

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4076

Appeal MA19-00701

Township of Scugog

June 28, 2021

Summary: In a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), the requester sought access to records relating to the decision of the Township of Scugog (the township) to hire an integrity commissioner. Amongst the responsive records located by the township was a table containing an evaluation of the various candidates for the position, as well as the application of the successful candidate. This order resolves the appeal of the township's decision to withhold these records under a number of exemptions. The adjudicator finds that some information withheld is *personal information*, as defined by section 2(1) of the *Act*, and that this personal information is exempt under the mandatory personal privacy exemption at section 14(1) of the *Act*. The adjudicator also finds that the township has not established that the discretionary exemptions claimed under sections 7(1) (advice or recommendations) or 11 (economic or other interests) apply. She finds that section 16 does not apply to the information exempt under section 14(1), and as a result, it is not necessary to consider the mandatory exemption at section 10(1) claimed over one of the records. Accordingly, the adjudicator orders the township to disclose portions of one record, and dismisses the appeal.

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"), 2(2.1), 2(2.2), 7(1), 10(1), 14(1), 11(a), 11(c), 11(d), 11(e), 16, and 42.

Orders Considered: Orders MO-3355 and MO-3819-I.

OVERVIEW:

[1] This order addresses the issue of access to Township of Scugog records related

to its recruitment of an integrity commissioner. Through a request made under the *Municipal Freedom of Information and Protection of Personal Privacy Act* (the *Act*), an individual sought access to information relating to the decision of the Township of Scugog (the township) to hire an integrity commissioner to investigate certain complaints. Amongst the responsive records identified by the township were two (an RFQ evaluation table and the successful candidate's RFQ response) that it withheld under the exclusion at section 52(3) (employment or labour relations) of the *Act*. The requester appealed the township's decision, and in Interim Order MO-3819-I,¹ I found that those records were not excluded from the scope of the *Act* under section 52(3). As a result, I ordered the township to issue an access decision regarding the records without relying on the exclusion at section 52(3). The township did so, and this order resolves the appeal of the township's decision to withhold the records under the discretionary exemptions at sections 7(1) (advice or recommendations) and 11(a), 11(c), 11(d), 11(e) (economic or other interests), and the mandatory exemptions at sections 10(1) (third party information) and 14(1) (personal privacy) of the *Act*. In Interim Order MO-3819-I, I referred to these records as records 4 and 5, and I will do so in this order as well.

[2] The requester, now the appellant, appealed the township's access decision to withhold the two records to the Office of the Information and Privacy Commissioner of Ontario (the IPC). A mediator was appointed to explore resolution.

[3] As a result of mediation, the township issued a revised access decision to disclose portions of Record 5 to the appellant. The affected third party whose interests might be affected by disclosure did not appeal the township's decision, so the township proceeded to disclose those portions of Record 5 to the appellant.

[4] The appellant advised the mediator that he wished to pursue access to the information that remained withheld at the next stage of the appeal process.

[5] Since no further mediation was possible, the appeal moved to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[6] As the adjudicator of this appeal, I began an inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the township and an affected party. I asked for written representations from each of them in response to the Notice of Inquiry, but did not receive written representations from either party. I then gave the appellant an opportunity to provide written representations in response to the Notice of Inquiry. The appellant provided representations. In his representations, he

¹ Interim Order MO-3819-I resolved most of the issues in Appeal MA18-252. The final order issued in Appeal MA18-252, Final Order MO-3909-F, resolved the issue of reasonable search.

indicated that he was not interested in pursuing access to *personal information* under the *Act*. After reviewing the appellant's representations, I invited the township to provide written representations in response. I did not receive a response from the township. Accordingly, I concluded the inquiry.

[7] For the reasons that follow, I uphold the township's decision, in part, and find that:

- some of the information withheld in Record 4 (the RFQ evaluation table) and all of the information withheld in Record 5 (the successful candidate's RFQ response) is personal information and is exempt from disclosure under the mandatory personal privacy exemption at section 14(1);
- the township has not met its burden to establish that any of the discretionary exemptions at sections 7(1), 11(a), 11(c), 11(d), or 11(e) apply to the remaining portions of Record 4;
- the public interest override at section 16 does not apply to override the application of section 14(1).

