

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4180

Appeal MA20-00600

Town of Grimsby

March 29, 2022

Summary: The appellant filed a request with the Town of Grimsby (the town) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of the employment agreement of the chief administrative officer (CAO) and payments made to them by the town. The town disclosed in full a record of the CAO's reimbursements for employment-related expenses and issued a decision to grant partial access to the employment agreement, citing the personal privacy exemption in section 14(1) of the *Act* to withhold some information. The appellant appealed the town's decision and sought access to the agreement in full, including access to an email and "Appendix A", that are referenced in the agreement. The appellant took the position that the public interest override in section 16 of the *Act* should apply.

In this order, the adjudicator finds that the personal privacy exemption in section 14(1) only applies to the CAO's salary information and personal email address. However, the adjudicator also finds that there is a compelling public interest in the disclosure of the salary information and orders that the town disclose the agreement and the referenced email (except for the affected party's email address). The adjudicator further finds that the town conducted a reasonable search for "Appendix A".

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of "personal information"), 14(1)(d), 14(1)(f), 14(3)(d), 14(3)(f), 14(4)(a) and 16.

Orders Considered: Orders PO-2519, M-23, PO-1885, MO-3937, P-984 and MO-2563.

OVERVIEW:

[1] The Town of Grimsby (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records pertaining to the hiring of the CAO and town employees.

[2] Following correspondence between the town and the requester, the requester narrowed the scope of the request to the following:

1. I would like to read [the CAO's] employment contract with [the town].
2. Have a copy of all payments made to [the CAO] by [the town] including all salary, gas, travel and entertainment expenses etc.

[3] After notifying the CAO (the affected party) of the request, the town issued a decision granting partial access to the employment agreement with some information severed pursuant to the personal privacy exemption in section 14(1) of the *Act*. The town also disclosed in full a record relating to the affected party's reimbursements for employment-related expenses.

[4] The requester, now the appellant, appealed the town's decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was appointed to explore the possibility of resolving the appeal.

[5] During mediation, the appellant confirmed that they wished to obtain access to the information withheld from the affected party's employment agreement. The appellant also claimed there is a public interest in disclosure of the withheld information and raised the application of the public interest override in section 16 of the *Act*. The mediator contacted the affected party to seek consent to disclose the withheld portions of the agreement but consent was not provided.

[6] In addition, the appellant advised the mediator they were seeking access to an email and "Appendix A", which are both referenced in the employment agreement.

[7] The town located the responsive email and notified the affected party. In a supplementary decision, the town granted partial access to the email with some information withheld pursuant to the personal privacy exemption in section 14(1) of the *Act*. The appellant confirmed that they wished to pursue access to the information withheld from disclosure.

[8] With regard to "Appendix A", the town conducted a search and did not locate it. During mediation, the town advised that the employment agreement does not have an "Appendix A" and the appellant maintained that it ought to exist. Accordingly, the reasonableness of the town's search for "Appendix A" is an issue in this appeal.

[9] As a mediated resolution was not achieved, the file was transferred to the adjudication stage, where an adjudicator may conduct an inquiry. The adjudicator

originally assigned to the appeal sought and received representations from the town, the affected party and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure* and *Practice Direction Number 7*. The file was then transferred to me to continue the inquiry.¹

[10] In this order, I find that the personal privacy exemption in section 14(1) only applies to the affected party's salary and personal email address. In addition, I find that there is a compelling public interest in the disclosure of the affected party's salary that outweighs the purpose of the section 14(1) exemption and find that section 16 applies. Accordingly, I order the town to disclose the entire employment agreement and the email referenced in sections 6.2 and 9.1 of the agreement (except for the affected party's personal email address) to the appellant. I also find that the town conducted a reasonable search for "Appendix A".

RECORDS:

[11] The information at issue is the sections severed from the affected party's employment agreement (7 pages) and a referenced email (1 page).

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Does the mandatory personal privacy exemption in 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 personal privacy exemption?
- D. Did the town conduct a reasonable search for records?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[12] The town has withheld information from the employment agreement on the basis of the section 14(1) personal privacy exemption. This exemption can only apply to personal information and so I must first decide whether the records contain "personal information."

¹ I have reviewed the complete file material, including the representations from the town, the affected party and appellant. I have concluded that I do not need any further information before rendering a decision.

[13] Personal information is defined in section 2(1) of the *Act*, which states, in part:

“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,

...

(d) the address, telephone number, fingerprints or blood type of the individual,

...

