



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

ORDER P-1333

Appeal P_9600339

Ontario Municipal Employees Retirement Board



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NATURE OF THE APPEAL:

The Ontario Municipal Employees Retirement Board (the Board) received a request under the Freedom of Information and Protection of Privacy Act (the Act) for information relating to the amount of pension benefits received by a named individual for a specific period of time from the Toronto Parking Authority, the City of Toronto (the City), or any other municipal agency or body.

The Board responded to the requester and denied access to the responsive information on the basis of the following exemption under the Act:

- invasion of privacy - section 21(1).

The requester (now the appellant) appealed the Board's decision.

This office provided a Notice of Inquiry to the appellant, the Board and the named individual (the affected person). Representations were received from all three parties.

The only information at issue in this appeal is the amount of pension benefits received by the affected person for the years 1986 to 1996.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual.

The appellant submits that the information at issue does not fall within any of the eight subparagraphs included under the definition of personal information in section 2(1) of the Act.

Section 2(1) of the Act does not provide an exhaustive list of the types of information which qualify for inclusion under the definition of "personal information". Information which does not qualify under any of the subparagraphs will still meet the requirements of the definition if it can be said to be "... any recorded information about an identifiable individual ...", as provided by the introductory wording to the definition. Accordingly, I find that the amount of pension benefits received by the affected person falls within the definition of "personal information" in section 2(1). The information at issue relates to the affected person only.

Once it has been determined that a record contains personal information, section 21(1) of the Act prohibits the disclosure of this information except in certain circumstances. One of these circumstances is found in section 21(1)(f), which 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.

Sections 21(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Where one of the presumptions found in section 21(3) applies to the personal information found in a record, **the only way** such a presumption against disclosure can be overcome is where the personal information falls under section 21(4) or where a finding is made that section 23 of the Act applies to the personal information.

If none of the presumptions contained in section 21(3) apply, the Board must consider the application of the factors listed in section 21(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Board submits that disclosure of the information at issue is presumed to be an unjustified invasion of privacy pursuant to section 21(3)(f) of the Act, which reads:

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

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

The Board argues that the amount of pension benefits received over the ten-year period is information that describes the affected person's finances, income, assets and financial activities. Therefore, the Board submits that pursuant to section 21(3)(f), disclosure of this information is presumed to constitute an unjustified invasion of his personal privacy.

I have carefully reviewed all the representations in this appeal. In my view, the information at issue satisfies the requirements of a presumed unjustified invasion of privacy of the affected person under section 21(3)(f) of the Act.

As I indicated earlier, if one of the presumptions under section 21(3) applies, the Board can disclose the personal information only if it falls under section 21(4) of the Act, or if section 23 of the Act (the public interest override) applies.

Section 21(4) of the Act identifies particular types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. Section 21(4)(a) reads:

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. [emphasis added]

The words “[d]espite subsection (3)” do not limit the application of section 21(4) to those types of information identified in section 21(3); rather they identify types of information that the legislature clearly intended to fall within the exception contained in section 21(1)(f). Generally speaking, if a record contains information of the type described in section 21(4), the exception to the section 21 exemption contained in section 21(1)(f) will apply (Order M-23).

In Order M-23, Commissioner Tom Wright provided a definition for the term “benefits” found in section 14(4)(a) of the Municipal Freedom of Information and Protection of Privacy Act (which is identical to section 21(4)(a) of the Act):

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 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”. [emphasis added]

I adopt Commissioner Wright’s comments for the purposes of this order.

The appellant submits that the information at issue in this appeal falls within the ambit of section 21(4)(a) and, accordingly, disclosure of this information would not constitute an unjustified invasion of personal privacy of the affected person.

In their representations, both the Board and the affected person argue that section 21(4)(a) does not apply to the information at issue. The Board submits that section 21(4)(a) should apply only to the description of the benefits available to the employee, but not the precise quantum of the value of benefits received. The Board therefore concludes that the precise pension amounts received by a retiree does not fall within the definition of benefits under section 21(4)(a).

