

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3844

Appeal MA18-440-2

Niagara Peninsula Conservation Authority

October 3, 2019

Summary: The Niagara Peninsula Conservation Authority (the NPCA) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for the titles and salaries of NPCA staff members whose salary is \$100,000 or more. The NPCA denied access to the requested information, citing the application of the mandatory personal privacy exemption in section 14(1).

In this order, the adjudicator finds that the record contains the personal information of the affected persons and that section 14(1) applies. She also finds that the public interest override in section 16 applies to override the application of the section 14(1) exemption and orders the information at issue in the record disclosed to the appellant.

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), 14(3)(f) and 16; *Public Sector Salary Disclosure Act*, 1996, S.O. 1996, Chapter 1, Schedule A.

Orders Considered: Order MO-2563.

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

OVERVIEW:

[1] The Niagara Peninsula Conservation Authority (the NPCA) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*):

I am requesting the current salaries of every position that receives one hundred thousand (\$100,000) or more.

[2] The NPCA responded to the requester, but did not issue an access decision as the requester had previously requested the same information.

[3] The requester appealed to this office as the NPCA was in a deemed refusal situation and Appeal MA18-440 was opened to address the appeal.

[4] The NPCA subsequently issued a decision denying access to the responsive records. Access to the withheld information was denied pursuant to section 15(b) (information soon to be published) of the *Act*. The NPCA also cited their reliance on the mandatory personal privacy exemption in section 14(1) of the *Act*, noting that the information to be published would only include salary ranges and not specific salaries. As an access decision was issued, Appeal MA18-440 was closed.

[5] The requester (now the appellant) appealed the NPCA's decision to this office, which opened Appeal MA18-440-2 and appointed a mediator to explore resolution.

[6] During the course of mediation, the NPCA emailed the appellant to advise him that the salary ranges had been published and provided him with the URL to locate the information.

[7] The appellant advised the mediator that he wished to proceed to inquiry on the information withheld pursuant to section 14(1) of the *Act*, namely, the exact salary amounts and the titles of the individuals to whom these salaries relate. The appellant also claimed that the public interest override under section 16 of the *Act* should apply to the withheld information. As the appellant did not appeal the information withheld under section 15(b), that exemption is no longer at issue in this appeal.

[8] As no further mediation was possible, this file proceeded to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry.

[9] I sought and received representations from the NPCA, the appellant and the six individuals whose salary is listed in the record (the affected persons). I received representations from the NPCA, the appellant and four of the affected persons, all of whom objected to their salary being disclosed. One affected person consented to their salary being disclosed to the appellant and the NPCA disclosed that individual's job title and salary to the appellant. The remaining affected person could not be contacted.

[10] The appellant only provided representations on the application of the public interest override in section 16.

[11] The representations that were received were exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction 7*.

[12] In this order, I find that the record contains the personal information of the

affected persons and that section 14(1) applies. I also find that the public interest override in section 16 applies to override the application of the section 14(1) exemption and I order the information at issue in the record disclosed to the appellant.

RECORD:

[13] The record is dated November 2018 and lists the titles and salaries of six staff at the NPCA who earn \$100,000 or more in salary. As the salary and title of one staff member has been disclosed to the appellant, at issue are the titles and salaries of five NPCA staff (the affected persons) whose salary was over \$100,000 as of the date of the record.

ISSUES:

- A. **Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?**
- B. **Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?**
- C. **Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?**

DISCUSSION:

Background Information

[14] The request seeks the salaries of NPCA staff who earn over \$100,000. The *Public Sector Salary Disclosure Act (PSSDA)*¹ expressly authorizes the public disclosure of salary and benefits paid in respect of employment in the public sector to employees who are paid a salary of \$100,000 or more in a year. However, the *PSSDA* is not applicable to NPCA because the organization does not meet the funding conditions under the *PSSDA*. Therefore, the NPCA is not subject to the *PSSDA*, and the appellant is seeking this information under the *Act*.

Issue A: Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[15] In order to determine which sections of the *Act* may apply, it is necessary to

¹ *Public Sector Salary Disclosure Act*, 1996, S.O. 1996, CHAPTER 1, SCHEDULE A.

decide whether the record contains “personal information” and, if so, to whom it relates. The NPCA relies on the following two paragraphs set out in the definition of personal information in section 2(1) of the *Act*:

“personal information” means recorded information about an identifiable individual, including,

(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,

(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.