(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 is not exhaustive and IPC adjudicators have held that other types of information may also qualify as personal information.²

[15] The *Act* states that the name, title and contact information or designation of an individual in a business, professional or official capacity is not personal information under section 2(1). Nevertheless, if this type of information reveals something of a personal nature about the individual, it may still qualify as personal information.³

[16] In its representations, the town cites Order MO-3684-I and submits that information about individuals in employment contracts generally constitutes their personal information within the meaning of section 2(1). The town’s position is that the severed portions of the agreement in this appeal include information that would reveal the term of the contract, the exact salary to be paid under the contract, negotiated provisions regarding Ontario Municipal Employees Retirement System (OMERS) payments, vacation entitlements and detailed provisions regarding termination including a description of circumstances in which the termination clauses of the contract may be triggered. The town’s position is that the generic clauses of the agreement that are not personal to the appellant are within the portions of the employment agreement that have been disclosed to the appellant.

[17] The town submits that each withheld portion of the agreement reveals information that is about the affected party, an identifiable individual in this context,

² Order 11.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

and thus qualifies as "personal information." In their representations, the affected party states that the severed portions are specific clauses of their employment agreement that are personal in nature so they should be considered personal information.

[18] It is the appellant's position that there must be a reasonable expectation that the information that is severed would identify the affected party, if disclosed. The appellant submits that the severances appear to be standard sections of the employment agreement and accordingly could be information of any employee at the town. The appellant accepts that the severance relating to the exact salary may be an exception as a large salary might identify an individual in senior management.

Analysis and findings

[19] Previous orders of the IPC have consistently found that information about individuals in employment contracts generally constitutes their "personal information."⁴

[20] I have reviewed the information that has been withheld from the employment agreement. I note that it relates to specific aspects of the employment relationship between the town and the affected party, as follows:

- Preamble and section 4 - the term (duration) of the employment,
- Sections 5.1 and 5.3 - the affected party's salary;
- Section 6.2 and the email referenced in that section (including the affected party's personal email address) - benefits;
- Section 7.1 - vacation entitlement;
- Section 13.1 to 13.6 – termination; and
- The date of the agreement.

[21] With one exception, I find that the information severed from the above sections of the agreement and the referenced email qualifies as the affected party's personal information within paragraphs (b), (d), and (h) of the definition in section 2(1) of the *Act*. The portions withheld contain information that relates to the affected party's employment history or financial transactions, which appear with their name and reveal something personal in nature about them and their employment with the town.

[22] With respect to whether the information relates to an identifiable individual, I disagree with the appellant that the affected party is not identifiable. While some parts of the agreement might also appear in the employment agreements of other town employees, the appellant requested the agreement relating to the affected party and that is the record before me.

⁴ 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-3648-I.

[23] Furthermore, while previous IPC orders have found that generic clauses in employment agreements do not contain personal information, the withheld sections of the affected party's agreement are not generic in their nature. I agree with the town that the generic sections of the agreement have already been disclosed to the appellant.

[24] The exception to this finding is the date of the agreement, which previous orders of the IPC have found not to be personal information.⁵ I am not satisfied that the date of the signing of the agreement, as distinct from the effective date of the agreement, is information about the affected party that reveals something of a personal nature about them. Accordingly, I find that the date of the agreement does not qualify as "personal information" and cannot be exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*. I will order the town to disclose the date of the agreement.

[25] I must now consider whether the mandatory personal privacy exemption in section 14(1) applies to the affected party's personal information in the employment agreement and the referenced email.

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

[26] Where a requester seeks personal information of another individual, as is the case in this appeal, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. Section 14(1)(a), which requires disclosure if the affected individual consents, is not relevant here because the affected party has not consented to the disclosure of their information.

[27] The appellant claims two exceptions to the personal privacy exemption in section 14(1) apply to the information at issue in this appeal; namely sections 14(1)(d) and (f), which state:

14(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

...

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

...

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

⁵ Orders MO-3044 and MO-3684-I.

[28] With regard to section 14(1)(f), the factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy.

[29] Section 14(4) lists the types of personal information that fall within the exception to the personal privacy exemption in 14(1)(f), irrespective of whether any of the presumptions in section 14(3) are present. In previous orders, the IPC has found that the application of section 14(4) cannot be "overridden" or "rebutted" by the factors set out in section 14(2).⁶

[30] If any of paragraphs (a) to (c) of section 14(4) apply to the personal information withheld in this appeal, disclosure does not constitute an unjustified invasion of personal privacy and the information is not exempt under section 14(1).

[31] In their representations, the affected party submits that the exception in section 14(1)(f) does not apply because disclosure would constitute an unjustified invasion of their personal privacy.

[32] The affected party also made representations that allude to several of the factors in section 14(2) that weigh against disclosure. They submit that disclosure of the withheld portions of the employment agreement would be an invasion of privacy as the personal information in the "specifically negotiated clauses" should be "confidential labour relations matters." The affected party also submitted that disclosure would expose them to "potentially unfair and/or pecuniary harm" [section 14(2)(e)], would disclose personal information that is highly sensitive [section 14(2)(f)] and could lead to damage to their reputation [section 14(2)(i)].

