

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4192

Appeal MA19-00858

Town of Grimsby

April 27, 2022

Summary: The appellant made a request to the Town of Grimsby (the town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the employment agreement between the town and its Chief Administrative Officer (CAO), the CAO job description and a record called "Salary Classifications and Rates of Pay" as at October 1, 2019. The town granted partial access to the CAO's employment agreement and a referenced email, withholding portions of both pursuant to the personal privacy exemption in section 14(1). On appeal from that decision, 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).

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 appellant made two requests under the *Municipal Freedom of Information*

and Protection of Privacy Act (the *Act*) to the Town of Grimsby (the town). In the first request, the appellant sought access to the following:

1. Record that specifies the conditions of the relationship between the Chief Administrative Officer (CAO) and the town. Such record may be referred to as a contract, contract for services, letter of offer agreement, employment agreement, employment contract, etc. and typically contains conditions such as consideration/compensation, how the relationship can be terminated, etc. This request includes supplementary material that governs the relationship, such as often referred to as an appendix or addendum, and all appendices and addenda to any agreement governing the relationship are included in this request.
2. The job position description as it existed when by-law 19-76 was passed, for the position of CAO referenced in the bylaw.
3. The record as it existed Oct. 2019, and all amended versions since, that includes the salary information for management and officers with the town and includes such information as: position, title, pay grade, job rate, is requested. The record "Salary Classifications and Rates of Pay" has included such information in the past. The title corresponding to job rates with annualized salaries less than \$100,000 may be redacted if the town wishes.

[2] In the second request, the appellant sought access to Report HR-19-08, which was titled Compensation Market Review Results (the report).

[3] The town issued a decision to the appellant denying access to the CAO's employment agreement and the report, in full. The town granted the appellant partial access to the "Salary Classifications and Rates of Pay" record and a "Management Classifications and Rates of Pay" record (advising the appellant that this was the updated version of the record sought in part (3) of the first request and withholding information relating to salaries of less than \$100,000) and disclosed in full the CAO's job description, an organization chart, a job posting and an email circulated to staff regarding the results of a salary review. The town did not cite any exemptions under the *Act* as the basis for denying access to the CAO's employment agreement or the report.

[4] The appellant appealed the town's decision to the Information and Privacy Commissioner of Ontario (IPC), and a mediator was assigned to explore resolution. During mediation, the town issued a revised decision granting the appellant partial access to the CAO's employment agreement with some information severed pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*. In the revised decision, the town maintained its decision to deny access to the report relying on the closed meeting exemption in section 6(1)(b) of the *Act*.

[5] Following receipt of the employment agreement, the appellant sought access to

an email and an "Appendix A", which were referenced within the disclosed portions of the agreement. The town issued a further access decision granting the appellant partial access to the email referenced in the employment agreement with some information withheld pursuant to the personal privacy exemption in section 14(1) of the *Act*. Regarding "Appendix A", the town advised the appellant that there was no "Appendix A". The town also stated that it maintained its decision to deny access to the report and relied upon the labour relations and employment records exclusion in section 52(3) of the *Act*, in addition to section 6(1)(b).

[6] The appellant advised that they wished to pursue access to the information withheld from the CAO's employment agreement and the referenced email. The appellant stated that they believe there is a public interest in the disclosure of this information, thereby raising the possible application of the public interest override in section 16 of the *Act*. The appellant confirmed that they are not pursuing access to the report. Therefore, the exclusion in section 52(3) and the exemption in section 6(1)(b) were removed from the scope of the appeal.

[7] 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 notified the CAO (the affected party) of the appeal and 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

[8] In this order, I find that the personal privacy exemption in section 14(1) only applies to the affected party's salary and their 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.

RECORDS:

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

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

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?

DISCUSSION:

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

[10] The town has withheld information from the employment agreement and the referenced email on the basis of the mandatory 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."

[11] 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;

[12] The list is not exhaustive and IPC adjudicators have held that other types of

information may also qualify as personal information.²

[13] 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(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

Representations

[14] 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 agreement 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.

