

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4060

Appeal MA19-00061

Tay Valley Township

May 31, 2021

**Summary:** The appellant made a request under the Act to the township for information relating to the employment and overtime salary paid to a particular employee. The township granted partial access to the employee's employment agreement, withholding some of the information on the basis of the mandatory personal privacy exemption at section 14(1). It withheld other records identified in its search on the basis of the employment exclusion at section 52(3)3 of the *Act* or that they are not responsive to the request.

In this order, the adjudicator upholds the township's decision that some of the records are excluded from the *Act* under section 52(3)3.

Regarding the employment agreement, the adjudicator upholds the township's decision to withhold a third party's personal information, the employee's remuneration information and their signature, finding that disclosure of this information would be an unjustified invasion of personal privacy. The adjudicator orders that the township disclose information pertaining to vacation, benefits, rights on termination and minimum workweek hours, finding that disclosure of this information would not be an unjustified invasion of personal privacy. Lastly, the adjudicator also determines that some information is not personal information and orders it to be disclosed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 52(3)3, 14(1), 14(1)(b), 14(1)(f), 14(3)(d), 14(3)(f), 14(4)(a), and 14(4)(b); *Public Sector Salary Disclosure Act, 1996*, S.O. 1996, c. 1, Sched. A.

**Orders and Investigation Reports Considered:** Orders PO-2641 and MO-3044.

## **OVERVIEW:**

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Tay Valley Township (the township) for certain information relating to the employment and overtime salary paid to a particular township employee.

[2] The township searched and located records in response to the appellant's request and then notified the employee, a person whose interests may be affected by disclosure of the records (the affected party), under section 21(1) of the *Act*.

[3] Following notification, the township issued a decision granting the appellant partial access to the affected party's employment agreement. The township withheld portions of the employment agreement under the mandatory personal privacy exemption in section 14(1) of the *Act*.

[4] Dissatisfied with the township's decision, the appellant filed this appeal to dispute the decision and other issues.

[5] During mediation, the issues under appeal were narrowed to include only the township's decision to withhold certain information and records. The township maintained its position to withhold parts of the employment agreement, citing the mandatory personal privacy exemption at section 14(1). Regarding the other records, the township provided the following reasons to support its decision to withhold them in their entirety:

- the records relate to labour and employment relations and are therefore excluded from the scope of the *Act* due to section 52(3)3; and,
- the records, although identified during the search, are not responsive to the request.

[6] The parties maintained their positions during mediation and so the appeal transferred to the adjudication stage of the appeal process. I conducted a written inquiry and invited representations from the township, the appellant and the affected party. The township and the appellant made representations, which were shared with each other in accordance with the *Code of Procedure* and Practice Direction 7. The affected party did not make representations in this inquiry but referred to submissions that he made to the township prior to the decision (at the request stage) and he also relied on the township's representations.

[7] In this order, I find that five of the records are excluded from the *Act* on the basis of section 52(3)3 of the *Act*.

[8] Regarding the one remaining record, the employment agreement, I order the township to disclose some additional information in the agreement on the basis that it is not personal information or that disclosure would not constitute an unjustified invasion

of personal privacy and that therefore the section 14(1)(f) exception to the mandatory personal privacy exemption applies. However, I uphold the township's decision to withhold the remuneration information, the affected party's signature and the personal information of a third party individual on the basis of section 14(1).

## **RECORDS:**

[9] The following records are at issue.

No.	Description
1	Employment agreement of the affected party.
2	February 7, 2018 email exchange.
3	August 7, 2018 minutes of a closed session of a township council meeting.
4	August 14, 2018 minutes of a closed session of a township council meeting.
5	December 21, 2018 email exchange.
6	March 4, 2019 email exchange.

[10] Record 1 has been partially disclosed and will be referred to in this order as "the agreement." The remaining records have been withheld in full.

## **ISSUES:**

- A. Are records 2-6 excluded from the Act because of the labour relations or employment-related exclusion in paragraph 3 of section 52(3) of the Act?
- B. Does the withheld information in the agreement consist of the affected party's "personal information" as defined in section 2(1)?
- C. Does the mandatory exemption for personal privacy at section 14(1) apply to the withheld information?

