



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-1082**

**Appeal M-9700317**

**The Corporation of the Town of Whitby**

## **NATURE OF THE APPEAL:**

The Corporation of the Town of Whitby (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to “information regarding the dismissal and compensation package to [a named individual] employed by the Town of Whitby”. Specifically, the requester sought access to the amount of the severance paid to the named individual, a former employee (the affected person), the amount of the Town’s legal expenses and any related costs incurred by the Town. The Town denied access to the responsive records on the basis that the following exemptions in the Act apply:

- advice and recommendations - section 7(1)
- third party information - section 10(1)
- economic and other interests - section 11(c)
- solicitor-client privilege - section 12
- invasion of privacy - section 14(1)

The requester appealed the decision to deny access.

The records at issue consist of two accounts for legal services (the legal accounts) and an agreement between the Town and the affected person (the agreement). During mediation, the Town disclosed the total dollar amounts of the two legal accounts. Therefore, what remains at issue is the agreement in its entirety together with the severed portions of the legal accounts which contain the description of the legal services rendered to the Town by its solicitors. During mediation, the appellant also indicated that there is a public interest in this matter.

This office provided a Notice of Inquiry to the appellant, the Town and the affected person. The parties were asked to comment on the application of the exemptions raised by the Town and the possible application of section 16 (the so-called public interest override) of the Act. Representations were received from all parties.

## **RECORDS AT ISSUE**

The appellant has indicated to this office that he is seeking access to Town’s total cost in connection with its termination of the affected person. As indicated previously, this amount consists of the Town’s legal costs and the amount paid to the affected person pursuant to the agreement. As part of his representations, the appellant has confirmed to this office that he is not seeking access to the description of the legal services contained in the legal accounts nor is he seeking access to the terms of the agreement other than the dollar amount.

The Town has previously disclosed the total amount of its legal fees and disbursements to the appellant. I have reviewed the remaining information in the legal accounts and I find that it contains a description of the services for which the Town was billed. Since this information is not being sought by the appellant, I find that the remaining parts of the legal accounts are not at issue in this appeal. With respect to the agreement, it is only the dollar amount paid to the affected person which is at issue in this appeal.

**DISCUSSION:  
PERSONAL INFORMATION AND 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 information at issue is the amount paid to the affected person as a result of his claim for wrongful dismissal and pursuant to the agreement. On that basis, I find that the information qualifies as the personal information of the affected person.

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) give 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 to the personal information found in a record, 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 to the personal information.

The appellant refers to the limitation in sections 14(4)(a) and (b) and argues that the severance paid to the affected person had to have arisen from an employment contract between the affected person and the Town.

Sections 14(4)(a) and (b) of the Act provide:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,

- (a) 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 a staff of a minister. [emphasis added].
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

The payment amount in the agreement was not received by the affected person as a result of being employed. Rather, the amount was negotiated in exchange for acceptance of the agreement. Accordingly, the payment to the affected person does not constitute “benefits” within the meaning of section 14(4)(a) of the Act (Orders M-173, M-204 and M-278).

Section 14(4)(b) is also not applicable to the personal information because the affected person was an employee of the Town and was, therefore, not a party to a contract for personal services with the Town (Order M-173).

Previous orders of the Commissioner have addressed the issue of access to information in retirement or severance agreements. In some of those appeals, information relating to the employment commencement dates, sick time entitlements, and the start date of unpaid leave was found to fall within the presumption in section 14(3)(d) (employment history). References to specific salary to be paid to an employee over a period of time and the contributions made to a pension plan by the employee were also found to fall within the section 14(3)(f) presumption (finances, income and financial history). In the present case, the monetary amount paid out to the affected person was not a "benefit" arising out of employment; it was negotiated as part of the settlement between the Town and the affected person.

In Order M-173, former Assistant Commissioner Irwin Glasberg commented on the monetary entitlements contained in retirement agreements and found that:

While it is true that a number of the clauses confer monetary entitlements on the three former employees, with one exception, these provisions cannot be said to describe an individual's "finances, income, assets, net worth, financial history, or financial activities" for the purposes of section 14(3)(f) of the Act. Rather, these entitlements represent one time payments to be conferred immediately or over a defined period of time that arise directly from the acceptance by the former employees of retirement packages.

I agree with these findings and find that they are equally applicable to the fact situation of this case. I find that the amount paid out to the affected person pursuant to the severance agreement is a one-time payment made by the Town as a result of the acceptance of the agreement. In my view, the presumptions in section 14(3) do not apply to the personal information at issue.

I will now consider the factors in section 14(2). In interpreting this section, I must consider all the relevant circumstances of the case in addition to the factors enumerated under this section.

The Town argues that the agreement was entered into in the context of whether the affected person was wrongfully dismissed from employment and that the amount of the settlement points to the integrity of the affected person and the manner in which he fulfilled his obligations to the Town. The Town points out that the agreement contains a confidentiality clause because the parties felt that the nature of the issues necessitated such an inclusion. In this way, the Town appears to have raised sections 14(2)(f) (highly sensitive) and (h) (supplied in confidence).

The affected person states that he is party to the agreement and the confidentiality clause contained in the agreement precludes him from discussing the settlement.

I have reviewed the evidence before me and I make the following findings:

1. The personal information in the agreement was negotiated and not “supplied” as required by the section 14(2)(h) provision and this provision, consequently, does not apply to the information.
2. The agreement does contain a confidentiality clause and I accept that the affected person had an expectation that his negotiations with his former employer would not be made public. This factor is relevant and weighs in favour of protection.
3. The personal information in the agreement could be characterized as being “highly sensitive” in the context of the termination of the employment. This factor is relevant and favours protection of the personal information.

I have reviewed all the factors in section 14(2) together with all the material circumstances of this case and I find that the considerations which favour protection of the personal information outweigh those that favour disclosure. Accordingly, I find that disclosure of information in the agreement would constitute an unjustified invasion of personal privacy.

## **PUBLIC INTEREST**

The appellant submits that the agreement was between a public institution and its employee and the severance was funded with public monies. Therefore, the matter should be regarded as one of “public interest” and open to the public.

Section 16 of the Act reads as follows:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13, **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. (emphasis added)

In order for section 16 to apply, two requirements must be met. First, there must exist a compelling public interest in the disclosure of the records. Second, this interest must clearly outweigh the purpose of the personal information exemption.

I agree with the appellant that the current climate of spending restraints in which this agreement was negotiated places an unparalleled obligation on officials to ensure that tax dollars are spent wisely. However, in the circumstance of this case, there is not sufficient evidence of a **compelling** public interest in the disclosure of the information which clearly outweighs the purpose of the section 14 exemption. I find that section 16 does not apply.

**ORDER:**

I uphold the Town's decision to withhold access to the information in the agreement.

Original signed by: \_\_\_\_\_

Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_ March 6, 1998