such payments do not fall within any of the presumptions in section 14(3), including section 14(3)(f).[20] Additionally, this amount could also be described as a lump sum payment separate from the affected party's salary which, as noted above, have been found not to fall under section 14(3)(f). Accordingly, I do not accept that section 14(3)(f) applies to this information.

[85] Additionally, although the severance agreement refers to continued contributions to the affected party's pension, there is no reference to the amount or value of that contribution. Accordingly, I do not accept that this information is subject to the presumption at section 14(3)(f).

[86] I find that none of the information that remains at issue in the records is subject to the presumption relating to finances at section 14(3)(f).

14(3)(g): personal recommendations

[87] The terms "personal evaluations" or "personnel evaluations" refer to assessments made according to measurable standards.[21] The thrust of section 14(3)(g) is to raise a presumption concerning recommendations, evaluations or references about the identified individual in question rather than evaluations, etc., by that individual.[22]

[88] In my view, both versions of the reference letter contain information that qualifies as "personal evaluations." This information describes the Mayor's opinions or views about the affected party and his ability to perform the tasks required of the position that he held with the city. I find that these portions of both versions of the reference letter fall under the presumption at section 14(3)(g) as personal recommendations.

Section 14(2): Factors and Considerations

[89] Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2).[23] If no section 14(3) presumption applies and the exception in section

[18] Orders M-173, MO-1184, MO-1469, MO-2174 and MO-2318.
[19] Orders M-173, P-1348 and PO-2050.
[20] Orders MO-1184 and MO-1332.
[21] Orders PO-1756 and PO-2176.
[22] Order P-171.
[23] *John Doe*, cited above.

14(4) does not apply, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.[24] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring *disclosure* in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.[25]

[90] I have found that the affected party's annual salary should be disclosed pursuant to the exception to section 14(1), at section 14(1)(d). I have also found that some of the information contained in the records relates to benefits as they deal with health, insurance and pension benefits, as well as expenses to which the affected party was entitled as a result of being employed. Therefore, these portions of the records should be disclosed as they meet the exception listed in section 14(4)(a).

[91] I have also found that the disclosure of a limited amount of information in the records would amount to a presumed unjustified invasion of the affected party's personal information pursuant to the presumptions under section 14(3)(d) and (g) and should not be disclosed. Specifically, I find that the affected party's termination date and years of service meet the presumption at section 14(3)(d) as the affected party's employment history, and the reference letter (in both English and French) meet the presumption at section 14(3)(g) as personal recommendations. As a result of the application of these presumptions, this information should not be disclosed as disclosure would result in a presumed unjustified invasion of the affected party's personal privacy. This personal information is, therefore, exempt under section 14(1).

[92] With respect to the remaining information, I must determine whether any of the factors identified in section 14(2), as well as all other considerations that are relevant in the circumstances of this appeal, might apply either to support its disclosure or non-disclosure.

[93] Neither the city nor the requester has specifically raised the possibility that any of the factors listed at section 14(2) might apply to the information contained in the records. The affected party submits that he has difficulty understanding how section 14(2)(a) might apply, but does not raise the possible relevance of any of the factors weighing against disclosure.

[94] On my review, it appears that the factors at sections 14(2)(a), (f) and (h) warrant consideration as to whether they apply to the remaining portions of the records. Those sections read:

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[24] Order P-239.
[25] Orders PO-2267 and PO-2733.

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all of the relevant circumstances, including whether,
>
> (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
>
> …
>
> (f) the personal information is highly sensitive;
>
> …
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and,

[95] I also find that the unlisted consideration of the public's confidence in the integrity of an institution might be a relevant factor for consideration under section 14(2).

14(2)(a): public scrutiny

[96] The public has a right to expect that expenditures of employees of government institutions during the course of performing their employment-related responsibilities are made in accordance with established policies and procedures, carefully developed in accordance with sound and responsible administrative principles.[26] Section 14(2)(a) contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.[27]

[97] In Order MO-2174, I discussed the principles behind the public scrutiny considerations of section 14(2)(a):

> Previous orders have also found that the content of agreements entered into between institutions and senior employees represent the sort of records for which a high degree of public scrutiny is warranted as identified in section 14(2)(a) of the *Act*.[28] This is because "all government institutions are obliged to ensure that tax dollars are being spent wisely."[29]

[26] Orders P-256 and PO-2536.
[27] Order P-1134.
[28] Orders M-173 and MO-1184.
[29] Orders MO-1184, MO-1332, and MO-1405.

In Order MO-1469, Adjudicator Donald Hale followed those orders in his consideration of the section 14(2)(a) factor in relation to the disclosure of information contained in a severance agreement:

> It has been well established in a number of previous decisions that the contents of agreements entered into between institutions and senior employees represent the sort of records for which a high degree of public scrutiny is warranted.[30] Based on this, and the appellant's desire to scrutinize how the Municipality compensated a senior management employee upon his termination, I find that section 14(2)(a) is a relevant consideration in the circumstances of the present appeal. I further find that this is a significant factor favouring the disclosure of the information contained in the record.

[98] The principles and approach that I outlined in Order MO-2174 are applicable to the circumstances of the present appeal. The records at issue relate to the termination of the affected party's employment with the city. I have identified the personal information contained within them that would amount to a presumed unjustified invasion of the affected party's personal privacy. Taking into consideration the information that remains at issue, I am satisfied that its disclosure is desirable for the purpose of shedding light on the details of this particular agreement and would address any "publicly scrutiny" concerns that the requester, or any other member of the public, might have.