## **DISCUSSION:**

**Issue A: Are records 2-6 excluded from the *Act* because of the labour relations or employment-related exclusion in paragraph 3 of section 52(3) of the *Act*?**

[11] The township asserts that records 2-6 are excluded from the *Act* because of the labour relations or employment-related exclusion, which would mean that the records cannot be ordered disclosed under the *Act*. Paragraph 3 of section 52(3) states,

Subject to subsection (4), this *Act* does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

3. Meetings, consultations, discussions or communications about labour relations or employment-related matters in which the institution has an interest.

[12] "In relation to" means that it must be reasonable to conclude that there is "some connection" between the records and the labour relations or employment-related matters.<sup>1</sup> The "some connection" standard must involve a connection that is relevant to the statutory scheme and purpose understood in their proper context.<sup>2</sup>

[13] Generally speaking, the type of records excluded from the *Act* by section 52(3) are documents related to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue. Employment-related matters are separate and distinct from matters related to employees' actions on behalf of the institution.<sup>3</sup>

[14] If I find that section 52(3) applies to the records, I must also consider whether any of the exceptions to the exclusion found in section 52(4) apply, which I will discuss in more detail below.

[15] For section 52(3)3 to apply, the township must establish that:

1. the records were collected, prepared, maintained or used by the township or on its behalf;
2. this collection, preparation, maintenance or usage was in relation to meetings, consultations, discussions or communications; and
3. these meetings, consultations, discussions or communications are about labour relations or employment-related matters in which the township has an interest.

[16] The phrase "in which the institution has an interest" means more than a "mere curiosity or concern", and refers to matters involving the institution's own workforce.<sup>4</sup>

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<sup>1</sup> Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

<sup>2</sup> For example, the relationship between labour relations and accounting documents that detail an institution's expenditures on legal and other services in collective bargaining negotiations is not enough to meet the "some connection" standard. See Order MO-3664, upheld on judicial review *Brockville (City) v. Information and Privacy Commissioner, Ontario*, 2020 ONSC 4413 (Div Ct.).

<sup>3</sup> *Ontario (Ministry of Correctional Services) v. Goodis (2008)*, 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.).

<sup>4</sup> *Ontario (Solicitor General) v. Ontario (Assistant Information and Privacy Commissioner)* (2001), 55 O.R. (3d) 355 (C.A.), leave to appeal refused [2001] S.C.C.A. No. 507.

## ***Representations***

[17] The township begins by noting the purpose of the exclusion, as described by the Divisional Court in *Reynolds v. Ontario (Information and Privacy Commissioner)*,<sup>5</sup> to protect the confidentiality of labour relations information.

[18] The township submits that records 2-6<sup>6</sup> meet all three of the criteria set out above. It explains that the records consist of either email communications about the affected party's leave, vacation banks and overtime, or are confidential council meeting minutes about the affected party's workload and overtime.

[19] The township refers to Order MO-3537 as an example of an order where the IPC found that information maintained for the purpose of human resources administration was excluded from the *Act*. The township submits that the subject matter of the records at issue in this appeal is likewise, "core matters of human resources administration in relation to the employment of the" affected party.

[20] Lastly, the township submits that it has more than a mere curiosity or concern in the employment-related matter as it pertains to its employment relationship with the affected party.

[21] The township says that none of the exceptions to the exclusion in section 52(4) apply to the records at issue.

[22] The appellant acknowledges the purpose of the section 52(3)3 exclusion and asks me to review the records to confirm that the exclusion has been properly applied. He also argues that "employment-related matters" should be read in conjunction with other provisions of the *Act* including its overall purpose and intent. Specifically, the appellant points to section 14(4) of the *Act*, which deals with types of personal information that if disclosed would not be constitute an unjustified invasion of personal privacy. The appellant notes that section 14(4) deems that disclosure of information about salary range and benefits or employment responsibilities would not constitute an unjustified invasion of personal privacy.

[23] The appellant also refers to the exceptions to the exclusion in paragraphs 3 and 4 of section 52(4), which state:

This Act applies to the following records:

3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.