[16] The NPCA states that the record contains employment information about identifiable individuals, namely, the specific salary information of individuals earning more than \$100,000 annually through their employment at the NPCA.

Analysis/Findings

[17] 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.²

[18] Sections 2(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.

[19] 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

² Order 11.

individual.³

[20] 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.⁴

[21] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[22] The record is a list of titles of five NPCA employees who earned over \$100,000 per year, along with their salaries, as of November 2018.

[23] Although the record only lists the titles of the individuals, I am satisfied that these individuals are identifiable by means of their title and the date of the record.

[24] I agree with the NPCA, and I find, that the record contains the personal information of identifiable individuals other than the appellant. This personal information is the affected persons' salaries and consists of these individuals' employment history in accordance with paragraph (b) of the definition of personal information in section 2(1) of the *Act*.⁶

[25] As well, I find that paragraph (h) of the definition of personal information in section 2(1) applies as disclosure of the affected persons' titles in the record could reasonably be expected to identify the affected persons, thereby revealing their names. Since this would reveal that these individuals earned over \$100,000 annually, I find that the information fits within paragraph (h) of the definition of personal information in section 2(1) of the *Act*.

[26] The record does not contain the personal information of the appellant. At issue in the record is only the personal information of the five affected persons who did not consent to the disclosure of their title and salary.

[27] As the information at issue in the record consists of the personal information of the affected persons, I must consider whether the mandatory personal privacy exemption applies to the information as the NPCA claims.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁶ See also Order MO-3368.

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

[28] 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.

[29] 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.

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

[31] If the information fits within any of the paragraphs in section 14(4), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1). None of these exceptions to the mandatory personal privacy exemption apply in this appeal.⁷

[32] Sections 14(2) and (3) also help in determining whether disclosure would or would not be an unjustified invasion of privacy.

[33] In this appeal, the NPCA is relying on the presumption in section 14(3)(f), which reads:

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

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[34] The NPCA states that the salary information at issue directly relates to the affected persons' finances and income and, therefore, the presumption in section 14(3)(f) applies to this personal information.

[35] The affected persons that provided representations all object to their salary information being disclosed on the basis that it would be an unjustified invasion of their personal privacy.

⁷ The exceptions in section 14(4)(a) applies to salary ranges, not specific salaries.

Analysis/Findings

[36] At issue is the exact salary of five NPCA staff members as of November 2018. As the record describes the affected persons' income, I find that the presumption in section 14(3)(f) applies to the information.

[37] Since section 14(3)(f) applies, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. 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).⁸ 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.⁹

[38] In this appeal, as stated above, section 14(4) does not apply. As the presumption in section 14(3)(f) applies to the record, the record is exempt under the mandatory personal privacy exemption in section 14(1), subject to my review of the application of the public interest override in section 16.

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

[39] 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.

[40] 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.

[41] 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.¹⁰

⁸ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

⁹ *John Doe*, cited above.

¹⁰ Order P-244.

Compelling public interest

[42] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act’s* central purpose of shedding light on the operations of government.¹¹ Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.¹²

[43] A public interest does not exist where the interests being advanced are essentially private in nature.¹³ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.¹⁴

[44] A public interest is not automatically established where the requester is a member of the media.¹⁵

[45] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.¹⁶

[46] Any public interest in *non*-disclosure that may exist also must be considered.¹⁷ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling”.¹⁸

[47] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation¹⁹
- the integrity of the criminal justice system has been called into question²⁰
- public safety issues relating to the operation of nuclear facilities have been raised²¹

¹¹ Orders P-984 and PO-2607.

¹² Orders P-984 and PO-2556.

¹³ Orders P-12, P-347 and P-1439.

¹⁴ Order MO-1564.

¹⁵ Orders M-773 and M-1074.

¹⁶ Order P-984.

¹⁷ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

¹⁸ Orders PO-2072-F, PO-2098-R and PO-3197.

¹⁹ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

²⁰ Order PO-1779.