[8] Given my finding that section 14(1) applies to exempt Record 5, there is no need to review the possible application of section 10(1) to that record. Further, in light of my finding that the township did not meet its burden of proof to establish sections 7(1) or 11, there is no need to discuss the public interest override at section 16 in relation to those exemptions.

[9] As a result of my findings, I will order the township to disclose the non-exempt portions of Record 4, and I dismiss the appeal.

RECORDS:

[10] Records 4 and 5 relate to a specified Request for Quotation (RFQ) issued by the township for the professional services of an integrity commissioner. Record 4 is a table that the township has described as an evaluation of proposals corresponding to the RFQ in question.² It is two pages long, and has been withheld in full under sections 7(1), 11 and 14(1).

[11] Record 5 is the RFQ response of the successful candidate. The township withheld pages 1, 2, 3, 4, and 7 from disclosure under sections 10(1), 11 and 14(1), and disclosed the remaining pages to the appellant. Pages 1 and 2 are a cover letter, pages 3 and 4 are a resume, and page 7 contains reference information.

² It did so in the appeal that resulted in Interim Order MO-3819-I.

ISSUES:

- A. Do the records contain *personal information*? If so, to whom does it relate?
- B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in records 4 and 5?
- C. Do the discretionary exemptions for advice or recommendations and valuable government information at sections 7(1) and 11(a), 11(c), (d), or 11(e) apply to the remaining portions of Record 4?
- D. Is there a compelling public interest in disclosure of the remaining portions of the records that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

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

[12] As I will explain below, I find that the records contain *personal information*, as defined in section 2(1) of the *Act*, relating to several identifiable individuals.

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

“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,

...

(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;

[14] 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.³

[15] 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.

The appellant's position

[16] By way of background to better understand the appellant's position, I note, that in a certain year, and many months apart, the township received complaints against certain township councillors. After receiving the first complaint, the township issued a request for quotations (RFQ) for the position of an integrity commissioner to investigate the complaint. The RFQ was disclosed to the appellant through his previous appeal. The township compared the bids in response to the RFQ and generated Record 4, which is an RFQ evaluation table. The successful bid in response to the RFQ is Record 5.

[17] Months after receiving the first complaint, the township received a complaint against two township councillors. In response, it hired the bidder who had won the RFQ earlier in the year.

[18] The appellant submits that any information in the records would presumably be about the individuals in a professional capacity and, therefore, would not qualify as personal information under section 2(2.1) of the *Act*. However, he states that if there is personal information that can be severed to protect personal privacy while permitting disclosure "to allow public scrutiny of the process, that would be acceptable."

³ Order 11.

[19] With respect to Record 4, the RFQ evaluation table, the appellant states that this record relates to the evaluation of bids in response to an RFQ for the hiring of an integrity commissioner to investigate the first complaint.

[20] Turning to Record 5, which consists of the successful candidate's cover letter, resume, and reference information, the appellant refers to the type of personal information listed at paragraph (f) of section 2(1), which relates to correspondence sent to an institution. He submits that at least hypothetically, this record might include information relating to the individual's employment history, education or other background information intended to demonstrate his qualifications for the contract. He asserts that such information is publicly available on the Integrity Commissioner's current business website at a specified web address. The appellant also asserts that additional information, including the individual's regulatory history, is publicly available through a specified professional governing body. The appellant argues that "it would be more a matter of the extent of the detail provided, rather than the nature of the information, as the [individual involved] has voluntarily made much of it public already."

Analysis/findings

[21] 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.⁴

[22] 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.⁵

[23] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁶

Information that qualifies as personal information under the Act

[24] Record 4 is a table setting out the township's evaluation of four proposals made in response to the RFQ for the contract to be its integrity commissioner, one successful, the other three not. I find that this record contains personal information about individuals, even though it is about them in an employment capacity, for reasons I will explain below.

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[25] In my view, because the RFQ involves the awarding of a contract for professional services provided by an individual, the fact that an individual made a proposal that was rejected is the personal information of the unsuccessful candidates under section 2(1) of the *Act*. I find support for this approach in Order MO-3355, which dealt with unsuccessful candidates who had applied to be appointed to fill vacancies on the Waterfront Advisory Committee of the Corporation of the Town of Coburg. In Order MO-3355, the adjudicator held that the names of the unsuccessful applicants are the personal information of those individuals pursuant to paragraph (h) of the definition of "personal information." She found that:

Disclosure of the names would reveal the fact that these individuals applied to be appointed to the Waterfront Advisory Committee and were unsuccessful, which is information about an identifiable individual in their personal capacities. While, as noted above, information associated with an individual in a professional capacity is generally not considered to be that individual's personal information, an individual's failed application for a board appointment has a personal aspect to it. This is distinct from a record that, for example, merely identifies an individual in his or her professional capacity as an employee or appointee.