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<sup>5</sup> [2006] O.J. No. 4356 ("*Reynolds*")

<sup>6</sup> The township also claims in relation to record 6 is that it is not responsive to the request.

4. An expense account submitted by an employee of an institution to that institution for the purpose of seeking reimbursement for expenses incurred by the employee in his or her employment.

[24] The affected party did not specifically address whether the exclusion ought to apply; however, he generally takes the position that the request is an attempt to interfere with the employment relationship between the affected party and the township and, as noted, relies on the representations made by the township in this inquiry.

### ***Analysis and findings***

[25] Having reviewed records 2 to 6, I find that they were prepared or used by the institution in relation to communications about employment related matters in which the township has an interest, including its employment relationship with the affected party and other related matters.

[26] The records deal with topics that ordinarily arise in the course of an employment relationship, such as overtime and workload issues. These are human resources-related topics in which the township is acting as an employer. Considering the content and issues discussed in the records, I find that they are the very type of records that are intended to be excluded from the *Act* by section 52(3)3.

[27] The appellant is correct that not all "employment-related" information is excluded from the *Act*. As noted above, section 52(4) sets out a number of exceptions to the section 52(3) exclusion. Indeed, in this appeal, record 1, the employment agreement between the affected party and the township, has already been partially disclosed and the township properly makes no claim that section 52(3)3 applies to the employment agreement.<sup>7</sup> The appellant, relies on section 14(4), but that section does not assist the appellant in relation to the application of section 52(3)3 because section 14 may only be considered if the records at issue are subject to the *Act*.

[28] I have considered and rejected the appellant's arguments about section 52(4) because on the face of them, records 2 to 6 do not relate to expense accounts and they are not agreements. Accordingly, I find that records 2 to 6 are excluded from the scope of the *Act* and I will not consider them further in this order.

### **Issue B: Does the withheld information in the agreement consist of the affected party's "personal information" as defined in section 2(1)?**

[29] The township has withheld certain information in the agreement on the basis that it is the affected party's personal information that it is required to withhold it on the basis of the mandatory personal privacy exemption in section 14(1). It is necessary

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<sup>7</sup> See section 52(4)3.

therefore to consider whether the withheld information is personal information.

[30] There is no material debate among the parties about whether the agreement contains the personal information of the affected party; however, the appellant argues that the affected party's name, which has been withheld throughout the agreement, is not personal information. The township states that the affected party's name is personal information in this case because it appears with other personal information about them.

[31] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual," including information such as: an individual's age or marital status (paragraph (a)), an individual's employment history of financial transactions in which they have been involved (paragraph (b)), any identifying number, symbol or other particular assigned to the individual (paragraph (c)), the address or telephone number of the individual (paragraph (d)), or the individual's name if it appears with other personal information about the individual (paragraph (h)).

[32] The withheld information consists of the following information about the affected party: compensation, minimum weekly hours of work, vacation, benefits, entitlements upon termination from employment, home address, name and signature. This is identifying information about the affected party in his personal capacity and I find it to be personal information within the meaning of the *Act*.<sup>8</sup>

[33] The township has also withheld the names and signatures of the township's representatives who signed the agreement on the township's behalf on page 8 of the agreement. These are not personal information because they relate to those individuals in their official capacities, and disclosure would not reveal anything of a personal nature about them.<sup>9</sup>

[34] I also find that the withheld information contains the personal information of an unidentified third party individual, the signature of the person who witnessed the affected party's signature. There is no indication, nor does it follow logically, that this individual signed the agreement in an official capacity. This is personal information and I will refer to it below as the "witness' signature."

[35] As a result of these findings, I will order the township to disclose to the appellant the information that is not personal information – the signatures of the township officials who signed the agreement. In the next section of this order I will consider whether the mandatory personal privacy exemption applies to the personal information in the agreement.

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<sup>8</sup> Regarding information in employment agreements in general, see Orders M-173, P-1348, MO-1184, MO-1332, MO-1405, MO-1622, MO-1749, MO-1970, MO-2318, PO-1885, PO-2050 and MO-3684-I; see Order MO-1391 regarding signatures in employment agreement.

<sup>9</sup> Section 2(2.1) of the *Act*.