[33] The affected party further submits that disclosure of the negotiated clauses of the agreement would not be desirable for the purpose of subjecting the activities of the town to public scrutiny [section 14(2)(a)].

[34] The town submits that disclosure of the severed portions of the employment agreement would constitute an unjustified invasion of the affected party's privacy and the exception to the exemption in section 14(1)(f) does not apply in this case. The town's position is that the presumption in section 14(3)(d) applies because the withheld personal information relates to the affected party's employment.

[35] In its representations, the town states that the factors in section 14(2) weigh against disclosure of the withheld information. The town submits that as the information severed from the agreement is not the type that it ever proactively discloses, its release may lead to "unwarranted criticism from the public" as there are no comparators against which to consider the information, unfairly exposing the affected party to harm [section 14(2)(e)]; the information is highly sensitive and relates to employment negotiations so that, if disclosed, it could lead to potential interpersonal conflict at the town [section 14(2)(f)]; it was the affected party's expectation that the

⁶ Order PO-1763.

information would remain confidential [section 14(2)(h)]; and the information could be manipulated or referenced out of context to harm the affected party's reputation [section 14(2)(i)].

[36] It is the town's position that while the public is entitled to scrutinize many aspects of its activities, labour relations are intended to remain confidential. While the town recognizes that public interest may be higher in relation to the employment of its most senior official, it submits that the town made the decision to disclose the majority of the agreement to the appellant and the affected party is entitled to have the portions containing personal information remain confidential and that it is not desirable for the sake of public scrutiny for the public to have access to the same [section 14(2)(a)].

[37] The town submits that none of the circumstances in section 14(4) apply to overcome the presumption in section 14(3)(d). The town relies upon the fact that it has released the majority of the employment agreement to the appellant and it argues that the severed portions at issue in this appeal cannot be characterised as "classification, salary range and benefits, or employment responsibilities" under section 14(4)(a). For each of the types of information withheld from the employment agreement: the term, salary, benefits, vacation and termination clauses, the town submits that they do not fall within the exception to the exemption in section 14(4)(a). I consider these submissions in more detail in my analysis of section 14(4)(a) below.

[38] In their representations, the appellant submits that disclosure of the withheld portions of the employment agreement would not constitute an unjustified invasion of the affected party's personal privacy because the information is of the type that falls within section 14(4)(a) of the *Act*.

[39] It is also the appellant's position that the affected party's salary falls under the exception to the personal privacy exemption in section 14(1)(d) as the *Public Sector Salary Disclosure Act*⁷ (*PSSDA*) authorises disclosure of the affected party's salary as a public sector employee whose income exceeds the \$100,000 threshold. The appellant also states that disclosure would not constitute an unjustified invasion of personal privacy for the purpose of the exception in section 14(1)(f) because the factor set out in section 14(2)(a) (public scrutiny) applies to weigh in favour of the disclosure of the information withheld by the town in the employment agreement.

Analysis and findings

Section 14(1)(d)

[40] I will first consider the section 14(1)(d) exception.

[41] The appellant submits that the exception in section 14(1)(d) applies to the affected party's salary information, because that salary is subject to the provisions of the *PSSDA*. The exception in section 14(1)(d) provides that:

⁷ S.O. 1996, c. 1, Sched. A.

14(1) 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.

[42] The *PSSDA* requires certain employers in the public sector to disclose annually the names, positions, salaries and total taxable benefits of employees paid \$100,000 or more in a calendar year. Section 3(1) of the *PSSDA* states

Not later than March 31 of each year beginning with the year 1996, 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.

[43] The salary information at issue is the affected party's base salary as of the time the agreement was signed. Accordingly, it is not the amount of salary paid by the town to the affected party in a calendar year, as required by the *PSSDA*. As the appellant states in their representations, it is a matter of public record that the affected party began their employment with the town during 2019. Accordingly, the disclosure of the affected party's paid salary under the provisions of the *PSSDA* for the calendar year of 2019 is not the same as their annual starting base salary, which is the information withheld from section 5 of the employment agreement.

[44] For these reasons, I find the *PSSDA* does not expressly authorise the disclosure of the affected party's salary information in the employment agreement and that the exception in section 14(1)(d) to the personal privacy exemption does not apply.

Section 14(1)(f) exception

[45] I will now consider whether the section 14(1)(f) exception applies. As I noted above, in deciding whether disclosure would not be an unjustified invasion of privacy, sections 14(2), 14(3) and 14(4) are relevant. Section 14(4) sets out circumstances in which disclosure would not be an unjustified invasion of personal privacy (despite the application of any section 14(3) presumption), and so I will begin my analysis under section 14(4), specifically section 14(4)(a).