[99] Accordingly, I find that the consideration under section 14(2)(a) is a relevant factor that weighs significantly in favour of the disclosure of the information remaining at issue in the records.

14(2)(f): highly sensitive

[100] Previous orders have established that to be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.[31]

[101] Given the subject matter of the records, I accept that it could be argued that the disclosure of a severance agreement might cause the individual to whom it relates some personal distress. However, in the circumstances of this appeal I do not accept that the disclosure of the information at issue would result in significant personal distress to the affected party. First, it is common for senior officials with municipal governments to negotiate severance agreements when they depart prior to the end of

[30] Order M-173 and M-953.
[31] Orders PO-2518, PO-2617, MO-2262 and MO-2344.

their employment contracts. I find that the affected party is well aware, given his former position with the city, that such agreements, or portions of such agreements, are frequently disclosed under the *Act*. Additionally, from the affected party's representations, it is clear that although he reviewed the considerations listed in section 14(2), he did not specifically raise section 14(2)(f) as a relevant consideration. Accordingly, I do not accept that the disclosure of any of the information at issue might cause the affected party personal distress that could be described as significant.

[102] Therefore, while the factor at section 14(2)(f) weighing against disclosure is a relevant consideration, in my view, in the circumstances of this appeal it is only to be afforded little weight in the balancing of the affected party's personal privacy interests against the requester's right of access.

14(2)(h): supplied in confidence

[103] This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.[32]

[104] For section 14(2)(h) to be a relevant consideration, the information in question must have been "supplied" by the affected party. Accordingly, in the circumstances of this appeal this factor cannot apply to the severance agreement as it is the product of negotiations between the affected party and the city and was not supplied by the affected party himself. Although I accept that there is a possibility that the affected party had some expectation of confidentiality with respect to his resignation letter which is attached as Appendix A of the severance agreement, in the absence of representations to this effect or any indication on the face of the letter that this was the affected party's belief, I find that the factor at section 14(2)(h), while potentially relevant, carries minimal weight against the disclosure of this letter.

[105] Additionally, it cannot apply to the reference letter as that record was "supplied" by the city and the city is not opposing its disclosure. Accordingly, I find that the factor at section 14(2)(h) carries no weight with respect to the disclosure of the reference letter.

Ensuring public confidence in an institution

[106] A relevant consideration found to apply in past appeals involving requests for severance agreements and that weighs in favour of disclosure, recognizes that the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution.[33] Previous orders have found that as the severance

[32] Order PO-1670.
[33] Orders M-129, P-237, P-1014 and PO-2657.

agreements of public servants involve the expenditure of public funds, often on behalf of senior employees, institutions are placed in a position to ensure that tax dollars are spent wisely. Therefore, ensuring the public's confidence in the integrity of an institution is a relevant consideration when contemplating disclosure of such agreements.[34]

[107] The requester submits that the city has disclosed severance agreements in the past while the affected party was the individual responsible for responding to requests under the *Act*. He states that he "simply want[s] an unbiased review of the pertinent documents, and a full disclosure in the accordance with the applicable law."

[108] As noted above, the city does not object to the disclosure of the severance agreement, with the exception of Appendix B.

[109] As mentioned several times above, the affected party argues that "as a summary of the impact of the agreement was revealed to the public, there is no logical reason or purpose that the document needs to be revealed."

[110] In Order MO-2344, Commissioner Beamish found that the unlisted principle "ensuring public confidence in an institution" applied and carried significant weight with respect to the determination of the disclosure of information contained in an employment separation agreement. He stated:

> Separation agreements may involve significant expenditures on the part of government institution. Taxpayers have a right to review these expenditures in order to determine whether the institution has acted prudently with respect to their money. The integrity of a government institution is based on the principles of openness, transparency and accountability for the expenditure of taxpayer dollars.

[111] I agree with the reasoning expressed by Commissioner Beamish in Order MO-2344 and find that it is relevant in the circumstances of this appeal, particularly in relation to the disclosure of the affected party's severance agreement, including appendices. Accordingly, I find that this unlisted consideration of "ensuring public confidence in an institution" is both relevant and carries significant weight in favour of the disclosure of that agreement.

Balancing the considerations

[112] I have found that the factor favouring disclosure in section 14(2)(a) and the unlisted consideration relating to ensuring public confidence in the integrity of an institution are both relevant and carry significant weight in favour of disclosure of the

[34] Order MO-1469.

information remaining at issue. I have found that the factors weighing against disclosure in sections 14(2)(f) and 14(2)(h) carry only limited weigh regarding the non-disclosure of that information. Balancing these factors to determine whether the disclosure of the remaining portions of the records would result in an unjustified invasion of privacy, I find that the considerations favouring disclosure outweigh the considerations weighing in favour of the non-disclosure of this information. Accordingly, I find that the disclosure of the information that remains at issue would not constitute an unjustified invasion of the affected party's personal privacy. Therefore, the exception to the exemption in section 14(1)(f) applies, and this information is not exempt from disclosure pursuant to section 14(1). I will therefore order that it be disclosed to the requester.

ORDER:

1. I order the city to disclose to the requester portions of the records that I have found would not amount to an unjustified invasion of the affected party's personal privacy pursuant to section 14(1) of the *Act*. This disclosure should be made by **July 6, 2015**, but not before **June 29, 2015**. For the sake of clarity, enclosed with this order, I am providing the city with a copy of the records at issue that have been highlighted to indicate the information that *should not* be disclosed to the requester.

2. In order to verify compliance with Order Provision 1, I reserve the right to require the city to provide me with a copy of the material sent to the requester.

Original Signed By: May 29, 2015
Catherine Corban
Adjudicator