**Issue C: Does the mandatory exemption for personal privacy at section 14(1) apply to the withheld information?**

[36] The following withheld personal information remains at issue:

- The notice obligations on termination of employment (clauses 1.4, 4.1 and 4.3) (“termination clause”).
- Starting hourly rate of pay (clause 2.1) (“remuneration information”).
- Minimum weekly hours of work (clause 3.2) (“minimum workweek hours”).
- Vacation entitlement (clause 3.3) (“vacation information”).
- Township contribution amounts to life insurance and health care plan (clauses 3.5 and 3.6) (“contribution information”).
- Name and signature of affected party.
- The witness’ signature.

***Preliminary issue – affected party’s home address***

[37] The township also withheld the affected party’s home address. In the inquiry the appellant stated that he does not seek access to the affected party’s home address. As a result, I will not order the township to disclose this information and it is not addressed further in this order.

***Overview***

[38] The township withholds the personal information listed above on the basis of the mandatory personal privacy exemption at section 14(1) of the *Act*, which requires institutions to withhold personal information unless an exception applies. The township notes that the “default” position under section 14(1) is that unless an exception applies, personal information must be withheld.

[39] The appellant acknowledges the mandatory obligation of institutions to withhold personal information but he argues that the section 14(1)(d) exception applies – that there is another statutory authority to disclose the information; or, that the section 14(1)(f) exception applies – that disclosure would not constitute an unjustified invasion of personal privacy.

[40] The affected party objects in general to disclosure arguing that the purpose of the access request is to impugn his personal reputation. He relies on the township’s representations in this appeal. He also states that the appellant’s access requests are frivolous and vexatious; however, the township has not made this claim and it is not an issue before me.



[41] In the discussion that follows, I explain why the section 14(1)(d) exception does not apply to any of the information at issue. I also explain why the section 14(1)(f) exception applies to some of the information, meaning that some of the information should be disclosed to the appellant. Lastly, I explain why I uphold the township's decision to withhold the remuneration information and the signatures.

***Section 14(1)(d) – the exception for another statutory authorization***

[42] The appellant submits that section 14(1)(d) applies to the affected party's salary and benefits (i.e. the remuneration information and contribution information). Section 14(1)(d) states,

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;

[43] The appellant states that sections 3 and 4 of the *Public Sector Salary Disclosure Act, 1996*<sup>10</sup> (the "PSSDA") provide sufficient authority to disclose the affected party's salary and benefits. He explains that the PSSDA requires this information to be made public. Sections 3(1) and 4 of the PSSDA states,

Public disclosure

3(1) Not later than March 31 of each year [...] every employer shall make available for inspection by the public without charge a written record of the amount of salary and benefits paid in the previous year by the employer to or in respect of an employee to whom the employer paid at least \$100,000 as salary.

Contents of record

3(2) The record shall indicate the year to which the information on it relates, shall list employees alphabetically by surname, and shall show for each employee,

(a) the employee's name [...];

(b) the office or position last held by the employee [...];

(c) the amount of salary paid by the employer to the employee in the year;

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<sup>10</sup> S.O. 1996, c. 1, Sched. A.

(d) the amount of benefits reported to Revenue Canada, Taxation, under the Income Tax Act (Canada) by the employer for the employee in the year.

Copy of record

4 (1) An employer shall promptly furnish a person with a copy of a record or statement that the employer is required to make available under section 3 if the person requests a copy and pays the employer the fee prescribed by the regulations. 1996, c. 1, Sched. A, s. 4 (1).

...

Information may be published

(3) There is no copyright with regard to a record or statement referred to in section 3, and the information contained in it may be published by any member of the public or disclosed by any ministry of the Crown to whom it is provided pursuant to a regulation made under clause 8 (1) (d). 1996, c. 1, Sched. A, s. 4 (3).

[44] The township did not address this argument.

*Finding – section 14(1)(d) does not apply*

[45] 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.<sup>11</sup>

[46] The IPC has considered whether the *PSSDA* provides sufficient authority pursuant to section 14(1)(d) in several prior orders.<sup>12</sup> The *PSSDA* has been found to provide sufficient authority in certain cases, but each case must be assessed on the basis of the information at issue.