[46] For the reasons set out below, I find that most of the personal information at issue in this appeal falls under section 14(4)(a). I will therefore consider the application of this section first.

Section 14(4)(a)

[47] Section 14(4)(a) states that:

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.

Salary range

[48] Based on the plain wording of section 14(4)(a), salary ranges are distinct from an individual's specific salary. None of the information at issue is salary range information. As information severed from section 5 of the employment agreement contains the exact salary of the affected party and does not refer to salary range, I find that this information does not fall within section 14(4)(a).⁸

Benefits

[49] For the reasons set out below, I am satisfied that the information severed from sections 6.2, 7.1, 13.1-13.4 and 13.6 of the employment agreement, together with the referenced email (excluding the affected party's personal email address), qualifies as "benefits" under section 14(4)(a).

[50] A disclosure of personal information does not constitute an unjustified invasion of personal privacy if it discloses the "benefits" that the individual receives under the employment contract. In Order PO-2519, Adjudicator Steven Faughnan reviewed the definition of "benefits" applied in previous IPC orders and stated:

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 [M-23]. Order M-23 lists the following as examples of "benefits":

- insurance-related benefits
- sick leave, vacation
- leaves of absence
- termination allowance
- death and pension benefits
- right to reimbursement for moving expenses

In subsequent orders, adjudicators have found that "benefits" can include:

- incentives and assistance given as inducements to enter into a contract of employment [Order PO-1885]

⁸ Order MO-2470.

- all entitlements provided as part of employment or upon conclusion of employment [Order P-1212]

These principles and this reasoning have been applied in previous orders issued by [the IPC] including MO-1749 and MO-1796.

[51] The town and the affected party submit that the information severed from section 6.2 (benefits and pension) and section 7.1 (vacation) of the employment agreement are not part of the town's standard employment contracts. They claim these terms were negotiated between the town and the affected party and do not "disclose information about a 'benefit' as that term is traditionally understood."

[52] The appellant submits that whether the severed clauses reflect a unique arrangement between the town and the affected party is irrelevant to their consideration under the *Act* because the question is whether they fall under the definition of "benefit."

[53] In Order M-23, former Commissioner Tom Wright described an expansive definition of the term "benefits" with reference to the intent and purpose of the *Act*, when he stated:

Since the "benefits" that are available to officers or employees of an institution are paid from the "public purse", either directly or indirectly, I believe that it is consistent with the intent of section 14(4)(a) and the purposes of the *Act* that "benefits" be given a fairly expansive interpretation. In my opinion, the word "benefits" as it is used in section 14(4)(a), means entitlements that an officer or employee receives as a result of being employed by the institution. Generally speaking, these entitlements will be in addition to a base salary. They will include insurance-related benefits such as life, health, hospital, dental and disability coverage. They will also include sick leave, vacation, leaves of absence, termination allowance, death and pension benefits. As well, a right to reimbursement from the institution for moving expenses will come within the meaning of "benefits" ... In my view, the disclosure of these clauses would not constitute an unjustified invasion of personal privacy.

[54] Subsequent orders of the IPC have adopted this expansive definition of "benefits" in relation to pension benefits and entitlements paid to an individual as a result of their employment with an institution.⁹

[55] In Order PO-1885, Assistant Commissioner Sherry Liang considered the term "benefits" in the corresponding section of the provincial counterpart to the *Act* and noted that there was nothing in the expansive meaning of the term "benefits" to exclude "incentives and assistance" given to an employee to enter into a contract of employment, finding instead that "all are, generally speaking, types of compensation for

⁹ For example, Orders PO-1885 and PO-2050.

services, whether rendered or anticipated.”

[56] I have considered the town’s submission regarding the unique nature of these sections of the agreement and the assertion that they are not “benefits” as traditionally understood. However, the town has not provided any support for a restrictive definition of the word “benefit” and there is no basis for me to depart from the IPC’s past interpretation of the term in orders such as Order M-23. In particular, I am not persuaded that the fact the benefits may have been negotiated between the town and the affected party excludes them from the definition of “benefits” in section 14(4)(a) adopted in previous orders of the IPC.

[57] I agree with the appellant’s submission that whether the severed sections of the agreement reflect a unique arrangement between the town and the affected party is irrelevant to their consideration under the *Act* where the question is whether they fall within the definition of “benefit” in section 14(4)(a).

[58] I agree with Assistant Commissioner Liang’s approach in Order PO-1885 and will apply it in this appeal. In my view, a more expansive definition of the term “benefits” in section 14(4)(a) of the *Act* is consistent with the intent of the provision and does not exclude benefits like those under consideration in this appeal, even if they may have been negotiated as a “unique arrangement” between the town and the affected party. Accordingly, I am satisfied that sections 6.2 and 7.1 (and the referenced email, on which the town did not make specific representations) are “benefits” within the meaning of section 14(4)(a) of the *Act*.