- disclosure would shed light on the safe operation of petrochemical facilities²² or the province's ability to prepare for a nuclear emergency²³
- the records contain information about contributions to municipal election campaigns²⁴

[48] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations²⁵
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations²⁶
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding²⁷
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter²⁸
- the records do not respond to the applicable public interest raised by appellant²⁹

Purpose of the exemption

[49] The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[50] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.³⁰

²¹ Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

²² Order P-1175.

²³ Order P-901.

²⁴ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

²⁵ Orders P-123/124, P-391 and M-539.

²⁶ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

²⁷ Orders M-249 and M-317.

²⁸ Order P-613.

²⁹ Orders MO-1994 and PO-2607.

³⁰ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.).

Representations

[51] The NPCA states that, as it is not subject to the disclosure requirements of the *PSSDA*, there must be a presumption that disclosure of this information is not in the public interest. It states that it asked the Ontario Government's Public Sector Salary Disclosure Department if this information could be voluntarily disclosed and it was told this was not an option.

[52] The NPCA states that there exists no legislative authority for the NPCA to disclose the record and the affected persons have not given their consent to the disclosure. As such, it states that it would be a violation of the personal privacy rights of these individuals if the NPCA were to disclose this information.

[53] The NPCA submits that by enacting legislation that allows organizations to fall within two distinct groups, either inside or outside the scope of the *PSSDA*, the province has signaled its intention to exclude certain organizations from the disclosure obligations of the *PSSDA*.

[54] It states that by enacting the *PSSDA*, the province has already defined what salary information the public has an interest in.

[55] In the alternative, the NPCA submits that any compelling public interest in the record does not outweigh the purpose of the section 14(1) exemption. It states that in a situation like this where the appellant has only made the bald allegation that section 16 of the *Act* should apply, any public interest cannot be said to outweigh the legitimate privacy interests of the individuals in question.

[56] The appellant states that there is a compelling interest in knowing exactly what has transpired regarding the salaries and benefits of the NPCA's senior personnel. He states that there have been public demands for the NPCA to increase transparency in its operations, which resulted in an audit of the NPCA by Ontario's Auditor General (the AG) in late October 2017.

[57] The appellant relies on the September 2018 Auditor General's report of the NPCA.³¹ He states that the core operations of the NPCA have been eroded to the point of standstill while managerial staff continues to reward itself with hefty pay raises.

[58] The appellant submits that the public has a right to know the exact figures around these issues in order to properly address them. He states:

Despite the completion of the AG's report, citizens and local governments remain engaged with the NPCA to ensure it is on the proper course

³¹ Found at page 10 of http://www.auditor.on.ca/en/content/specialreports/specialreports/NPCA_en.pdf

correction. 2018 marked the first time in recent memory the NPCA has not disclosed salaries under the *Public Sector Salary Disclosure Act* because of a change in the reporting procedures[;] this does not imply the public has no compelling interest to closely monitor the salaries of the top staff at this public institution. In fact, in light of the controversy surrounding the NPCA and its management the opposite is true[;] this is a textbook case of compelling public interest.

Unfortunately, the release of the AG's highly critical report into the NPCA did not resolve the situation at the agency. The NPCA has been plagued with what can only be described as a management crisis since the report has been released and citizen scrutiny can be argued to be the only thing that keeps things moving into a better direction. The turmoil at the NPCA is of epic proportion and under these circumstances the public has a right to know exactly what management is doing regarding compensating themselves. A recent revelation revealed that at least four management personnel staff have been given contracts that include monthly vehicle allowances of \$1,000 each; in a small agency with a budget of ten million dollars per year, this has incensed the people and led the cry for quicker change.³²

[59] In reply, the NPCA states that the appellant has not demonstrated that there is a compelling public interest in the salary information requested. It submits that there has already been wide public coverage or debate of the issue, and the record would not shed further light on the matter, as the NPCA has previously disclosed many financial documents that are more than sufficient to satisfy any public interest considerations.

[60] The NPCA submits that it has also disclosed other information through the freedom-of-information process to the appellant, which included employment agreements with specific salaries removed. It states that the appellant has not raised any arguments as to why these disclosures are not adequate to satisfy the public interest.

[61] The NPCA submits that when the information from the AG's report into the operations of the NPCA is combined with the information released by the NPCA and related disclosures through the freedom-of-information process, the wealth of information available is sufficient to satisfy the public interest in the operations of the NPCA.