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<sup>11</sup> Orders M-292, MO-2030, PO-2641 and MO-2344.

<sup>12</sup> See for example Order PO-2641 in which the *PSSDA* was found to provide sufficient authorization for section 14(1)(d) and Order MO-3044 in which the *PSSDA* was found not to provide sufficient authorization. The adjudicator in Order MO-3044 considered the applicability of the *PSSDA* in the context of records similar to those at issue in this appeal, information contained in an employment contract of a member of the Orangeville Police Services Board. The specific information at issue was described as “the component parts of the [member’s] salary.” The adjudicator in MO-3044 determined that the *PSSDA* did not provide sufficient statutory authority to disclose the information under section 14(1)(d) on the basis that the information was different in kind than what is specified in section 3(2)(c) of the *PSSDA* (i.e. the “amount of salary paid by the employer to the employee in the year”).

[47] Based on my review of the information at issue and the PSSDA, I find that neither the contribution or remuneration information reveal information that would be required to be disclosed under section 3(1) of the *PSSDA*. I am unable to elaborate further about the nature of the information at issue without revealing the content of the record. As a result, section 14(1)(d) does not apply to any of the remaining information at issue because there is no applicable statutory authority authorizing disclosure.

***Section 14(1)(f) – the exception for disclosures that do not constitute an unjustified invasion of personal privacy***

[48] The appellant submits that disclosure of the remaining information would not constitute an unjustified invasion of personal privacy, while the township takes the opposite view. The township begins by restating that the default position in section 14(1) of the *Act* is that personal information should be withheld. The appellant acknowledges the township's duty to withhold personal information but he argues that the section 14(1)(f) exception to this rule applies to the information at issue.

*The affected party's name*

[49] Before turning to the parties' arguments, I will first address the township's decision to redact the affected party's name. Although there is no mystery whose name has been redacted (in light of the wording of the access request), the appellant nevertheless argues that the name should be disclosed. I agree.

[50] As I will explain below, I have determined that some of the withheld information must be disclosed because the section 14(1)(f) exception to section 14(1) applies to it. As I will also explain, some information in the agreement has already been disclosed, apparently because the township reached a similar conclusion for that information. The implication of this is that some personal information of the affected party has been or will be disclosed. However, a name on its own is not personal information. In these circumstances, the affected party's name should be disclosed because there is no risk that its disclosure will reveal any other personal information of the affected party that will not be specifically addressed in this order.

*Determining whether the section 14(1)(f) exception to the mandatory personal privacy exemption applies*

[51] Unless I determine that the section 14(1)(f) exception to the mandatory personal privacy exemption applies, section 14(1) provides that the remaining withheld information must not be disclosed. The section 14(1)(f) exception will apply if I determine that disclosure would not constitute an unjustified invasion of personal privacy.

[52] As I will address in more detail below in the context of the parties' arguments, sections 14(2), (3) and (4) help in determining whether disclosure would constitute an unjustified invasion of personal privacy. If any of the paragraphs in section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal

privacy. Section 14(4) lists situations that would not be an unjustified invasion of personal privacy that prevails over the section 14(3) presumptions.

[53] When neither of sections 14(3) nor (4) apply, the factors in section 14(2) are considered to determine whether disclosure would constitute an unjustified invasion of personal privacy. Some of the section 14(2) factors, if present, weigh against disclosure while others weigh in favour of disclosure.

*Do any of the section 14(3) presumptions apply?*

#### Representations

[54] The township submits that the presumption at section 14(3)(d) for employment history applies because the agreement contains detailed information about the affected party's employment with the township.

[55] The township also argues that the presumption at section 14(3)(f) for an "individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities or credit worthiness" applies because it says that the information relates to the affected party's "remuneration and other financial entitlements."

[56] The appellant rejects the township's claims that any of the section 14(3) presumptions apply, arguing mainly that section 14(4) prevails over any presumptions that may arise under section 14(3).

[57] The affected party does not specifically address this issue.

#### Findings about section 14(3)

[58] Section 14(3)(d) states,

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

(e) relates to employment and educational history;

[59] Information that 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.<sup>13</sup> Information contained in resumes<sup>14</sup> and work histories<sup>15</sup> also

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<sup>13</sup> Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.

falls within the scope of section 14(3)(d).