[59] I similarly find that sections 13.1-13.4 and 13.6 of the employment agreement fall within the meaning of “benefits” in section 14(4)(a) of the *Act*. In the case of section 13.4, the town argues this information is “entitlements that have been negotiated as part of a termination package” and as such it is not “benefits” within section 14(4)(a). The town relies upon previous orders of the IPC.¹⁰ Regarding section 13.1-13.3 and 13.6, the town submits that this information is not to be confused with “termination allowances”, which have been considered “benefits” under section 14(4)(a).

[60] I have considered the orders cited by the town and note that where they are considered in the context of a separation or retirement agreement, negotiated benefits in a termination package may be construed differently.¹¹ However, in my view the distinction between negotiated “entitlements” and other benefits is artificial and I agree with the observation of former Assistant Commissioner Tom Mitchinson in Order PO-380 when considering the question of whether the term “benefits” applied to benefits negotiated by senior employees and stated that “in many positions in the public service, particularly those at a senior level, it is reasonable to expect that there will be a certain

¹⁰ Orders MO-1749, PO-2050, PO-2519 and PO-2641.

¹¹ See for example Order MO-2174 where Adjudicator Corban noted the IPC’s approach to apply section 14(4)(a) to benefits negotiated as part of a retirement or termination package, so long as the benefits derive from the period of employment.

element of negotiation involved in establishing salary and benefits packages.”

[61] As noted above, in previous orders, the IPC has held that “benefits” can include all entitlements provided upon the conclusion of employment.¹² I do not accept the town’s submission that the fact that the benefits are part of a negotiated termination package is relevant to their consideration under section 14(4)(a). In this appeal, the termination package forms part of the affected party’s employment agreement and the benefits derive from the affected party’s employment. Applying the more expansive definition of “benefits” and consistent with the intent of the provision, I find that the benefits negotiated as part of the termination package qualify for section 14(4)(a).

[62] Accordingly, I find that the information in sections 13.1-13.4 and 13.6 relating to the affected party’s entitlements upon termination qualifies as “benefits” under section 14(4)(a) and its disclosure does not constitute an unjustified invasion of personal privacy.

Employment responsibilities

[63] For the reasons set out below, I am satisfied that the personal information withheld from the preamble, section 4 and section 13.5 of the employment agreement falls within the “employment responsibilities” in section 14(4)(a).

[64] In previous orders, the IPC has held that start and end dates in employment agreements qualify as “employment responsibilities” for the purpose of section 14(4)(a).¹³ In my view, the start and end dates and duration of a term of employment, being the time that an individual is contractually bound to perform their duties under the agreement, is part of the responsibilities associated with their employment. I therefore find that the term of the affected party’s employment and the relevant dates in the preamble and section 4 qualify as their “employment responsibilities” for the purpose of section 14(4)(a) and its disclosure would not be an unjustified invasion of personal privacy.

[65] Section 13.5 sets out certain circumstances in which the termination provisions of the employment agreement may be triggered. Regarding the application of section 14(4)(a) to this section of the agreement, the town’s position is that the information in this section is not to be confused with a ‘termination allowance’, which is considered a benefit pursuant to section 14(4)(a) and as such there is no basis for disclosing the personal information contained within these clauses. I am not persuaded by the town’s submission. From my review of section 13.5, I find that it qualifies as the affected party’s “employment responsibilities” for the purposes of section 14(4)(a) of the *Act*, specifically, the affected party’s responsibilities that arise in the specified circumstances and that may trigger the termination provisions of the agreement.

¹² For example, Order PO-1212.

¹³ For example, Orders MO-4026 and MO-3684-I.

Summary of conclusions on section 14(4)(a)

[66] In summary, I find that section 14(4)(a) applies to the severed information in the preamble, sections 4, 6.2, 7.1 and 13 of the employment agreement and the referenced email (excluding the affected party's personal email address) as these sections qualify as the affected party's benefits and employment responsibilities. Accordingly, I find that the exception in section 14(1)(f) to the personal privacy exemption applies because the disclosure of these portions of the employment agreement would not constitute an unjustified invasion of the affected party's personal privacy. I will order the town to disclose them.

[67] As I have found that section 14(4)(a) does not apply to section 5 (salary information) or the affected party's personal email address, I will now consider sections 14(3) and (2), as necessary, in order to determine whether disclosure of this information would be an unjustified invasion of personal privacy.

Section 14(3) presumptions

[68] As noted above, it is the town's position that section 14(3)(d) applies to the severed portions of the employment agreement so that their disclosure is presumed to constitute an unjustified invasion of the affected party's personal privacy. Section 14(3)(d) applies when the personal information relates to an individual's employment or educational history.

[69] The remaining severed portion of the employment agreement that must be considered under section 14(3) concerns the affected party's salary and their personal email address.