[26] I find that this approach is applicable here, for similar reasons. Specifically, I find that disclosure of the names of the unsuccessful candidates and/or the corporate name(s) that would identify them, information relating to their work history, and the views or opinions of others about them is their personal information under paragraphs (b), (g), and (h) of the definition of personal information at section 2(1) of the *Act*. In making this finding, I considered the possible application of the *personal information* exception in section 2(2.1), set out above. However, despite the professional context in which it appears, based on my review of this information, I find that the disclosure of the unsuccessful candidates' names, and the other information about them, would reveal something of a personal nature about the unsuccessful candidates.⁷

[27] Based on my review of Record 4, I find that a small portion of the information relating to the successful candidate personal information, under paragraphs (b) and (h) of the definition of personal information at section 2(1) of the *Act*.

[28] With respect to Record 5, I find that it contains personal information about an identifiable individual, including information that is listed under paragraphs (b) (employment history), (e) (views or opinions), (g) (views or opinions of others about the individual) and (h) (name, in conjunction with other personal information) of the definition in section 2(1) of the *Act*. Although the information at issue in the record appears in a professional or business context, I find that it qualifies as personal

⁷ Order PO-2225.

information relating to the successful candidate because it reveals something of a personal nature about that individual. I cannot elaborate on this more without disclosing details of the withheld pages of Record 5. With respect to the appellant's argument that the personal information at issue is available online, or otherwise publicly accessible, it must be noted that even if this was the case (and I make no findings about that), that would not mean that the information at issue is not *personal information* as defined by *MFIPPA*.

[29] I will review the application of the mandatory personal privacy exemption to records 4 and 5, below.

Information that does not qualify as personal information under the Act

[30] The remaining portions of Record 4 consist of some of the details about the evaluation of the bids of the unsuccessful candidates, and I find that these portions do not contain information that qualifies as personal information under the *Act*. This information includes hourly rates, scores assigned by the township, and portions of comments by individuals that were contacted about the unsuccessful candidates that would not identify them. I find that the personal information in Record 4 can be severed from information that does not qualify as *personal information* in Record 4.

[31] In addition, I find that the portions of Record 4 that relate to the successful candidate do not constitute personal information under the *Act*. I find that the information pertaining to this candidate, as the successful candidate, relates to him in a professional capacity and that its disclosure would not reveal something of a personal nature about him.

[32] Information that is not personal information cannot be exempt under the personal privacy exemption at section 14(1) of that *Act*. However, the township claimed sections 7(1) and 11 over Record 4, and I will review those claims in relation to the portions of Record 4 that I have found do not contain personal information, under Issue C in this order.

Issue B: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in records 4 and 5?

[33] 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. As I will explain below, I find that the mandatory exemption at section 14(1) applies to the personal information in records 4 and 5.

[34] 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.

[35] The appellant states that he can only speculate on most considerations regarding section 14(1) because he has not seen the records at issue. Having reviewed the records, I will now consider whether section 14(1) applies to the withheld information.

Do any of the exceptions at sections 14(1)(a) to (e) apply?

[36] If the information fits within any of paragraphs (a) to (e) of section 14(1), it is not exempt from disclosure.

[37] The appellant states that he cannot comment as to whether consent was given to release the personal information at issue, under paragraph 14(1)(a). He also states that he does not believe that paragraphs 14(1)(b) through (e) apply, but says he is not familiar with all the possible statutes that may be relevant to paragraph (d).

[38] Based on the evidence before me, and having reviewed the records, I find that none of the exceptions at paragraphs (a) to (e) of section 14(1) apply to Record 4 or the pages at issue in Record 5.

Does the exception at section 14(1)(f) apply?

[39] Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure. Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

Do any of the presumptions in paragraphs (a) to (h) of section 14(3) apply?

[40] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if an exception in section 14(4) or the public interest override at section 16 applies.⁸

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

[41] A person's name and professional title, without more, does not constitute *employment history*.