[60] Based on my review of it, none of the information remaining at issue constitutes employment history within the meaning of section 14(3)(d). While there is no question that the agreement contains employment information about the affected party, the withheld information does not reveal information about the employment history of the affected party. Most of the information remaining at issue (i.e. the termination clause, remuneration information, minimum workweek hours, vacation information, and contribution information) is about the affected party's future entitlements and do not reveal anything about the affected party's prior employment, prior employers, retirement eligibility or use of any entitlements. (For completeness, neither the affected party's nor the witnesses' signature are in the nature of information that is captured by section 14(3)(d).)

[61] I find that the section 14(3)(d) presumption does not apply. I will now consider the possible application of the section 14(3)(f) presumption.

[62] Section 14(3)(f) states,

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

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[63] Lump sum payments that are separate from an individual's salary have consistently been found not to fall within section 14(3)(f).<sup>16</sup> Contributions to a pension plan have been found to fall within section 14(3)(f).<sup>17</sup>

[64] Having reviewed the information, I find that the remuneration information and the contribution information constitute information about the affected party's finances and income within the meaning of section 14(3)(f). The information is specific to the affected party and can be contrasted with information describing a salary range or a boilerplate benefit program. As a result, I find that disclosure of the remuneration information and the contribution information is presumed to constitute a presumed unjustified invasion of personal privacy.

[65] However, this presumption may be overcome if any of the circumstances in section 14(4) are present, the issue considered next in this order.

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<sup>14</sup> Orders M-7, M-319 and M-1084.

<sup>15</sup> Orders M-1084 and MO-1257.

<sup>16</sup> Orders M-173, MO-1184, MO-1469, MO-2174 and MO-2318.

<sup>17</sup> Orders M-173, P-1348 and PO-2050.

*Does section 14(4) apply?*

[66] I will now discuss whether section 14(4) applies to any of the information at issue, which would mean that disclosure of the information is not an unjustified invasion of personal privacy.

[67] The township submits that section 14(4) does not apply. The appellant submits that sections 14(4)(a) and (b) apply.

Section 14(4)(a) applies only to the vacation information and the contribution information

[68] Section 14(4)(a) deems that disclosure of certain types of general information about an employee's terms and conditions of work is not an unjustified invasion of personal privacy. It states:

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

(a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

[69] The township submits that section 14(4)(a) does not apply, arguing that the withheld information is "not merely information relating to the existence of a particular benefit, rather it sets out the financial value associated with that benefit and is distinct from the type of information intended to be captured by section 14(4)(a)." The township says that it has already disclosed information in the agreement, such as the salary range, that section 14(4)(a) deems not to constitute an unjustified invasion of personal privacy. Further, it submits the IPC has determined in prior orders that where the information at issue relates to the specific salary of an individual, section 14(4)(a) does not apply, citing Order MO-3191-F.

[70] The appellant states that information should be disclosed to the extent that it relates to the affected party's "classification" or "employment responsibilities" in accordance with section 14(a).

[71] To begin, the affected party is an employee of the township and section 14(4)(a) therefore requires consideration. Only the remuneration, contribution and vacation information are arguably captured by section 14(4).

[72] Based on my review of it, I find that the remuneration information is not in the nature of information described in section 14(4)(a). The withheld remuneration information states the specific salary of the affected party and can be contrasted with information that the township has already disclosed in the agreement, such as the salary ranges and job duties that are in the nature of the type of information described in section 14(4)(a).

[73] However, I find that the vacation information, the contribution information and the termination clause pertain to benefits of the affected party and therefore disclosure of this information would not constitute an unjustified invasion of personal privacy under section 14(4)(a). The IPC has interpreted "benefits" to include entitlements, in addition to base salary, that an employee receives as a result of being employed by the institution, such as insurance-related benefits, termination allowances, and vacation.<sup>18</sup>

[74] I also find that the minimum workweek hours qualifies as information that discloses the employment responsibilities of the affected party<sup>19</sup> and section 14(4)(a) therefore applies to it. The information at issue is general, setting out the minimum hours required to be worked each week and, for example, does not contain records of actual hours worked or logged.