[70] I find that the affected party's salary information withheld from section 5 of the agreement is within the presumption in section 14(3)(f). Without specifically referring to this presumption, the town relies upon previous orders of the IPC in which exact salary information has been found to be exempt under section 14.¹⁴

[71] Personal information qualifies for the presumption in section 14(3)(f) when it describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. In previous orders, the IPC has found that to qualify under this section, information about an asset must be specific and must reveal, for example, its dollar value or size.¹⁵ I adopt a similar approach in this appeal. The affected party's salary information, which is expressed in a dollar amount in section 5 of the agreement, is specific information describing the affected party's income and I therefore find that the presumption in section 14(3)(f) applies.

[72] As I find that the presumption in section 14(3)(f) applies to the affected party's salary information so that its disclosure is presumed to constitute an unjustified invasion

¹⁴ Orders P-61, M-5, P-183 and P-924.

¹⁵ Orders PO-2011 and MO-3910.

of their personal privacy, there is no need for me to consider the application of the presumption in section 14(3)(d) argued for by the town.

[73] As I noted above, in deciding whether information is exempt under section 14(1), a presumption under section 14(3) cannot be rebutted by any section 14(2) factors. I have already found that section 14(4) does not apply to the salary information. Therefore, the salary information qualifies for exemption under section 14(1), subject only to whether the section 16 public interest override applies to it.

[74] Neither the town nor the affected party has claimed any presumptions in section 14(3) apply to the affected party's personal email address and the appellant has not made submissions on the application of the personal privacy exemption in section 14(1) to this information in their representations. As none of the presumptions in section 14(3) are claimed, I will consider whether any factors set out in section 14(2) favouring disclosure apply to the email address. If they do not, then the information is exempt under section 14(1).

[75] I conclude that none of the factors in section 14(2) favouring disclosure are present. Specifically, I am not satisfied that disclosure of the affected party's personal email address is desirable for the purpose of subjecting the activities of the town to public scrutiny, would promote public health and safety or an informed choice in the purchase of goods and services, or that it is relevant to a fair determination of the appellant's rights¹⁶. Accordingly, I find that the affected party's personal email address is exempt from disclosure under section 14(1).

[76] I will now consider whether the public interest override in section 16 applies to the exempt personal information.

Issue C: Is there a compelling public interest in disclosure of the salary information and/or email address that clearly outweighs the purpose of the personal privacy exemption?

[77] The public interest override in section 16 of the *Act* provides for the disclosure of records that would otherwise be exempt under section 14 (and certain other sections) if "a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption." For section 16 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the section 14(1) exemption.

[78] The *Act* does not state which party bears the onus to show that section 16 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the

¹⁶ The factors favouring disclosure listed in section 14(2)(a)-(d).

exemption.¹⁷

[79] In my view, there is no compelling public interest in disclosure of the affected party's personal email address and the appellant has not argued that section 16 applies to it. I am not satisfied that the disclosure of the email address is in the public interest or connected to the *Act's* purpose of providing accountability of elected officials. Accordingly, I find that the public interest override does not apply to the personal email address that I have determined is exempt from disclosure under section 14(1). I will therefore consider the application of the public interest override in section 16 in relation to the affected party's salary information withheld from section 5 of the employment agreement only.

Representations

[80] The appellant's position is that there is a compelling public interest in disclosure of the affected party's full employment agreement that outweighs the protection of their personal privacy. The appellant states that the affected party holds a high-profile position within the town and there is a public interest in knowing more about the elected town council's decision to hire the affected party to this position. The appellant argues that disclosure of the full employment agreement is in the public interest so that the public are informed when making political choices.

[81] The appellant makes representations about the interest among members of the town community in the "history, hiring and tenure" of the affected party, which the appellant describes as "controversial". This interest has attracted significant media attention and has led town residents to sign a petition calling for the province to examine the hiring of the affected party. The appellant states that the petition has 1500 signatures from members of the public and submits that disclosure of the withheld information would be consistent with the central purpose of the *Act* to shed light on the operations of government.

[82] It is also the appellant's position that there is no public interest served in withholding the affected party's salary information, which is publicly available through the *PSSDA*. I note however that, as I have explained above, the *PSSDA* does not authorise disclosure of the precise salary information at issue in this appeal.

[83] It is the town's position that there is no compelling public interest (the town's emphasis) in disclosure of the affected party's personal information that would clearly outweigh the purpose of the personal privacy exemption. The town submits that the portions of the employment agreement that have already been disclosed serve the purpose of shedding light on the town's operations.

