



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

ORDER M-609

Appeal M_9500392

The Corporation of the Town of Oakville



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NATURE OF THE APPEAL:

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Corporation of the Town of Oakville (the Town) received a request for access to training report forms which are prepared when a Town firefighter has successfully completed one of two courses relating to the handling of hazardous and radioactive waste. The appellant specifically indicated that she wanted the names of the firefighters who have taken the courses.

The Town located a representative sample of records responsive to the request and advised the requester that access would be denied only to the personal information of individual firefighters contained therein. In addition, the Town issued a fee estimate in the amount of \$110. The requester asked that the fee be waived. The Town refused to grant a fee waiver. The requester appealed the Town's decision regarding the amount of the fee, the denial of the fee waiver and its refusal to grant complete access to the requested records.

The Town provided this office with two of the records, which are forms filled in by the firefighter and the course instructor upon the successful completion of one of the courses. The Town estimates that there are 100 of these forms. As the forms contain similar information, I consider these two documents to be a representative sample of the records held by the Town.

A Notice of Inquiry was sent to the appellant and the Town. Representations were received from both parties.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and the individual's name where 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.

The firefighter's name, the dates on which the training took place, the hours spent in training and the particular course taken are included on the form. I have reviewed the two sample forms and find that they contain the personal information of the individual firefighters whose names appear in them.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(f) of the Act reads as follows:

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.

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(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made that section 16 of the Act applies to the personal information.

The Town submits that the information contained in the records falls within the presumptions under sections 14(3)(d) and (g) which read as follows:

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

- (d) relates to employment or educational history;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

I have reviewed the Town's representations with respect to the application of the presumptions. I find that the records do not consist of personal recommendations or evaluations within the meaning of section 14(3)(g) of the Act.

As stated above, the information contained in the records pertains only to the course which the firefighter has successfully completed. It describes a course taken by the firefighter during his or her employment, as opposed to providing a narrative of events which have taken place during the individual's employment with the Town. For this reason, I find that the information cannot be considered to be "employment history" within the meaning of the Act.

The information about the training course successfully completed by each firefighter is quite detailed. Because of the nature of the training received and the duration of the course, I find that its successful completion represents a significant upgrade to the educational background of those who are so enrolled. I find that professional development through extended training courses such as these merit inclusion within the definition of education history when it appears in a record. I find, therefore, that the information contained in the records relates to the educational history of the individual firefighters whose names appear on them. Accordingly, I find that the disclosure of the personal information in the records would constitute a presumed unjustified invasion of the personal privacy of the firefighters under section 14(3)(d).

None of the personal information contained in the records falls under section 14(4) and the appellant has not raised the possible application of section 16 of the Act. Accordingly, I find that the disclosure of the personal information in the records would constitute an unjustified invasion

of the personal privacy of the firefighters and that the records are exempt from disclosure under section 14 of the Act.

However, the Town is under an obligation to consider section 4(2) of the Act, which states:

Where an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

I have reviewed the records and have determined that with the name and signature of the firefighters severed from each of the forms, the information is no longer identifiable as personal information. Thus, the disclosure of the remainder of the records would not constitute an unjustified invasion of the personal privacy of the firefighters.

FEE/FEE ESTIMATE

The fee estimate provided by the Town may be summarised as follows:

Search time: 5 hours less 2 hours, @ \$30.00 an hour = \$90

Photocopying charge: approximately 100 pages x \$0.20/page = \$20

In reviewing the fee estimate of the Town, it is my responsibility under subsection 45(5) of the Act to ensure that the amount of the estimate is reasonable in the circumstances. The burden of establishing the reasonableness of the estimate rests with the Town. In my view, the Town discharges this burden by providing me with detailed information as to how the fee estimate was calculated, and by providing sufficient evidence to support its claim.

Search time/Preparation of the Record

The Town submits that the requested records are "fire reports" within the meaning of its By-law 1993-88 which permits a charge of \$50 per report. I find that the requested records are not "fire reports" and are not, accordingly, subject to the charges prescribed in By-law 1993-88.

