



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# ORDER P-380

Appeal P-920150

Teachers' Pension Plan Board



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Télééc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

# ORDER

## BACKGROUND:

The Teachers' Pension Plan Board (the Board) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for access to information respecting the salary and benefits of its Chief Executive Officer (the CEO), Senior Vice-President of Investments (the Senior VP) and Investment Managers. The requester subsequently modified his request to include only the salary ranges for these positions rather than the specific salaries, provided that the ranges were not excessively broad. The Board denied access to the salary ranges and benefits pursuant to sections 21(1) and 18(1)(c) of the Act. The requester appealed the Board's decision.

During mediation, the Board provided the appellant with the salary ranges for the Senior VP and Investment Managers, and indicated that no salary range had been created for the CEO position. The appellant was not satisfied with this response, claiming that the Senior VP's salary range was too broad, that salary range information for the CEO should exist, and that he should be provided with access to details relating to the full range of benefits provided by the Board to the CEO and the Senior VP.

Further mediation was not successful, and notice that an inquiry was being conducted to review the Board's decision was sent to the appellant, the Board, the CEO and the Senior VP (the affected persons). Written representations were received from all parties.

During the inquiry stage of the appeal, the Board acknowledged that a salary range for the CEO position had been created, and records containing this information are within the scope of this appeal.

The Board identified the following records as responsive to the request:

1. Salary Recommendation form, dated April 2, 1992, re the CEO;
2. Compensation outline form for various senior positions at the Board;
3. Employment Agreement, dated July 19, 1990, between the Board and the CEO;
4. Letter from the Board to the Senior VP, dated March 12, 1992, re various salary and benefit details;
5. 1992 Executive Merit Plan re the Senior VP;
6. 1992 Salary Ranges form for positions in the Investments department of the Board;

7. Letter from the Board to the Senior VP, dated September 18, 1990, re appointment to position;
8. Internal Board memorandum, dated July 30, 1992, re implementation of certain benefits for Senior VP;
9. Internal Board memorandum, dated May 30, 1992, re implementation of certain benefits for Senior VP;
10. 1992 Merit Increase Matrix form for Board positions;
11. Compensation outline form for Senior VP and certain other Board positions;
12. Award Determination form for Senior VP and certain other Board positions;
13. Compensation outline form for certain Board employees.

I have examined these records and, in my view, some portions of Records 1, 2, 7, 11, 12, and 13 contain information which does not relate to the salary range and/or benefits of the CEO or the Senior VP. These portions of the records are not responsive to the appellant's request, and fall outside the scope of this appeal.

Also, in its representations the Board agrees to release Record 3 to the appellant, subject to the severance of clauses 2 and 3(a). Therefore, my order as it relates to Record 3 only deals with these two remaining clauses.

## **ISSUES:**

The issues arising in this appeal are:

- A. Whether the exemption provided by section 18(1)(c) of the Act applies to the records.
- B. Whether the information contained in the records qualifies as "personal information", as defined in section 2(1) of the Act.
- C. If the answer to Issue B is yes, whether the mandatory exemption of section 21 of the Act applies to the records.
- D. Whether the salary ranges provided by the Board for the CEO and Senior VP positions are overly broad.

- E. If the answer to Issues A and/or C is yes, whether there is a compelling public interest under section 23 in the disclosure of the personal information which clearly outweighs the purpose of the section 18(1)(c) or section 21(1) exemption.

## **SUBMISSIONS/CONCLUSIONS:**

### **ISSUE A: Whether the exemption provided by section 18(1)(c) of the Act applies to the records.**

Section 18(1)(c) reads as follows:

A head may refuse to disclose a record that contains,

information where the disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;

In order to qualify for exemption under section 18(1)(c), the Board must provide detailed and convincing evidence that disclosure of the information contained in the records could reasonably be expected to prejudice the economic interests or competitive position of the Board. The expectation must not be fanciful, imaginary or contrived, but rather one that is based on reason [Orders 188, P-346].

The Board states that there are a limited number of individuals qualified to manage large pension plans and that as a consequence, there is stiff competition among pension plans to recruit senior executives. The Board submits that disclosure of its compensation practices would enable other pension plans to lure away its executives, by offering comparable or superior compensation and, therefore, the performance of the pension plan fund would suffer.

Having reviewed the Board's representations, I find that the evidence submitted in support of its claim under section 18(1)(c) is speculative and, in my view, not sufficient to establish a reasonable expectation of prejudice to the economic interests or competitive position of the Board. Therefore, I find that none of the records qualify for exemption under section 18(1)(c) of the Act.

### **ISSUE B: Whether the information contained in the records qualifies as "personal information", as defined in section 2(1) of the Act.**

Section 2(1) of the Act states, in part:

"personal information" means recorded information about an identifiable individual,

In my view, the salary and employment benefits of the CEO and the Senior VP are clearly information about those individuals, and fit within the definition of personal information under section 2(1) of the Act.