[62] The NPCA submits that, contrary to the appellant's submission, the documents

³² The appellant references include: <https://www.stcatharinesstandard.ca/news-story/9164030-acting-cao-pace-of-change-frustrate-npca-board/> <http://www.niagaralaw.ca/npca/>

provided by him (the AG's report into the operations of the NPCA and several news articles reporting on the activities of the NPCA) show that there has already been wide public coverage of the debate at issue. Further, it states that the appellant has not submitted any evidence or arguments as to how the information requested would shed further light on the matter.

[63] The NPCA also submits that as the NPCA is not subject to the *PPSDA*, this fact should be weighed in favour of non-disclosure and that when this is taken into account, any public interest does not clearly outweigh the legitimate privacy expectations of the individuals to whom the information relates.

[64] In sur-reply, the appellant states that the NPCA has displayed a consistent pattern of rewarding top management at a scale that is out of line with any reasonable expectations and continues to do so to this day. He refers to the results of his access request that he released to the media that exposed the fact that senior directors of the NPCA were receiving monthly vehicle allowances of \$1,000 each. He states that the public pressure brought to bear by that revelation will be another factor in driving the change towards transparency and integrity that has been sorely lacking.

[65] The appellant submits that the public has a right to scrutinize the compensation of public servants, and the *PSSDA* is one tool for facilitating this scrutiny, but it is not the only one.

[66] He refers to Order MO-2563, where the adjudicator found that the compelling public interest in disclosure of the salaries at issue clearly outweighed the purpose of the section 14 (1) exemption. The adjudicator found that disclosure of salary information was not limited to only those amounts that are disclosed under the *PSSDA*. The adjudicator determined that in that appeal the need for complete transparency outweighed the limited privacy interests of the affected parties.

[67] The appellant states that the public interest clearly outweighs the purpose of the exemption and the fact that the NPCA falls under the threshold for mandatory reporting under the *PSSDA* does not negate the fact that "the public has a right to know to the fullest extent possible."³³ "

[68] The affected persons objected to the disclosure of their salaries as being an invasion of their privacy and prohibited under law as not authorized for disclosure under the *PSSDA*. They provided representations that included the following submissions:

³³ Under the *PSSDA*, as a public sector commission, the NPCA must meet the funding requirements of the *PSSDA* to be subject to the reporting requirements of that Act. These funding requirements provide that a public sector commission is subject to the reporting requirements in a year only if it received funding from the Government of Ontario in that year of an amount that is at least equal to \$1,000,000 or 10 per cent of the body's gross revenues for the year if that percentage is \$120,000 or more.

- [The appellant] has access to the information he has requested - 2018 salary disclosures...
- Sharing my salary information will compromise my current and future job offers and compensation negotiations especially at the executive level. Sharing this information will cause serious damage to my job opportunities and income...
- The NPCA has been negatively impacted in the news due to senior leadership issues and any personal information may be used to associate me with the NPCA leadership issues unjustly and unfairly creating false optics or perceived ones, which may create serious reputational career damage...

[69] In response to the affected persons' representations, the appellant acknowledges that he has the salary information at issue, but says that as a political appointee, he cannot release this information publicly. He wants to be able to disclose this information publicly in order to shed light on and increase transparency into the operations of the NPCA. He states:

The NPCA has been under intense public scrutiny for the past 5 years, it has been widely criticized for straying far from its provincial mandate and employing [human resources] practices that are questionable to say the least. The media has published many accounts of the issues within the NPCA. The [NPCA] went through three [Chief Administrative Officers] in a matter of weeks...

This disarray was then compounded by a total reshuffle of senior staff, lawsuits, and other actions that serve to amplify the public's need to understand exactly what has transpired within the organization.

The reshuffle of staff included people being assigned to top senior management positions (Directors) with no job postings, no open competition and no explanation to the public how this came to be. The public has a right to a full understanding of what transpired at the NPCA and a small portion of this transparency is the release of the information I have requested.

The NPCA has been embroiled in public controversy and that controversy has included the issues of hiring, firing and compensation.³⁴

Analysis/Findings

[70] At issue is a list of five NPCA titles and the corresponding salary of each title-

³⁴ The appellant provided news articles in support.

holder as of November 2018. I found above that disclosure of this information could reasonably be expected to identify the affected persons as these individuals are top administrators at the NPCA and their identities can be ascertained from other publicly available information.