[84] On this point, the town refers to Order MO-3937, in which Adjudicator Valerie Jepson considered the public interest in the disclosure of salary information under the *Act* in the context of *PSSDA*. Adjudicator Jepson determined that the level of disclosure

¹⁷ Order P-244.

that would be provided to the appellant as a result of her findings addressed any public interest issues raised by the appellant in relation to the disclosure of the specific salary information of affected parties. The town relies upon this reasoning and submits that any public interest issue raised by the appellant is addressed by the *PSSDA* and the portions of the employment agreement it has already disclosed.

[85] The affected party's position is that they consented to the disclosure of the majority of their employment agreement in order to meet any compelling public interest. They submit that there is no compelling public interest in disclosure of the withheld portions of the agreement and doing so would not serve the purpose of shedding light on the operations of the government.

Analysis and findings

[86] For the reasons set out below, I am persuaded that the interest in the affected party's hiring, the terms of their tenure and the decision-making process of elected officials extends beyond the appellant personally. In their representations, the appellant has pointed to the media attention about these matters within the community, and I am satisfied that a broader public interest is established.

[87] In Order P-984, Adjudicator Holly Big Canoe stated that "one of the principal purposes of the *Act* is to open a window into government ... to enable an informed public to better participate in the decision-making process of government and ensure the accountability of those who govern." The adjudicator noted the dictionary definition of "compelling", as meaning "rousing strong interest or attention." A *compelling* public interest in disclosure of records must therefore serve the purpose of informing the public about the activities of its government.

[88] The appellant's submission is that disclosure of the salary information in the employment agreement would inform the public about the decision making of elected officials. I am satisfied that there is therefore a connection between the public interest in disclosure and the purpose of the *Act* to ensure accountability of elected officials.

[89] I disagree with the town's submission that this appeal is similar to the one in Order MO-3937 in which the degree of disclosure ordered by the adjudicator prior to her consideration of section 16 was sufficient to satisfy the public interest. In that appeal, the adjudicator found that disclosure of the exact salaries of senior public officials had been made under the provisions of the *PSSDA* and the appellant was seeking information relating to their pay structure and duties, which would become apparent from the disclosure that was to be ordered in the disposal of the issues in the appeal.

[90] In the appeal before me, I find that the public interest in the affected party's hiring and tenure and the decisions of elected officials in this regard extends beyond the salary information available under the *PSSDA* and the parts of the affected party's employment agreement that will be disclosed by reason of my findings about section 14(4)(a). As I have set out above under my findings on the application of the section

14(1)(d) exception, the *PSSDA* does not authorise the disclosure of the affected party's starting salary as it appears in section 5 of the employment agreement. In my view, this specific salary information is directly connected to the town's decision to hire the affected party and its obligations under the agreement. In my view, the public interest served by the disclosure of this information is consistent with the purpose of the *Act* as noted in Order P-984, to ensure accountability of those in government.

[91] As I am satisfied that the broader public interest is engaged in the disclosure of the affected party's salary information and that the public interest it would serve is consistent with the purpose of the *Act*, I find that there is a public interest in disclosure of the remaining portion of the affected party's employment agreement. Further, I find that the public interest in disclosure of the affected party's salary information is compelling as evidenced by the appellant's representations about the controversy surrounding the affected party's hiring, the public desire for scrutiny demonstrated in the signing of the petition seeking examination of the hiring process and the media interest that the issue has generated.

[92] The existence of a compelling public interest in disclosure of the personal information is not sufficient to trigger disclosure under section 16. The interest must also clearly outweigh the purpose of the personal privacy exemption in section 14(1).

[93] Previous orders of the IPC have held that 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.¹⁸ The personal privacy exemption in section 14(1) is mandatory and ensures the privacy of individuals whose personal information is held by institutions. In this appeal, this would refer to the protection of the affected party's privacy in relation to their finances, given the section 14(3)(f) presumption that I have found applies.

[94] In Order MO-2563, Adjudicator Bernard Morrow considered the balancing of a compelling public interest in disclosure against the purpose of the personal privacy exemption and determined that:

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.

[95] I agree with and adopt this analysis for the purposes of this appeal. I am satisfied, and I find, that the compelling public interest in the hiring and tenure of the

¹⁸ For example, Orders PO-1398 and PO-3617.

affected party as a senior public servant outweighs the purpose of the section 14(1) exemption in this case for the purpose of government transparency and accountability.

[96] Although not specifically related to the application of the public interest override test in section 16, the affected party and the town make representations that the effect of disclosure of their personal information would cause unfair harm or pecuniary harm and could lead to damage to the affected party's reputation.¹⁹ As the test under section 16 in the circumstances of this appeal includes the balancing of public and personal privacy interests, I have considered these submissions and whether disclosure of the affected party's salary is consistent with the purpose of the personal privacy exemption in section 14(1).

[97] In this regard, I agree with and adopt the view of the adjudicator in Order MO-2563 that when an individual enters the public service, they accept that their salary may be exposed to public scrutiny.²⁰ For this reason, I am not persuaded that the town's and the affected party's personal privacy concerns displace the need for transparency in the context of the public interest that has been identified in the disclosure of the information that I found to be exempt under section 14(1) in this case.