**ISSUE C: If the answer to Issue B is yes, whether the mandatory exemption provided by section 21 of the Act applies to the records.**

Once it has been determined that a record contains personal information, section 21 of the Act provides a general rule of non-disclosure of the personal information to any person other than the individual to whom the personal information relates. Section 21(1) provides some exceptions to this general rule of non-disclosure, one of which, section 21(1)(f), reads:

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

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

Section 21(4)(a) of the Act identifies a particular type of information, the disclosure of which does not constitute an unjustified invasion of personal privacy. This section reads as follows:

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

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

As Commissioner Wright pointed out in Order M-23, when considering section 14(4)(a), the equivalent of section 21(4)(a) found in the Municipal Freedom of Information and Protection of Privacy Act:

In my view, section 14(4) is a clear indication by the legislature that the disclosure of the identified types of information is in the public interest. It is my opinion that the words "[d]espite subsection (3)" do not limit the application of section 14(4) to those types of information identified in section 14(3), rather they identify types of information that the legislature clearly intended to fall within the exception contained in section 14(1)(f). Generally speaking, if a record contains information of the type described in section 14(4), the exception to the section 14 exemption contained in section 14(1)(f) will apply.

I agree with Commissioner Wright's interpretation of the interaction between sections 14(4) and 14(1)(f) of the municipal Act, and find that it is equally applicable to sections 21(4)(a) and 21(1)(f) of the provincial Act.

The Board acknowledges in its representations that the CEO is an officer and an employee of the Board, and that the Senior VP is a Board employee. However, the Board also states:

Contributions to the [Ontario Teachers' Pension Plan] Fund are made by active teachers. Their contributions are matched by their employers. Where the employers are public boards the matching contributions are made by the government of Ontario on behalf of the employing boards of education. Thus the Board's employees' salaries are derived from employee and employer contributions and investment income and not from the public purse.

I do not accept the Board's position. The Board is a designated institution under Regulation 371/91 of the Act and, in my view, moneys paid by the Board to provide salary and benefits to its officers and employees are properly characterized as "public funds" and should be considered as such for the purposes of the Act.

The Board also states:

... only the salary ranges in the Board's compensation system and the benefits listed in Order M-23 are subject to disclosure.

Again, I do not agree. On the question of benefits, Commissioner Wright made the following points in Order M-23:

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) [21(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 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".

The Board, in addressing Order M-23, states:

In Order M-23 ... the Commissioner indicated that the identifying features of benefits was that they resulted from "being employed" by the institution. Incentive payments and items negotiated by individual incumbents do not result from merely "being employed".

In my view, in defining what constitutes a "benefit" under section 21(4)(a), the distinction between standard benefits and negotiated benefits is artificial. 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 benefit packages. In addition, it is relevant to note that benefits are provided as part of a remuneration package to employees and solely by virtue of the employer-employee relationship, regardless of whether a particular benefit has been negotiated.

It is clear from a reading of Order M-23 that Commissioner Wright did not intend the list of enumerated benefits in that order to be exhaustive. In my view, they were merely provided as examples, and I agree that the term "benefits" should be given an expansive definition, in order to be consistent with the intent of both section 21 and the Act as a whole.

Therefore, I find that all of the entitlements provided to the CEO and the Senior VP as part of their employment as officers and/or employees of the Board are properly characterized as "benefits" for the purpose of section 21(4)(a).

In summary, I find that disclosure of the salary ranges and benefits of the CEO and Senior VP fall within the scope of section 21(4)(a) of the Act and, therefore, release of records which would disclose this information would not constitute an unjustified invasion of their personal privacy.

**ISSUE D: Whether the salary ranges provided by the Board for the CEO and Senior VP positions are overly broad.**

The appellant submits that the salary range of the Senior VP is unreasonably broad because the difference between the upper and lower ends of the range is \$66,000. The appellant asks that he be provided with a reasonable range for both the CEO and the Senior VP positions.

In a postscript to Order M-5, which also dealt with section 14(4)(a) of the Act, Commissioner Wright states:

... The Act strikes the balance between the right of access to information and an individual's right to privacy of their own personal information at the disclosure of salary ranges and not specific salaries. In my opinion, in reaching this balance,

the legislature implicitly recognized that institutions need to be reasonable when establishing salary ranges. Ranges which are too broad may raise unwarranted suspicions in the eyes of the public and will not achieve the purposes of section 14(4)(a). This is a point which I feel institutions should keep in mind when applying the provisions of section 14.

The Board submits that the salary ranges are not unreasonably broad, and are in accordance with generally accepted compensation theory and practice. The Board contends that the appellant's request for a \$15,000 range is, in effect, equivalent to a request for an approximation of salary.

Having reviewed the representations, I find that the ranges, although perhaps large in numerical terms, are reasonable in the circumstances, given the salary levels of the positions involved. The difference between the top and bottom of the ranges established by the Board is approximately 26%, which is actually less than the spread in salary ranges for senior positions in the Ontario civil service.

In summary, I find that disclosure of the salary ranges and benefit entitlements for the CEO and the Senior VP would not constitute an unjustified invasion of their privacy, and this information contained in the records should be released to the appellant.

Because of the manner in which I have disposed of Issues C and D, it is not necessary for me to address Issue E.

## **ORDER:**

1. I order the Board to disclose the portions of the records which contain the salary ranges and benefit entitlements of the CEO and the Senior VP to the appellant within 35 days following the date of this order and **not** earlier than the thirtieth day following the date of this order. I have provided a highlighted copy of the records with the copy of this order which has been provided to the Board, which indicates the portions of the records which either are not responsive to the appellant's request or contain the actual salary levels of the CEO and the Senior VP, and should **not** be released.
2. In order to verify compliance with the provisions of this order, I order the Board to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, only upon request.



Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

\_\_\_\_\_ December 10, 1992