[71] The purpose of the *PSSDA* is to assure the public disclosure of the salary and benefits paid in respect of employment in the public sector to employees whose salary is \$100,000 or more in a year. As noted above, the NPCA is not subject to the *PSSDA* as it does not meet the funding threshold set out therein.

[72] In Order MO-2563, the order relied on by the appellant, the adjudicator ordered disclosure of the base salary of four employees of the York Police Services Board. In that appeal, the total compensation of these employees had been disclosed under the *PSSDA*. In that order, the base salary at issue was less than \$100,000, but the total compensation was more than \$100,000.

[73] In Order MO-2563, the adjudicator considered a number of factors and determined that, based on the nature of the information at issue and the fact that the named individual employees were subject to the *PSSDA*, the base salary information ought to be disclosed. He found that there existed a compelling public interest in the disclosure of the information. With respect to whether the public interest clearly outweighed the purpose of the section 14(1) exemption, the adjudicator stated:

In my view, the compelling public interest in disclosure of the withheld portions of the records at issue clearly outweighs the purpose of the section 14 exemption in this case. The public has a right to know to the fullest extent possible how taxpayer dollars have been allocated to public servants' salaries, and this has particular force with respect to public servants at senior levels who earn significant amounts of money paid out of the public purse. Certainly, the *PSSDA* is one important tool for ensuring such openness and transparency. However, in my view, to limit disclosure to only those amounts that are disclosed under the *PSSDA* seems incongruent with the government's commitment to openness and transparency and, in turn, accountability for the allocation of public resources. In my view, when an individual enters the public service he/she accepts that his/her salary may be exposed to public scrutiny. In this case, the amounts at issue exceed the *PSSDA* \$100,000 threshold and the impact on the affected parties' privacy is limited to the amounts provided for pay for performance in 2009, which can be extrapolated from a comparison of the base salary amounts in the records with the salaries published under the *PSSDA* for that year. In my view, the need for complete transparency in this case outweighs the limited privacy interests of the affected parties.

[74] In Order MO-2563, the adjudicator found that the public interest override in section 16 of the *Act* applied to the specific salary amounts at issue and ordered this

information disclosed to the requester.³⁵

[75] I adopt these findings in Order MO-2563 and agree that to limit disclosure of salary information to only those amounts that are disclosed under the *PSSDA* seems incongruent with the government's commitment to openness and transparency and, in turn, accountability for the allocation of public resources. I find that the need for complete transparency in this appeal outweighs the limited privacy interests of the affected persons.

[76] The appellant's request was made in 2018 and he sought access to the current salaries of NPCA staff who earned over \$100,000. The NPCA did not meet the funding requirements set out in the *PSSDA* and, therefore, was not subject to the salary reporting requirements that year.

[77] The NPCA tried to voluntarily report the salaries at issue under the *PSSDA*, but was advised that this was not an option as the NPCA was not subject to the *PSSDA*.

[78] Nevertheless, even if the NPCA was not eligible to report the salaries at issue under the *PSSDA*, this does not prohibit it from disclosing this information under *MFIPPA*. Neither *MFIPPA* nor the *PSSDA* contain any prohibition against disclosure under *MFIPPA* when the *PSSDA* does not apply to an institution.

[79] I have considered the parties' representations and find that, although the information at issue is subject to the personal privacy exemption in section 14(1), there is a compelling public interest in disclosure of the salary information at issue.

[80] As noted by the appellant, 2018 marked the first time in recent memory the NPCA has not disclosed salaries under the *PSSDA* because of a change in the reporting procedures. In my view, however, this does not imply the public has no interest in closely monitoring the salaries of the top staff at this public institution or that such a public interest is not compelling.

[81] The appellant provided numerous news articles, as well as an Auditor General's report, that indicate that there is public interest in the expenses and other costs incurred by the NPCA, including the salaries of NPCA staff. There has been concern over irregularities related to salary increases, as well as concern about the hiring and firing of key senior personnel, including related litigation involving the NPCA.

