



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-313**

## **Appeal M-9300400**

### **Township of Essa**



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# ORDER

## BACKGROUND:

The Township of Essa (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to notes of conversations that either of two named Township employees had with a third named employee (the primary affected person) in relation to certain identified projects or individuals. Access was also requested to any notes made of the project inspections.

The Township issued a decision denying access to the notes of conversations in their entirety claiming the application of the mandatory exemption in section 14 of the Act. The Township indicated that the requester had already been provided with access to any notes related to inspections. The requester appealed the decision of the Township relating to the notes of the conversations.

Mediation was not successful and notice that an inquiry was being conducted to review the decision of the Township was sent to the appellant, the Township, the primary affected person and four other individuals named in the records (the other affected persons). Representations were received from all the parties.

The Township has identified three records as being responsive to the request:

1. One-page memorandum, dated February 27, 1992, from the Clerk Administrator of the Township to the primary affected person;
2. One-page memorandum, dated February 27, 1992, from the primary affected person to the Clerk Administrator of the Township in response to Record 1; and
3. One-page memorandum, dated August 26, 1992, from the Clerk Administrator of the Township to the primary affected person including the response of the primary affected person.

## ISSUES:

The issues arising in this appeal are:

- A. Whether the information contained in the records 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.

## SUBMISSIONS/CONCLUSIONS:

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

"Personal information" is defined in section 2(1) of the Act, in part, as "... recorded information about an identifiable individual ..."

The appellant maintains that the information contained in the records is not "personal information" as the individuals who had the conversations were employees of the Township who were discussing a project they had dealt with in the normal course and scope of their employment.

The manner in which the primary affected person and one of the other affected persons dealt with this project has been called into question. The Township took action to address these concerns. In addition, the involvement of one of the other affected persons is under investigation.

In these circumstances, I am satisfied that the record contains the personal information of the primary affected person as well as that of certain affected persons.

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

Under Issue A, I found that the records contain the personal information of individuals other than the appellant. Section 14 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 my view, the only exception to the mandatory exemption contained in section 14 of the Act which has potential application in the circumstances of this appeal is section 14(1)(f) which states:

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.

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), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy.

The Township submits that the presumptions contained in sections 14(3)(b) and (g) apply to the records. These sections of the Act state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

The Township has provided no evidence substantiating how the personal information contained in the records could be said to have been compiled as part of an investigation into a possible **violation of law**. Accordingly, I find that section 14(3)(b) has no application in the circumstances of this appeal. Nor do I find that section 14(3)(g) has any application. A portion of Record 2 contains comments about the performance of the primary affected person but I do not consider the document to be a "personnel evaluation".

The Township also submits that the considerations in sections 14(2)(e), (h) and (i) are factors which weigh in favour of privacy protection. The appellant maintains that sections 14(2)(a) and (d) of the Act support disclosure of the records. These sections state:

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;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

- (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.

As far as sections 14(2)(a) and (d) are concerned, the appellant merely states that "... [these sections] would more than offset any concern about unjustified invasion of personal privacy...". Based on these representations and my review of the records, I find that there is no evidence to conclude that sections 14(2)(a) and (d) are relevant considerations weighing in favour of disclosure in this appeal.

Having considered all of the circumstances arising in this appeal, I find that disclosure of the records would constitute an unjustified invasion of the personal privacy of the affected persons and the mandatory exemption in section 14 of the Act applies.

Two of the affected persons have consented to the disclosure of their personal information. However, I find that their personal information is so intertwined with that of the primary and other affected persons that to give effect to these consents would result in an unjustified invasion of the personal privacy of other individuals.

### **ORDER:**

I uphold the decision of the Township.

Original signed by: \_\_\_\_\_  
Anita Fineberg  
Inquiry Officer

\_\_\_\_\_ April 26, 1994