



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

ORDER M-1076

Appeal M-9700260

County of Brant



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NATURE OF THE APPEAL:

The County of Brant (the County) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for a copy of all billing records submitted by County councillors for payment of mileage expenses and remuneration while attending meetings on County business during the month of June 1997. The appellant is a newspaper reporter who maintains that these monthly statements were routinely provided between January and May 1997.

The County identified 11 responsive records, each titled "Statement of Meeting Attendance Brant County Council Members or Representatives". They identify the councillor, list the meetings/events attended during June 1997 by date, as well as the mileage and remuneration claim for each listing and the monthly totals.

The County denied access to the records based on the following exemption contained in the Act:

- invasion of privacy - section 14.

The appellant appealed the County's decision, and also raised the possible application of section 16 of the Act, the so-called "public interest override".

During mediation, the County agreed to disclose the mileage expense information. Rather than severing the records, the County extracted the mileage expenses, combined them with other expense information for each councillor, and created a new record covering the months of June through October 1997. This new record was disclosed to the appellant.

This office sent a Notice of Inquiry to the appellant, the County and the 10 councillors whose information is contained in the records (the affected persons). Representations were received from the appellant, the County and four affected persons.

DISCUSSION:

PERSONAL INFORMATION:

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

Each record includes the name of the respective councillor, the nature or purpose of the event/meeting attended, the amount of remuneration paid for attendance at each event/meeting, and the total remuneration for the month of June 1997.

In its representations, the County states that most of the information contained in the records is available to the public. Specifically, By-law Number 5-93, which is a public document, sets the remuneration level for all meetings/events attended by councillors at \$100. The County also releases a detailed statement in February of each year which outlines the total annual remuneration paid to each councillor during the previous year. What these documents don't provide is a chronological list of meetings/events attended by councillors, which is reflected in the records at issue in this appeal.

In my view, the remuneration paid to councillors describes their income and is properly characterized as "personal information". Therefore, I find that the portions of the records which link the name of the councillor to the per diem and monthly remuneration levels is properly characterized as personal information, despite the fact that the per diem and annual remuneration levels for each councillor is public information under the terms of the County by-laws and practice.

As far as the rest of the information in the records is concerned, it consists of a listing of meetings attended by councillors. I find meetings and events are attended by councillors in their professional capacities as elected officials, and that information which reflects this professional activity does not qualify as "personal information" for the purposes of section 2(1) of the Act.

INVASION OF PRIVACY

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information unless one of the exceptions listed in the section applies. The only exception which might apply in the circumstances of this appeal is section 14(1)(f), which permits disclosure if it "... does not constitute an unjustified invasion of personal privacy".

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether the disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies, the only way such a presumption can be overcome is if the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies.

If none of the presumptions in section 14(3) apply, the County must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances which are relevant in the case.

The County submits that the disclosure of the personal information would be a presumed unjustified invasion of personal privacy under section 14(3)(f) of the Act (the information describes an individual's finances or income), and that section 14(2)(h) (the information was supplied in confidence) is a relevant consideration in the circumstances of this appeal.

The councillors who responded to the Notice of Inquiry all object to disclosure on the basis that the annual Statement of Payments for 1997 is published in February, 1998.

The appellant submits that until July 1997, the monthly records were regularly released by the County. He also submits that the information contained in the records is clearly relevant to whether elected public officials are performing their tasks appropriately and efficiently, and that disclosure of this information is “desirable for the purpose of subjecting the activities of the institution to public scrutiny” (section 14(2)(a)).

Although the per diem levels paid to a councillor for his/her attendance at meetings/events describes that individual’s income, I cannot ignore the fact that the County discloses the total remuneration paid to each councillor in the annual Statement of Payments, and that the per diem level of \$100 for each meeting is set by by-law and publicly known. It is a straightforward exercise to calculate the number of meetings attended by each councillor by simply dividing the annual figure by the per diem rate. In my view, it would be absurd to withhold monthly remuneration figures when the annual total remuneration levels are routinely disclosed, and I find that disclosure of these monthly amounts cannot be presumed to constitute an unjustified invasion of personal privacy under section 14(3)(f). My finding is distinguishable from that of Inquiry Officer Mumtaz Jiwan in Order M-854. In that case, the Inquiry Officer relied on the fact that the annual remuneration of councillors was not made publicly available.

I also find that section 14(2)(h) is not a relevant consideration in the circumstances of this appeal. Any per diem figures provided by the councillors were clearly submitted with full knowledge that they would subsequently be totalled and released in the annual Statement of Payments. In my view, this is inconsistent with any reasonable expectation of confidentiality.

I accept the appellant’s evidence that section 14(2)(a) is a relevant consideration. Councillors are paid from public funds to attend meetings/events in their role as elected public officials. Transparency in the administration of these payments is a legitimate public expectation, and presumably one of the bases for the County’s decision to release the annual Statement of Payments. In my view, disclosure of the annual Statement of Payments and the individual billing records is desirable for the purpose of subjecting the activities of the County to public scrutiny.

Having reviewed the records and all representations, I find that the public scrutiny considerations contained in section 14(2)(a) outweigh any considerations favouring privacy protection, in the circumstances of this appeal.

Therefore, I find that the exception to the exemption contained in section 14(1)(f) has been established by the appellant, and disclosure would not constitute an unjustified invasion of the privacy of the councillors.

Because I have found that the disclosure of the records does not constitute an unjustified invasion of personal privacy, I do not need to consider the possible application of section 16 of the Act.

ORDER:

1. I order the County to disclose the records in their entirety to the appellant by sending the appellant a copy no later than **March 19, 1998** but not before **March 16, 1998**.
2. In order to verify compliance with this order, I reserve the right to require the County to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

_____ February 12, 1998