[15] The affected party submits that the information that has been withheld from the employment agreement is their personal information as defined in section 2(1) of the *Act*. Their position is that the redacted sections contain the term of the contract and their exact salary, which are specific clauses that are personal in nature. The affected party's position is that the information in the contract relating to them in a professional capacity has already been disclosed to the appellant.

[16] It is the appellant's position that some of the redacted information may be considered the affected party's personal information. However, they also submit that information such as the capacity in which the affected party is employed is not personal information. The appellant states that in Order MO-3684-I it was found that the date an employment agreement was signed and the signatures and of the witnesses and parties to the agreement did not constitute personal information.

Analysis and findings

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

[18] I have reviewed the information that has been withheld from the employment

² Order 11.

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

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.

agreement and the email. 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 the agreement was signed.

[19] With one exception, I find that the information the town 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 withheld portions 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.

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

[21] The exception to this finding is the date that the employment agreement was signed. Previous orders of the IPC have found this information not to be personal information.⁵ I am not satisfied that the date the agreement was signed, 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 the agreement was signed 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.

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

⁵ Orders MO-3044 and MO-3684-I.

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

[23] 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.

[24] 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.

[25] Section 14(3)(a) to (h) should generally be considered first.⁶ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. If one of these presumptions applies, an individual's personal information cannot be disclosed unless (i) there is a reason under section 14(4) that disclosure would not be an unjustified invasion of personal privacy; or (ii) there is a "compelling public interest" under section 16 that means that the information should nonetheless be disclosed (the "public interest override").⁷

[26] If any of the reasons in 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).

Representations

The town's representations

[27] In its representations, the town submits that none of the exceptions in section 14(1)(a) to (e) apply and the disclosure of the severed portions of the employment agreement would constitute an unjustified invasion of the affected party's privacy so that the exception 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.

[28] The town submits 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

⁶ If any of the section 14(3) presumptions are found to apply, they cannot be rebutted by the factors in section 14(2) for the purposes of deciding whether the section 14(1) exemption has been established.

⁷ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

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 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)].

[29] 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. The town states that the affected party is entitled to have the portions containing personal information remain confidential and it is not desirable for the sake of public scrutiny for the public to have access to the same [section 14(2)(a)].

[30] 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.

The affected party's representations

[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 submits 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)].

The appellant's representations

[34] The appellant claims the exception to the personal privacy exemption in section 14(1)(f) applies to the information at issue in this appeal, namely that the disclosure of the full employment agreement and the email is not an unjustified invasion of personal privacy. The appellant submits that the disclosure of entire employment agreements is not unusual and, in the case of the town, is desirable to subject the town to public scrutiny [section 14(2)(a)].

[35] The appellant submits that the town, as a non-union employer, creates its own groupings of employees and "liaison committees" for each group to arrive at negotiated employment agreements, in a manner akin to collective agreements in a unionised environment. The appellant's position is that the negotiated employment agreements of employees, including the CAO, are therefore not labour relations that are intended to remain confidential, as the town suggests, but rather the "result of labour relations."

[36] The appellant states that it is normal for municipalities, including the town in this appeal, to post the negotiated employment agreements (referred to as "Document of General Working Conditions") on their websites for public scrutiny. The appellant submits that the CAO position of a town council is sometimes referred to as a council's only employee so that the decision to hire an individual to the position is the decision of elected, public officials. For this reason and given the unique nature of the CAO position, the appellant argues that the disclosure of the records is necessary for proper scrutiny and accountability of the town council and would not be an unjustified invasion of personal privacy.

[37] The appellant points to employment agreements made available by other municipalities and submits that, contrary to the town's assertion, the public will have comparators against which to assess the affected party's employment agreement. Finally, the appellant submits that they have obtained the affected party's employment agreement from a similar role held at another municipality as further evidence of the fact that the disclosure of such information to the public is not unusual and, they argue, not an unjustified invasion of personal privacy.

