



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-290**

**Appeal M-9300412**

**County of Hastings**



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# ORDER

## BACKGROUND:

The County of Hastings (the County) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to "a complete copy, including all references, of the proposal submitted [to the County] by [a named consulting firm]". The County located the proposal in question and granted partial access to the document with information relating to costs and references withheld pursuant to section 14(1) of the Act. The requester appealed the decision to deny access to the references only.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the County was sent to the County, the appellant, the named consulting firm (the firm), and five individuals identified in the record as references (the affected persons). Representations were received from the County and two of the affected persons.

## ISSUES:

- A. Whether the information contained in the record qualifies as personal information as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies to the personal information.

## SUBMISSIONS/CONCLUSIONS:

**ISSUE A: Whether the information contained in the record qualifies as personal information as defined in section 2(1) of the Act.**

Section 2(1) of the Act states, as follows:

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

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (g) the views or opinions of another individual about the

individual,

The record consists of the names, titles, addresses and telephone numbers of five references which were included in the proposal submitted by the firm. The proposal, which was partially disclosed to the appellant, was submitted to the County in response to a "Proposal Call" by the County, and contains information relating to the proposed project as well as background information about the firm, its associates and its services. The County claims that this information is the personal information of the principal of the firm.

It has been established in a number of previous orders that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not "personal information"(Orders M-71, M-74, P-326, P-328, P-329, P-333 and P-377).

In Order M-277, Assistant Commissioner Irwin Glasberg had occasion to consider whether information contained in an agreement between an institution and the principal of a consulting firm consisted of the personal information of the principal. In the circumstances of that appeal, and based on the actual wording of the agreement, Assistant Commissioner Glasberg found that the information contained in the record related to the principal of the firm in his personal capacity.

In my view, the considerations in Order M-277 do not apply in this case with respect to information relating to the principal of the firm. There was no evidence that this proposal involves the provision of services by the principal of the firm in his personal capacity. It would appear, from a review of the proposal as a whole, that the references were included as part of a complete package, to support the firm's proposal. Accordingly, the names, addresses and telephone numbers of the references are not the personal information of the principal of the firm.

The affected persons are identified in the proposal in their professional or employment capacities. In his representations, one affected person indicates that he knew the principal personally and professionally and had kept in contact with him and his professional activities. The other affected party also indicates that he knew the principal but is not sure whether or not he had provided a reference for him.

Despite the fact that the proposal identifies the professional credentials of the affected persons, the evidence before me does not support the view that they were providing references as part of their employment responsibilities or within their professional capacities. In my view, the identity of the references qualifies as their personal information. It is conceivable that disclosure of the addresses and telephone numbers would reveal the identity of the references. I, therefore, conclude that the names, titles, addresses and telephone numbers of the references qualify as their personal information.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies to the personal information.**

I have found under Issue A that the information being sought qualifies as personal information under the Act and that this information pertains to the affected persons only.

Section 14(1) of the Act is a mandatory exemption which prohibits the disclosure of personal information to any person other than to the individual to whom the information relates, except in the circumstances listed in sections 14(1)(a) through (f) of the Act.

In his letter of appeal, the appellant suggests that section 14(1)(c) applies. In my view, the only other exception to the section 14(1) mandatory exemption which has potential application is section 14(1)(f). These sections provide:

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

- (c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

With respect to section 14(1)(c), the appellant claims, in his letter of appeal, that the information he was requesting was put into a public document (the proposal) that anyone should have access to. However, no representations were submitted regarding this section. In the absence of supporting evidence, I am of the view that section 14(1)(c) does not apply.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The County claims that section 14(3)(g) applies. This section provides:

A disclosure of personal information is presumed to constitute an unjustified invasion of  
[IPC Order M-290/March 17,1994]

personal privacy if the personal information,

consists of personal recommendations or evaluations, character references  
or personnel evaluations;

In my view, for this presumption to apply, the personal information must relate to the contents of the reference or evaluation about an individual, rather than the identity of the person providing it. In this case, the substance of the information provided by the references is not at issue. I am, therefore, of the view that the presumption does not apply.

In my view, none of the other provisions of section 14(3) are relevant to this appeal.

Section 14(2) of the Act provides a non-exhaustive list of criteria which are to be considered, along with all other relevant circumstances, in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy.

In his letter of appeal, the appellant raises considerations outlined in section 14(2)(a). One affected person indicates that the considerations in sections 14(2)(h) and (i) are relevant in the circumstances of this appeal. These provisions read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

In interpreting section 14(2), all relevant circumstances of the case must be considered, not just the factors specifically listed in the section.

### **Section 14(2)(a)**

In my view, there are two elements which must be met for section 14(2)(a) to be considered a relevant factor: (1) the activities of the institution must have been publicly called into question, **and** (2) the disclosure of the personal information of the affected persons is desirable in order to subject the activities of the institution to public scrutiny.

In Order P-634, Assistant Commissioner Glasberg stated with respect to the first element as it relates to section 21(2)(a) of the Freedom of Information and Protection of Privacy Act (which is similar to section 14(2)(a) of the Act):

The records at issue in this appeal were created during a recessionary environment which has placed an unparalleled obligation on government agencies to ensure that tax dollars are spent wisely ... In these situations, I believe that the evidentiary threshold to establish that "the activities of a Ministry have been publicly called into question" should be modest in nature. That threshold will be satisfied, in my view, where there is some evidence that a public interest has been expressed about the circumstances which led to the creation of the record.

The record in this appeal is very different from the record which was the subject of Order P-634. However, I believe that the threshold established by the Assistant Commissioner is equally applicable here, and I adopt it for the purposes of this appeal.

The appellant indicates in his letter of appeal that conflict of interest concerns have been raised in Cavan Township (the Township) relating to the principal of the consulting firm and the Deputy Reeve of the Township. He states further that the organization to which he belongs had called a press conference to inform the media of these concerns. In my view, there is some evidence that the activities of the Township and the principal of the firm have been publicly called into question. Therefore, the first element has been satisfied.

Representations were not submitted regarding the desirability of disclosing the personal information of the affected persons in order to subject the activities of the institution to public scrutiny. The representations submitted by one affected person provide some background relating to the conflict of interest allegations.

I have carefully reviewed the entire record from which the references were withheld. I have also taken into account the fact that access was provided to the actual proposal. In my view, there is no evidence before me which indicates that disclosure of the personal information in the record is or would be desirable to subject the activities of the institution to public scrutiny.

I am, therefore, of the view that section 14(2)(a) is not a relevant consideration in the circumstances of this appeal.

As I indicated above, section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information. In order for me to find that the section 14(1)(f) exception applies, I must find that disclosure of the record would **not** constitute an unjustified invasion of personal privacy.

I have found that the names, titles, addresses and telephone numbers of the references qualify as personal information. In the absence of any evidence or argument weighing in favour of finding that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy, I find that the exception contained in section 14(1)(f) does not apply.

I am, therefore, of the view that the disclosure of the names, titles, addresses and telephone numbers of the references would constitute an unjustified invasion of their personal privacy and the exemption in section 14(1) of the Act applies to this information.

**ORDER:**

I uphold the decision of the County.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ March 17, 1994