[42] However, information contained in resumes⁹ and work histories¹⁰ falls within the

⁸ Order P-216.

⁹ Orders M-7, M-319 and M-1084.

¹⁰ Orders M-1084 and MO-1257.

scope of section 14(3)(d). Past IPC orders have also held that information such as that which reveals the start and end dates of employment, the number of years of service, and the last day worked, falls within the section 14(3)(d) presumption.¹¹

[43] The appellant submits that an individual must promote their experience, qualifications, and background to a broad audience in order to secure contracts and solicit clients. He argues that examination of such personal information would, therefore, not be an unjustified invasion of personal privacy, and the presumption at section 14(3)(d) would not apply.

[44] While I agree with the premise that an individual seeking to win a contract would submit information about their employment or educational history to a prospective employer, that is not determinative of whether the presumption against disclosure at section 14(3)(d) of the *Act* applies. All that is needed for the presumption to apply is that it is personal information that relates to an individual's employment or educational history.

[45] Based on my review of the personal information at issue in Record 4, it clearly relates to the employment and/or educational history of identifiable individuals (the unsuccessful candidates). Therefore, I find that the presumption at section 14(3)(d) applies to the personal information in Record 4.

[46] Based on my review of the personal information at issue in Record 5, I find that it relates to the employment and/or educational history of the successful candidate. My finding applies to all of the pages withheld from this record, as they each contain information about his employment and/or educational history, albeit in different formats (by letter, in a resume, and in work history on the referral form). Therefore, I find that the presumption at section 14(3)(d) applies to Record 5.

[47] For the sake of completeness, I will also discuss the presumption at section 14(3)(g).

Section 14(3)(g): personal recommendations

[48] The terms *personal evaluations* or *personnel evaluations* refer to assessments made according to measurable standards.¹²

[49] The thrust of section 14(3)(g) is to raise a presumption concerning recommendations, evaluations or references about the identified individual in question,

¹¹ Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.

¹² Orders PO-1756 and PO-2176.

rather than evaluations, etc., by that individual.¹³

[50] Based on my review of records 4 and 5, I find that they contain information relating to personal recommendations or evaluations. As a result, I find that the presumption at section 14(3)(g) applies to that personal information.

[51] 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).¹⁴ In this case, I have found that the presumptions at sections 14(3)(d) and 14(3)(g) apply. Since they cannot be rebutted by factors under section 14(2), I will not consider whether the public scrutiny factor section 14(2)(a) applies, as argued by the appellant. However, I will review his arguments about that type of consideration generally under section 16 (Issue D in this order).

Does section 14(4) apply?

[52] If any of the paragraphs in section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1).

[53] The appellant argues that section 14(4)(b) may apply.

[54] 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.¹⁵

[55] As the personal information in Record 4 relates to the unsuccessful candidates, who did not go on to provide services to the township, section 14(4)(b) cannot apply to it.

[56] The appellant states that the financial details of the contract awarded to the integrity commissioner have already been disclosed (his hourly rate and detailed final billing). He argues that "any other details of the contract that might constitute personal information would, in [his] view, fall under paragraph 14(4)(b)."

[57] Even if the successful candidate was an independent contractor for the purpose of section 14(4)(b), it does not follow that the personal information at issue relating to him falls within the exception in section 14(4)(b). The nature of the information at issue belonging to this individual in Record 5 would not disclose financial or other details of his contract with the township. As discussed, the personal information belonging to this individual relates to his views or opinions, the views or opinions of others about him,

¹³ Order P-171.

¹⁴ *John Doe*, cited above.

¹⁵ Orders MO-1361 and PO-2435.

and his employment and educational history. I find that this information is qualitatively distinct from the details of his contract with the township.

[58] In conclusion, I find that the personal information in records 4 and 5 is exempt from disclosure under the mandatory exemption at section 14(1) because the presumptions at sections 14(3)(d) and 14(3)(g) apply to it, and none of the exceptions at section 14(4) apply.

[59] I considered whether these exempt portions of records 4 and 5 could reasonably be severed, but I find that the personal information in these records cannot be further severed.

Issue C: Do the discretionary exemptions for advice or recommendations and valuable government information at sections 7(1) and 11(a), 11(c), (d), or 11(e) apply to the remaining portions of record 4?