[38] It is the appellant's position that section 14(4)(a) appears to apply to the withheld portions of the affected party's employment agreement. I consider these submissions in more detail in my analysis of section 14(4)(a) below.

Analysis and findings

Section 14(1)(f) exception

[39] In the circumstances, the only exception to the section 14(1) exemption that could apply is section 14(1)(f), and I will now consider whether it applies. As I noted above, in deciding whether disclosure would not be an unjustified invasion of privacy for the purpose of section 14(1)(f), 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).

Section 14(4)(a)

[40] 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

[41] The appellant submits that it is a "policy objective of the Province" that salaries in excess of \$100,000 are to be released and cites the *Public Sector Salary Disclosure Act* (the *PSSDA*) as support for section 14(4)(a) applying to the affected party's salary information. The appellant refers to the town's Management Salary Grid and the desire for public scrutiny as to whether the town deviated from its established salary grid when it hired the affected party.

[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.⁸ The *PSSDA* and the desire for public scrutiny may be a relevant factors when considering whether disclosure is an unjustified breach of personal privacy, for example under section 14(2)(a), or whether the public interest override in section 16 applies, but, in my view, the plain wording of section 14(4)(a), with its reference to "salary range", distinguishes a salary range from an individual's specific salary.

[43] None of the information at issue in this appeal is salary range information. As the salary 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).⁹

Benefits

[44] 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

⁸ See *PSSDA*, section 3(1).

⁹ Order MO-2470.

“benefits” under section 14(4)(a).

[45] 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]
- 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.

[46] 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.”

[47] The appellant argues that section 14(4)(a) does not distinguish the source of “benefits” that qualify for that section. The appellant submits that the information relating to the affected party’s pension and vacation benefits and the entire termination section in the employment agreement qualify as “benefits.”

[48] 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.

[49] 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.¹⁰

[50] 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 services, whether rendered or anticipated."

[51] 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.

[52] I agree with the appellant's submission that the application of section 14(4)(a) does not turn on when benefits are negotiated. In this regard, 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

¹⁰ For example, Orders PO-1885 and PO-2050.

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 information withheld from 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*.

[53] 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.¹¹ 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).

[54] 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.¹² However, in my view the distinction between negotiated "entitlements" and other benefits is artificial. I agree with the observation of former Assistant Commissioner Tom Mitchinson in Order P-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 element of negotiation involved in establishing salary and benefits packages."

[55] As noted above, in previous orders, the IPC has held that "benefits" can include all entitlements provided upon the conclusion of employment.¹³ 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).

[56] Accordingly, I find that the withheld 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.

¹¹ Orders MO-1749, PO-2050, PO-2519 and PO-2641.

¹² 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.

¹³ For example, Order PO-1212.

Employment responsibilities

[57] 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” aspect of section 14(4)(a).

[58] 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).¹⁴ 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.

[59] 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.

[60] In their representations regarding the application of section 14(4)(a) to the termination section of the employment contract, the appellant makes submissions about the desire for public scrutiny of the termination clauses in the agreement in light of events that took place in February 2020 relating to the affected party’s suspension and reinstatement. I will consider these submissions on the desire for public scrutiny in more detail in my analysis of section 16 below, but it is not necessary to consider them in respect of the termination clause, because I find that that information falls within section 14(4)(a).

[61] I am not persuaded by the town’s submission that section 13.5, not being a “termination allowance” does not qualify for section 14(4)(a). 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*. In my view, section 13.5 sets out the affected party’s responsibilities that arise in the circumstances that are specified, which are circumstances that may trigger the termination provisions of the agreement.

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

[62] 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

¹⁴ For example, Orders MO-4026 and MO-3684-I.

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.

[63] 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

[64] 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.

[65] 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. It is the appellant's position that as the information at issue in this appeal concerns a contemporaneous employment relationship and not a historical one, the presumption in section 14(3)(d) does not apply.