[98] Accordingly, I find that the public interest override in section 16 applies to the salary information in the employment agreement and I order this information to be disclosed to the appellant.

Issue D: Did the town conduct a reasonable search?

[99] As I noted above, the disclosed portion of the employment agreement makes reference to "Appendix A". The appellant asked for this appendix, but the town did not locate it. The reasonableness of the town's search therefore relates to "Appendix A".

[100] If a requester claims that additional records exist beyond those found by an institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.²¹ If I am satisfied that the search carried out by the town was reasonable in the circumstances, I will uphold the town's decision. If I am not satisfied, I may order further searches.

[101] The *Act* does not require the town to prove with absolute certainty that further records do not exist. However, it must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its custody or control.²² A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records that

¹⁹ Although not cited, the affected party's submissions allude to the factors weighing for the disclosure of personal information constituting an unjustified invasion of personal privacy under section 14(2)(a), (e), (f) and (i).

²⁰ Order MO-2563.

²¹ Orders P-85, P-221 and PO-1954-I.

²² Order MO-2185.

are reasonably related to the request.²³

[102] Although an appellant will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for asserting that such records exist.²⁴

Representations

[103] Following the town's decision to grant partial access to the affected party's employment agreement, the appellant requested access to "Appendix A", which is referenced in section 1.1 of the agreement. Section 1.1, which was disclosed in full, states:

The Employer agrees to employ [the affected party] in the position of Chief Administrative Officer (CAO), to perform the duties inherent in the position, as attached hereto as Appendix "A" (forming part of this Agreement). [The affected party] acknowledges and agrees that [their] duties and responsibilities may be reasonably modified or amended by the Employer based upon its needs and interests.

[104] It is the town's position that it has conducted an extensive search for "Appendix A" and has not been able to locate it. In its representations, the town states that its search included a review of all relevant physical and digital files. The town submits that the Manager of Human Resources reviewed the employee folder, again both physical and digital, which is where, it says, any attachments to the employment agreement would be placed in accordance with the town's standard filing practices. The town located the employment agreement in the folder but no "Appendix A."

[105] As part of its search efforts, the town states that it followed up with the affected party, who advised that there was no appendix incorporated into the agreement and it was an oversight that the reference to "Appendix A" remained in section 1.1. The town submits that it has reasonably concluded that "Appendix A" does not exist and that the reference to it in the employment agreement is an error.

[106] The appellant's position is that "Appendix A" ought to exist. The appellant submits that:

It is a rather difficult proposition to advance that the parties who signed the agreement, including an HR professional and an experienced affected party would enter into a contract where an employee's duties are not specified or sought to be clarified. The contract is specific in identifying where these duties are and that is the missing "Appendix A."

²³ Orders M-909, PO-2469 and PO-2592.

²⁴ Order MO-2246.

Analysis and findings

[107] As mentioned above, although an appellant will rarely be in a position to indicate which records an institution has failed to identify, they must still provide a reasonable basis for asserting that such records assist. In my view and in light of the reference to "Appendix A" in section 1.1 of the affected party's employment agreement, it was not unreasonable for the appellant to believe that "Appendix A", outlining the duties of the CAO position, may exist.

[108] However, based on the totality of the evidence before me, I find that the town has responded to the appellant's request by conducting a reasonable search for "Appendix A", as required by section 17 of the *Act*.

[109] I note that the town's search was carried out by the Manager of Human Resources and that they searched in the affected party's employment folder (both physical and digital), where the employment agreement was located. I am satisfied that the searches were carried out by an experienced employee who is knowledgeable in the subject matter of the request and the work required in order to respond to the request. I am also satisfied that the town followed up with the affected party to locate "Appendix A" and I accept the evidence of the affected party that there was no appendix incorporated into the agreement and the remaining reference to "Appendix A" is an oversight.

[110] I acknowledge the appellant's submission that without "Appendix A" the employment agreement appears to lack any information definitively setting out the affected party's duties and responsibilities. However, as I have found above in my analysis of the application of section 14(4)(a), some of the other sections of the agreement contain information relating to the affected party's employment responsibilities. I find it plausible, therefore, that Appendix "A" never existed.

[111] Accordingly, I find that the town has demonstrated that it expended a reasonable effort to locate "Appendix A" in response to the appellant's request, and I uphold the town's search as reasonable.

ORDER:

1. I order the town to disclose the entire employment agreement and referenced email (save for the affected party's personal email address) by **May 3, 2022**, but not before **April 28, 2022**.
2. I uphold the reasonableness of the town's search.

Original Signed by: _____

Katherine Ball
Adjudicator

March 29, 2022