[82] The appellant did receive information from the NPCA in another request for employment documents for top administrators. This request came back with much of the information redacted, including salaries. However, what was revealed in the

³⁵ The Divisional Court upheld Order MO-2563 in *York (Police Services Board) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 6175 (Div. Ct.).

disclosure package was that part of the compensation package for four of these top NPCA administrators was a \$1,000-a-month vehicle allowance. The evidence provided by the appellant demonstrated that the vehicle allowance was revealed to be more than the vehicle allowance received by the chief administrative officer for Niagara Region received as compensation for overseeing a \$1-billion budget, which dwarfs the NPCA's \$10-million budget.

[83] Ontario's Auditor General conducted an audit of the NPCA's financial situation. The opening words of the Auditor General's report³⁶ read:

In light of mounting criticisms of the Niagara Peninsula Conservation Authority (NPCA), the Standing Committee on Public Accounts of the Legislative Assembly of Ontario requested on October 25, 2017, that our Office conduct an audit of the NPCA.

[84] As set out in the appellant's representations, in her report of September 2018, Ontario's Auditor General notes a 49% increase in administrative support and corporate services at the NPCA, which would include salaries, as follows:

Administrative spending has increased while spending on watershed services has decreased. While the NPCA's overall expenses of \$9.6 million in 2017 were 3% lower than its expenses of \$9.8 million in 2012, expenses related to administrative support and corporate services increased by 49%, from \$2.3 million in 2012 to \$3.4 million in 2017. Spending on watershed services and management of conservation areas decreased by 18%, from \$7.54 million in 2012 to \$6.16 million in 2017.

[85] I agree with the appellant's submission that since the release of the Auditor General's highly critical audit report regarding the NPCA, the NPCA has been plagued with what can only be described as a management crisis, as evidenced by the news articles he has provided.³⁷

[86] I also agree with the appellant that the turmoil at the NPCA is of an epic proportion and under these circumstances the public has a right to know exactly what management is doing regarding compensating themselves.

[87] I find that the appellant has demonstrated that there is a compelling public interest in the salary information requested. I accept that not only are there financial mismanagement concerns at the NPCA, but also salary-related concerns about unfair hiring practices and improper compensation packages for the top administrators at the

³⁶ http://www.auditor.on.ca/en/content/specialreports/specialreports/NPCA_en.pdf

³⁷ Some of these news articles provided by the appellant have not been referenced in this order as they identify certain affected persons.

NPCA.

[88] One of the news articles provided by the appellant even indicates that St. Catharines city councillors were considering asking the provincial government to appoint a supervisor to run the NPCA.³⁸

[89] I find that disclosure would shed light on the operations of the NPCA and that the amount of information already disclosed is not adequate to address the public interest considerations. Based on my review of the information at issue in the record and the parties' representations, I find that there is a compelling public interest in the disclosure of the salaries at issue in the record.

[90] As previously discussed, section 14(1) is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. The exemption reflects one of the two key purposes of the *Act*: to protect the privacy of individuals with respect to personal information about themselves held by institutions. Therefore, it is important to carefully balance the public interest against the privacy interests of the individuals identified in the record.³⁹

[91] In balancing the public and privacy interests in this appeal, I find that the compelling public interest in disclosure of the record clearly outweighs the purpose of the section 14(1) personal privacy exemption. The salaries at issue in the record comprise a significant portion of the NPCA's budget and the evidence indicates that there exist financial mismanagement concerns on the part of the NPCA.

[92] In finding that compelling public interest in disclosure of the records clearly outweighs the purpose of the section 14(1), I also have taken into account that the salary amounts that exceed \$100,000 of NPCA staff have been disclosed in previous years. I have also considered the robust and continued interest on the part of the media, the AG, and the public regarding the management of the financial affairs of the NPCA.

[93] Accordingly, I find that the public interest override in section 16 applies to override the application of the section 14(1) exemption to the information at issue in the record. Therefore, I will order the information at issue in the record disclosed.

³⁸ According to the NPCA's website, the NPCA oversees the Niagara Peninsula watershed, which encompasses the Niagara Region, as well as portions of the City of Hamilton and Haldimand County. St. Catharines is a member of the Niagara Regional Council.

³⁹ See Order PO-3164.

ORDER:

I order the NPCA to disclose the information at issue in the record to the appellant **by November 8, 2019** but not before **November 1, 2019**.

Original signed by _____

Diane Smith
Adjudicator

October 3, 2019