[66] I find that the affected party's salary information withheld from section 5 of the agreement qualifies for 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 14.¹⁵

[67] 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.¹⁶ 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.

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

¹⁵ Orders P-61, M-5, P-183 and P-924.

¹⁶ Orders PO-2011 and MO-3910.

[69] 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)(a) 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.

[70] 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).

[71] 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 rights¹⁷. Accordingly, I find that the affected party's personal email address is exempt from disclosure under section 14(1).

[72] 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?

[73] 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.

[74] 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 exemption.¹⁸

¹⁷ The factors favouring disclosure listed in section 14(2)(a)-(d).

¹⁸ Order P-244.

[75] Previous orders of the IPC have held 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 that is available to the public to make effective use of the means of expressing public opinion or to make political choices.¹⁹

[76] 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).

[77] 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

[78] The appellant's position is that there is a public interest in the disclosure of the affected party's employment agreement and that the public interest is compelling. The appellant submits that the affected party's activities in several municipalities have garnered interest to the extent that there is an online petition calling for the province to begin an "independent investigation into [the affected party] and [their] activities at the [town] in addition to the initial hiring of [the affected party] to the CAO position." The appellant also submits that these concerns have attracted media attention and citizen groups have published articles expressing interest in the affected party's employment with the town.

[79] As noted earlier, in their submissions regarding the affected party's salary information, the appellant states that the town has disclosed portions of the Management Salary Grid and this raises the question of whether the town deviated from the established salary grid when it hired the affected party. In the context of the public interest in disclosure of the salary information, the appellant submits that the salary information available for the affected party pursuant to the *PSSDA*, which combines information from the affected party's current and previous employment, shows that they are one of the "best compensated municipal employees in Ontario." The appellant cites Order MO-3684-I and relies upon the approach taken in that decision by Adjudicator Justine Wai when she found that "the need for transparency with regard to a high level public sector employee's salary and the allocation of public funds outweighs the limited privacy rights of the affected party in this case."

[80] The appellant sets out events surrounding the suspension and reinstatement of

¹⁹ Orders P-984 and PO-2556.

the affected party since beginning their employment as CAO with the town, which have also attracted media attention. In addition, the appellant states that there is concern regarding the statutory authority of the affected party to make decisions about the town's budget and spending in light of COVID-19 and to appoint or remove from office other town officers, all of which the appellant submits speaks to the public interest in the disclosure of the affected party's employment agreement.

[81] In support of their submissions, the appellant notes that the affected party's employment agreement relating to previous employment in another municipality has been released in full. The appellant submits that the crux of the public interest engagement in wanting to know more about the hiring of the affected party is the public belief that the affected party "received preferential treatment" in the terms of the contract. The appellant argues that the fact that the town admits that it negotiated the portions of the agreement that have been withheld from disclosure is the reason those portions should be released. The appellant's submission is that the compelling public interest in the affected party's hiring justifies the release of the entire contract under section 16 of the *Act*.

[82] 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 it has already disclosed to the appellant serve the purpose of shedding light on the town's operations.

[83] Regarding the release of the affected party's employment agreement by another municipality, the town's position is that the fact that a municipality has publicly disclosed a particular document should not be taken as evidence that such disclosure is made under the provisions of the *Act* or that similar documents should be disclosed in other circumstances. The town submits that the disclosure practices of another municipality are not relevant to the determination of this appeal.

[84] In relation to the affected party's salary information in the employment agreement, it is the town's position that any public interest issues raised by the appellant are addressed by the affected party's salary information that is available pursuant to the *PSSDA*.

[85] 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 the *PSSDA*. Adjudicator Jepson determined that the level of disclosure 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.

[86] The affected party's position is that they consented to the disclosure of the majority of their employment agreement to the appellant 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.

[87] The affected party submits that the decision of one municipality to publicly disclose a particular document does not provide grounds for another municipality to disclose it. It is their position that the decision of the other municipality is irrelevant to the determination of this appeal.