[75] This means that disclosure of the vacation information, the contribution information, the termination clause and the minimum workweek hours would not constitute an unjustified invasion of personal privacy, that the section 14(1)(f) exception to the mandatory personal privacy exemption applies and it must be disclosed.

#### Section 14(4)(b) does not apply to the agreement

[76] The appellant briefly argues that the information is a "financial detail" of a "contract for personal services with the institution" within the meaning of section 14(4)(b). The township states summarily that the agreement is not a contract for personal services so this section does not apply.

[77] Section 14(4)(b) applies to financial and other details of contracts for personal services between an institution and a consultant or independent contractor, if that information is found to qualify as personal information.<sup>20</sup> The IPC's long-standing approach is that a contract for personal services is distinct from an employment contract.<sup>21</sup> In my view, this approach is sensible and properly takes into account principles of statutory interpretation, that section 14(4)(b) must be read in its entire context, in its grammatical and ordinary sense and harmoniously with the scheme of the *Act*.<sup>22</sup> That section 14(4)(a) refers to "officers or employees" when section 14(4)(b) refers to "contracts for personal services" means that the drafters must have intended there to be a difference between the two types of relationship at issue in each paragraph.

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<sup>18</sup> Orders M-23 and PO-1885.

<sup>19</sup> See Order MO-2470.

<sup>20</sup> Orders MO-1361 and PO-2435.

<sup>21</sup> Order M-373.

<sup>22</sup> *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR. 27 at para. 21, quoting from Elmer Driedger, *Construction of Statutes* (2nd ed. 1983) at p. 87.

[78] As is already clear, the affected party is an employee of the township, not engaged in a “contract for personal services” with it. As a result, section 14(4)(b) does not apply to any of the information at issue.

### Summary

[79] As a result of these findings, disclosure of the remuneration information remains a presumed unjustified invasion of personal privacy. When 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)<sup>23</sup> and I will therefore uphold this part of the township’s decision.

[80] It is not necessary to consider the parties’ other arguments about section 14(2) in relation to the termination clause, remuneration information, minimum workweek hours, vacation information and contribution information because all this information has been addressed above.

[81] The only remaining information at issue are the signatures of the affected party and the witness.

### *The affected party and the witness’ signature*

[82] None of the parties made arguments about the affected party’s or witness’ signature.

[83] I have reviewed whether any of the presumptions at section 14(3) apply to the signatures and confirmed that they do not. I must therefore consider the factors in section 14(2) to determine whether the exception at section 14(1)(f) applies – that is, would disclosure *not* constitute an unjustified invasion of personal privacy.<sup>24</sup>

[84] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors 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.<sup>25</sup>

[85] In my view, none of the factors favouring disclosure<sup>26</sup> are present in relation to either signature and I therefore find that the section 14(1)(f) exception is not established. Specifically, I considered but ruled out the possibility that disclosure of the signatures was desirable to subject the activities of the township to public scrutiny (section 14(2)(a)). In consideration of the information at issue, none of the other

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<sup>23</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

<sup>24</sup> Order P-239.

<sup>25</sup> Orders PO-2267 and PO-2733.

<sup>26</sup> Section 14(2)(a), (b), (c), (d).



factors favouring disclosure are arguably relevant.

[86] In other words, the township is required to withhold the signatures under section 14(1) and I uphold its decision to do so.

**ORDER:**

1. I order the township to disclose to the appellant the following: the affected party's name throughout the agreement; the remaining withheld information in clauses 1.4, 4.1, 4.3, 3.2, 3.3, 3.5, 3.6; the affected party's name; and, the names and signatures of the township officials who signed the agreement by **July 6, 2021** but not before **June 28, 2021**.
2. I uphold the township's decision to withhold the remuneration information in clause 2.1, the affected party's signature, the witness' signature and the home address.
3. I uphold the township's decision that the section 52(3)3 exclusion applies to records 2-6.
4. In order to verify compliance with order provision 1, I reserve the right to require the township to provide me with a copy of the agreement that it provides to the appellant.

Original signed by: \_\_\_\_\_  
Valerie Jepson  
Adjudicator

\_\_\_\_\_ May 31, 2021