I have carefully considered all the representations in this appeal. I find that the pension amounts at issue in this appeal were not received by the affected person as a result of being employed by the institution. Rather, the pension entitlements were received by the individual as a consequence of his retirement. On this basis, I must conclude that the amount of the pension received by the affected person does not constitute a benefit as defined in Order M-23. Consequently, I find that the information at issue does not fall within the ambit of section 21(4)(a) of the Act.

In summary, I find that disclosure of the information at issue would constitute a presumed unjustified invasion of personal privacy of the affected person under section 21(3)(f) of the Act.

I find that section 21(4) does not apply to this information. Therefore, I find that this information is properly exempt under section 21(1) of the Act.

PUBLIC INTEREST IN DISCLOSURE

The appellant argues that there exists a public interest in the disclosure of the information at issue under section 23 of the Act, which states:

An exemption from disclosure of a record under sections 13, 15, 17, 18, 20 and **21** does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. [emphasis added]

The appellant submits that it is in the public interest to have the information at issue in this appeal released. The appellant indicates that following his retirement, the affected person was hired back by the City as a consultant at the same level of remuneration, while continuing to receive his pension. The appellant asserts that during this time, the affected person also received income from another City funded source. The appellant claims that he has been trying to determine the extent to which the taxpayers of the City have been paying as a result of this. He indicates that the City has a policy against “double dipping”, and feels that the taxpayers of the City have a right to know about such activities. Therefore, the appellant submits that the public interest would clearly be served by revealing the amount of the pension received by the affected person.

Both the Board and the affected person argue that there is no compelling public interest in the disclosure of the information at issue. With respect to pension information, the affected person indicates that the rules for calculating a pension are easily obtainable and available for disclosure.

In Order P-1121, Inquiry Officer Holly Big Canoe made the following observations about the application of the “public interest override” contained in section 23:

There are two requirements contained in section 23 which must be satisfied in order to invoke the application of the so-called “public interest override”: there must be a **compelling** public interest in disclosure; and this compelling public interest must **clearly** outweigh the **purpose** of the exemption.

“Compelling” is defined in the Oxford dictionary as “rousing strong interest or attention”. In order to find that there is a compelling public interest in disclosure, the information at issue must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has available to effectively express opinion or to make political choices.

If a compelling public interest is established, it must then be balanced against the purpose of the exemption which has been found to apply. In my view, this balancing involves weighing the relationship of the information against the Act’s central purposes of shedding light on the operations of government and protecting

the privacy of personal information held by government. Section 23 recognizes that each of the exemptions listed in the section, while serving to protect valid interests, must yield on occasion to the public interest in access to information held by government. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption.

I adopt the approach expressed in Order P-1121 for the purposes of this appeal.

I have carefully considered the positions of the parties along with the information at issue. I note that the appellant has not raised any concerns regarding the calculation of the pension amount to which the affected person would be entitled as a result of his former employment with the City or whether he should be entitled to any pension in this regard.

I agree that the appellant's concerns pertaining to "double dipping" warrant public scrutiny, and were it the case that the affected person was receiving income from City sources contrary to stated City policy, a compelling public interest would be established. However, I am not persuaded that disclosure of the pension amount would shed light on these allegations or that it would add in some way to the information already available to the appellant to allow him (or the public generally) to effectively express an opinion regarding these activities or make political choices as a consequence of or in relation to them.

In the circumstances of this appeal, therefore, I am not persuaded that there exists a compelling public interest in the disclosure of the information at issue that clearly outweighs the purpose of the invasion of privacy exemption. Accordingly, I find that section 23 of the Act does not apply in the circumstances of this appeal. The result is that the information at issue in this appeal is properly exempt from disclosure under section 21(1) of the Act.

ORDER:

I uphold the Board's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

January 21, 1997