[60] The township also claimed the discretionary exemptions at sections 7(1) and 11 over Record 4, but for the reasons that follow, I find that the township has failed to establish that they apply, and I do not uphold the application of these exemptions.

[61] Under section 42 of the *Act*, a party resisting disclosure of a record (or part of a record) has the burden of proof that the record (or part of the record) falls within one of the specified exemptions in the *Act*.¹⁶ In this appeal, that party is the township. As mentioned, it provided no representations in this appeal.

[62] Without any evidence from the township in support of its section 7(1) claim, I find that the township has not established that disclosure of Record 4 would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution, under section 7(1) of the *Act*. Furthermore, based on my review of portions of Record 4 that are remaining at issue, I am not satisfied that they contain information that itself consists of advice or recommendations, or, if disclosed, would permit the drawing of accurate inferences as to the nature of the actual advice or recommendations.¹⁷

[63] Similarly, without any evidence from the township provided in this inquiry, I find that it did not establish that any of the discretionary exemptions at sections 11(a), (c), (d), or (e) apply to Record 4.¹⁸ The purpose of section 11 is to protect certain economic

¹⁶ Section 42 of the *Act* says: "If a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this Act lies upon the head."

¹⁷ Order P-1054.

¹⁸ Sections 11 (a), (c), (d), and (e) of the *Act* say:

A head may refuse to disclose a record that contains,

interests of institutions. Generally, it is intended to exempt commercially valuable information of institutions to the same extent that similar information of non-governmental organizations is protected under the *Act*.¹⁹

[64] Under sections 11(a) and 11(e), the institution must show that the information meets a three- and four-part test, respectively.²⁰ From my review of Record 4, I am unable to conclude that the portions of Record 4 remaining at issue meet either of these tests for exemption.

[65] Similarly, for sections 11(c) or (d) to apply, the institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.²¹ While the failure to provide detailed evidence will not necessarily defeat the institution's claim for exemption where harm can be inferred from the surrounding circumstances, parties should not assume that the harms under section 11 are self-evident or can be proven simply by repeating the description of harms in the *Act*.²² Without any evidence at all from the township, it has provided no reasonable basis upon which I could find that the risk of harms under sections 11(c) or 11(d) have been established. Based on my review of Record 4, I am unable to find that these exemptions apply.

[66] For these reasons, I do not uphold the application of sections 7(1), 11(a), 11(c), 11(d), or 11(e) to Record 4.

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- (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value;
 - (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
 - (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;
 - (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution;

¹⁹ *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.

²⁰ For section 11(a) to apply, the institution must show that the information at issue, is a trade secret, or financial, commercial, scientific or technical information, belongs to an institution, and has monetary value or potential monetary value. For section 11(e) to apply, the institution must show that: the record contains positions, plans, procedures, criteria or instructions, that these position, plans, procedures, criteria or instructions were are intended to be applied to negotiations, that the negotiations are being carried on currently (or will be carried on in the future), and that the negotiations are being conducted by or on behalf of an institution (see Order PO-2064).

²¹ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

²² Order MO-2363.

[67] I will now discuss whether the public interest override in section 16 applies to the information I have found to be exempt under section 14(1).

Issue D: Is there a compelling public interest in disclosure of the exempt portions of records 4 and 5 that clearly outweighs the purpose of the section 14(1) exemption?

[68] For the reasons that follow, I find that the public interest override at section 16 does not apply to the portions of the records I have found to be exempt under section 14(1).

[69] Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 9.1, 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.

[70] 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.

[71] 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.²³

Compelling public interest

[72] 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.²⁴ 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.²⁵

²³ Order P-244.

²⁴ Orders P-984 and PO-2607.

²⁵ Orders P-984 and PO-2556.

[73] A public interest does not exist where the interests being advanced are essentially private in nature.²⁶ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.²⁷

[74] The word *compelling* has been defined in previous orders as *rousing strong interest or attention*.²⁸

[75] Any public interest in *non*-disclosure that may exist also must be considered.²⁹ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of *compelling*.³⁰

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

- the records relate to the economic impact of Quebec separation³¹
- the integrity of the criminal justice system has been called into question³²
- public safety issues relating to the operation of nuclear facilities have been raised³³
- disclosure would shed light on the safe operation of petrochemical facilities³⁴ or the province's ability to prepare for a nuclear emergency³⁵
- the records contain information about contributions to municipal election campaigns³⁶

[77] 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 considerations³⁷

²⁶ Orders P-12, P-347 and P-1439.