Analysis and findings

Compelling public interest

[88] For the reasons set out below, I am persuaded that the interest in the affected party's hiring and the accountability of elected officials in making the hiring decision extends beyond the appellant personally. In their representations, the appellant has pointed to the engagement of the community and citizens' interest groups and the media attention this community action has attracted, and I am satisfied that a broader public interest is established.

[89] The appellant makes detailed submissions about the public interest in the disclosure of the withheld portions of the employment agreement relating to the affected party's duties and the termination clauses. As I have already determined that most of the information that is in issue in this appeal is not exempt under section 14(1) because it fits within section 14(4)(a), I will not address all of these submissions in detail. Accordingly, the appellant will be provided with the portions of the employment agreement setting out the term of the employment, the negotiated benefits and the section containing the termination clauses, all of which I have found to qualify as benefits and/or employment responsibilities under section 14(4)(a).

[90] 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.

[91] I find that the public interest in the affected party's hiring and tenure and the decisions of the elected town council in this regard extends to the salary information in the employment agreement. As I noted earlier, the *PSSDA* requires certain employers in the public sector to disclose information, including salaries and total taxable benefits, of employees paid \$100,000 or more in a calendar year. The information at issue relating

to the affected party's salary in the employment agreement is their salary as of the time the agreement was signed. Accordingly, it is not the same as the amount of salary paid by the town to the affected party in a calendar year, as required by the *PSSDA*. I therefore disagree with the town that the public interest in the affected party's salary is addressed by the disclosure of their salary information as required by *PSSDA*.

[92] I find that the salary information in the affected party's employment agreement is directly connected to the town's decision to hire the affected party. 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.

[93] In Order MO-2563, Adjudicator Bernard Morrow considered the public interest in disclosure of salary information of senior public sector employees and stated:

In my view, the allocation of taxpayers' money for the payment of senior level public sector salaries "rouses strong interest and attention" which means that the public interest in disclosure is "compelling." In addition, I have considered whether there is any public interest in the non-disclosure of the withheld portions of the record at issue and have concluded that none exists.

[94] I agree with and adopt this approach in this appeal. I am satisfied that the broader public interest in the allocation of taxpayers' money for the affected party's salary as a senior level public employee is engaged in the disclosure of their salary information.

[95] Further, I find that the public interest in disclosure of the affected party's salary information is compelling as evidenced by the appellant's submissions regarding the interest that has been roused by the local community in signing the petition calling for the province to investigate the initial hiring of the affected party, the articles that have been published by citizens' groups and the media attention that these actions have attracted.

[96] I will now consider the second part of the test and whether the compelling public interest outweighs the purpose of the personal privacy exemption in section 14(1).

Purpose of the Exemption

[97] 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.²⁰ 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

²⁰ For example, Orders PO-1398 and PO-3617.

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 to the affected party's salary information.

[98] In Order MO-2563, Adjudicator 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.

[99] 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 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.

[100] 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 the personal information would cause unfair harm or pecuniary harm and could lead to damage to the affected party's reputation.²¹ 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).

[101] 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. In addition, the affected party's salary information (for a calendar year, as opposed to the salary information at issue in this appeal) is publicly available as a result of the town's disclosure duties under the *PSSDA*. The impact of disclosure of the salary information in the employment agreement on the affected party's privacy is therefore limited. For this reason, I am not persuaded that the town's and the affected party's privacy concerns displace the need for transparency in the context of the compelling public interest that has been identified in the disclosure of the salary information that I have found to be exempt under section 14(1).

²¹ 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).

[102] I will therefore order the town to disclose the employment agreement, in full, and the referenced email (except for the affected party's personal email address) to the appellant.

ORDER:

I order the town to disclose the entire employment agreement and referenced email (save for the affected party's personal email address) by **June 2, 2022**, but not before **May 27, 2022**.

Original Signed by: _____
Katherine Ball
Adjudicator

_____ April 27, 2022