In addition, the Town submits that it will take five hours to "search files, compile the information, make an estimated 100 photocopies, black out all identifiable names, and package and mail the information".

The Town has provided no evidence as to the nature and extent of the search which will be required to locate the requested records. While I assume that the requested records are located in the personnel file of each individual firefighter, the Town has not indicated where these files are located or how the information sought might be retrieved. As I am unable to determine with any certainty whether the amount of time quoted by the Town which may be required to search for the records is reasonable, I must disallow this portion of the fee.

In my discussion of personal information above, I ordered that the names and signatures of the firefighters should be severed from the records. I am, accordingly, prepared to allow a charge of 30 seconds per page, at a rate of \$30 an hour, for the Town to prepare the records for disclosure, by making the required severances. As the Town has indicated that there are approximately 100 pages of responsive records, I find that it would take 50 minutes to complete the severing and that a reasonable fee would be, therefore, \$25 to prepare the records for disclosure.

Past orders have concluded that the language of the Act does not allow charging for such charges as "feeding the [photocopier] machine", or the packaging of the records (Order 184). I, therefore, disallow that portion of the charges. The Town would, however, be entitled to charge \$0.20 per page for photocopying.

FEE WAIVER

The appellant submits that the Town should waive payment of the fee as public health and safety will benefit through the disclosure of the information contained in the records. Section 45(4)(c) of the Act states:

A head shall waive the payment of all or any part of an amount required to be paid under this Act if, in the head's opinion, it is fair and equitable to do so after considering,

whether dissemination of the record will benefit public health or safety;

The appellant represents a group of residents who are concerned about the safety of a radioactive/nuclear waste transfer station located in the Town. The appellant is interested in determining whether the Town has adequately trained its firefighters to respond to an emergency at the facility. For this reason, the appellant is seeking information about the training provided to each individual firefighter employed by the Town.

In Order P-474, Assistant Commissioner Irwin Glasberg listed four factors which are relevant when determining whether dissemination of a record will benefit public health or safety under section 57(4)(c), which is the equivalent provision in the provincial Act to section 45(4)(c) in the Act. These factors are:

1. Whether the subject matter of the record is a matter of public rather than private interest;
2. Whether the subject matter of the record relates directly to a public health or safety issue;
3. Whether the dissemination of the record would yield a public benefit by a) disclosing a public health or safety concern or b) contributing meaningfully to the development of understanding of an important public health or safety issue;

4. The probability that the requester will disseminate the contents of the record.

I find that the subject matter of the records at issue in this appeal, the provision of training for firefighters in these specialized fields, is a matter of public interest which relates directly to a public health or safety issue. The appellant has only been advised that some of the firefighters which the Town employs have received training in dealing with accidents at facilities such as the transfer station. The appellant maintains that in order to determine the state of the Town's preparedness should an emergency occur, she requires the names of each individual who has completed these courses.

I find that the dissemination of the names of the individual firefighters who have undergone such training will not contribute in any meaningful way to either disclosing a public health or safety concern or to the development of understanding of an important public health or safety issue.

However, in my view, disclosing the fact that a given number of unidentified firefighters employed by the Town have completed safety courses aimed at responding to an emergency at the transfer station would yield a public benefit. The appellant has raised a legitimate public health or safety concern with the Town and the disclosure of the records, with the personal identifiers of the firefighters severed, would contribute meaningfully to the development of understanding of the need for firefighter training. I find this to be an important health and safety concern within the community. With the disclosure of these records, the public will be better able to determine whether the steps taken by the Town to train firefighters in the event of an emergency at the transfer station have been adequate.

Finally, based on the representations received from the appellant, I am satisfied that these records will likely be disseminated to the public by the appellant and her organization.

Therefore, I find that the dissemination of the records will benefit public health or safety in a manner contemplated by section 57(4)(c) of the Act and order that, in the circumstances of this appeal, the fee be waived.

ORDER:

1. I order the Town to waive the fee.
2. I order the Town to disclose to the appellant the requested records with the names and signatures of the individual firefighters deleted within twenty-one (21) days of the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Town to provide me with copies of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ October 5, 1995