²⁷ Order MO-1564.

²⁸ Order P-984.

²⁹ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

³⁰ Orders PO-2072-F, PO-2098-R and PO-3197.

³¹ 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.).

³² Order PO-1779.

³³ 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.

³⁴ Order P-1175.

³⁵ Order P-901.

³⁶ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations³⁸
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding³⁹
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter⁴⁰
- the records do not respond to the applicable public interest raised by appellant⁴¹

Purpose of the exemption

[78] 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.

[79] 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.⁴²

The appellant's representations

[80] To summarize the appellant's position on this issue, he asserts that given the circumstances surrounding the township's decision to hire an integrity commissioner, section 16 should apply to support disclosure and shed light on alleged irregularities or gaps in information regarding the hiring and mandate of the integrity commissioner who was retained. He submits that the circumstances call for greater public scrutiny of the township in this regard.

[81] He states that the type of information that he is seeking relates to the definition of the scope of work to be performed and the criteria to be followed by the integrity commissioner in investigating the complaint against township councillors. He argues that this background is relevant to the proposal made by the successful bidder.

³⁷ Orders P-123/124, P-391 and M-539.

³⁸ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

³⁹ Orders M-249 and M-317.

⁴⁰ Order P-613.

⁴¹ Orders MO-1994 and PO-2607.

⁴² 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.).

Analysis/findings

[82] Based on my review of the records and the appellant's representations, I am not satisfied that the requirements of section 16 are established in the circumstances.

[83] I acknowledge that there may be a relationship between Record 5, generally, and the *Act's* central purpose of shedding light on the operations of government,⁴³ in the broad sense of showing further details about the unsuccessful candidates (in Record 4), and the successful candidate's response to the RFQ (in Record 5).

[84] However, I note again that the word *compelling* has been defined in previous orders as "rousing strong interest or attention".⁴⁴ It is not clear from the evidence before me that the exempt personal information in the records can be characterized in that way.

[85] In addition, having reviewed the personal information that I found exempt under section 14(1) above, I find that it does not correspond to what the appellant is seeking. Specifically, I find that the exempt personal information in the RFQ evaluation table (Record 4) and the successful candidate's covering letter, resume, and reference form (the pages withheld in Record 5) would not shed light on the scope of work defined by the township or the criteria that were to be used in assessing the complaint that the integrity commissioner was hired to investigate in the first place. Rather, as the appellant himself suggested in his arguments under section 14(1), the portions of Record 5 that are at issue contain personal information that was intended to convince the township to award him the contract.

[86] Taking all of these factors into consideration, I find that any public interest that may be raised with respect to the personal information in the records is not *compelling* in this case. It is, therefore, unnecessary for me to discuss the purpose of the exemption at section 14(1), as the public interest override at section 16 cannot be established without first finding a public interest that is *compelling*. In the circumstances, therefore, I find that section 16 does not apply.

[87] Since I have found that the public interest override does not apply in this appeal, the township must withhold the personal information in Record 4 and pages 1, 2, 3, 4, and 7 of Record 5. Given my finding about Record 5, it is not necessary to consider whether those pages of it are also exempt under the mandatory exemption at section 10(1).

⁴³ Orders P-984 and PO-2607.

⁴⁴ Order P-984.

ORDER:

1. I uphold the township's decision to withhold Record 4, in part. I order the township to withhold the portions of Record 4 that contain personal information that is exempt under section 14(1), as highlighted in a copy of that record which will be sent to the township with this order. I do not uphold the township's decision to withhold the remaining portions of Record 4 under sections 7(1), 11(a), 11(c), 11(d), and 11(e) of the *Act*, and I order the township to disclose the non-exempt portions of Record 4 to the appellant by **August 4, 2021** but not before **July 28, 2021**.
2. I uphold the township's decision to withhold pages 1, 2, 3, 4, and 7 of Record 5 at issue, and I dismiss the appeal.
3. In order to ensure compliance with paragraph 1, I reserve the right to require the township to send me a copy of the pages of records as disclosed to the appellant.

Original signed by: _____

Marian Sami
Adjudicator

June 28, 2021 _____