



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

ORDER MO-1391

Appeal MA-000148-1

Elliot Lake Police Services Board



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NATURE OF THE APPEAL:

The appellant, on behalf of the Elliot Lake Police Association, wrote to the Elliot Lake Police Services Board (the Police) seeking access under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to five categories of information as follows:

1. [Police] Procedural By-law and any amendments thereto.
2. Employment agreement - salary and all benefits for the positions of Chief of Police and Deputy Chief of Police.
3. Signing bonus in lieu of retroactive agreement.
4. Physical fitness agreement.
5. Agreement to pay legal fees and costs resulting from litigation.

The Police responded to the request by granting access to the record responsive to item 1, but denied access to the remaining records “as the personal Service contract of both the Chief and Deputy Chief of Police are personal information as set out in section 14 of the [*Act*].” The Police further stated that the individuals “do not consent to the release of the described information.”

The appellant then appealed the decision of the Police to this office.

During the mediation stage of the appeal, the Police disclosed portions of the responsive records to the appellant, although certain information was withheld, again on the basis of section 14 of the *Act*. Later during the mediation stage of the appeal, the Police disclosed additional information from the records. Further, the appellant indicated that he was not interested in certain portions of the records that the Police were withholding. As a result, the only information remaining at issue in this appeal is that withheld from three pages of the records, pages 10, 17 and 18.

I sent a Notice of Inquiry setting out the issues in the appeal to the Police. I received representations in response. I then sent the representations of the Police, together with a Notice of Inquiry, to the appellant, who provided representations in response.

RECORDS:

The records at issue consist of portions of memoranda of agreement with two different Police employees (the affected persons).

ISSUES:

PERSONAL INFORMATION

Introduction

For section 14(1) to apply, the information contained in the severances must be personal information

as defined in section 2(1) of the *Act*. That term is defined, in part, as “recorded information about an identifiable individual”.

The information withheld from pages 10 and 17 reveals the names of the affected persons, their signatures, the amounts to be paid to them as signing bonuses “in lieu of retroactivity”, and the signatures of other members of the Police and witnesses. The information withheld from page 18 reveals the name of one of the affected persons, that person’s signature and job title, the amount to be paid to the affected person respecting a “solicitor client account”, the signatures of other members of the Police and witnesses, as well as an additional term of the agreement.

Personal vs. professional or official government capacity

Previous decisions of this office have drawn a distinction between an individual’s personal, and professional or official government capacity, and found that in some circumstances, information associated with a person in his or her professional or official government capacity will not be considered to be “about the individual” within the meaning of the section 2(1) definition of “personal information” [Orders P-257, P-427, P-1412, P-1621].

The following passage from a decision of the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385 at 413, 415, in the context of the federal *Privacy Act*, captures the essence of the distinction which this office has drawn between an individual’s personal, and professional or official government capacity:

The purpose of these provisions is clearly to exempt [i.e., from the definition of “personal information”] only information attaching to positions and not that which relates to specific individuals. Information relating to the position is thus not “personal information”, even though it may incidentally reveal something about named persons. Conversely, information relating primarily to individuals themselves or to the manner in which they choose to carry out the tasks assigned to them is “personal information”.

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The fact that persons are employed in government does not mean that their personal activities should be open to public scrutiny. By limiting the release of information about specific individuals to that which relates to their position, the *Act* strikes an appropriate balance between the demands of access and privacy. In this way, citizens are ensured access to knowledge about the responsibilities, functions and duties of public officials without unduly compromising their privacy [see Order P-1621].

In Reconsideration Order R-980015, former Adjudicator Donald Hale reviewed the jurisprudence relating to the definition of the term “personal information” as it relates to individuals associated with organizations:

... the information associated with the names of the affected persons which is contained in the records at issue relates to them only in their capacities as officials with the organizations which employ them. Their involvement in the issues addressed in the correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing. This information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein. Essentially, the information is not *about* these individuals and, therefore, does not qualify as their “personal information” within the meaning of the opening words of the definition.

In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. Individuals expressing the position of an organization act simply as a conduit between the intended recipient of the message and the organization. The voice is that of the organization rather than that of the individual delivering the message. In the usual case, the views expressed are those of the organization, as opposed to the personal opinions or views of the individual within the meaning of section 2(1)(e) of the *Act*. Further, this information will not be considered to be “about” the individual, for the reasons set out above [emphasis in original].

Representations

The Police submit that the information in question is “about” the two affected persons and therefore qualifies as their personal information.

The appellant submits:

Given the conclusions outlined by Adjudicator Donald Hale, in Reconsideration Order P-1538, the records requested should be disclosed without severances. The information requested is associated with the individuals currently employed by the organization and relates to them only in their capacities as officials with the organization. Essentially, the information is not about the individuals and, therefore, does not qualify as their “personal information” within the meaning of the opening words of the definition.

The appellant also submits that in the past, the Police had always entered into employment agreements by means of the passing of a by-law, which would be accessible to the public.

Findings

In my view, the names of the employees, their signatures and the amounts to be paid to them on pages 10 and 17 qualify as those individuals' personal information under section 2(1) of the *Act*. In addition, on page 18, the name of one of the affected persons, that person's signature and job title, and the amount to be paid to the affected person respecting a "solicitor client account", and the additional clause constitute that person's personal information. In the circumstances, all of this information is "about" these individuals in their personal capacity, although it also relates to their employment. This finding is consistent with previous orders of this office, which have concluded, for example, that an employee's term or duration of employment (Order MO-1272), exact salary (Orders P-61, M-5, P-183 and P-924) and professional training (Order P-1124) constitute personal information. The fact that this type of information may or may not have been available to the public by way of by-law in the past has no bearing on this determination.

The remaining withheld information relating to other individuals relates to them solely in their professional capacity and, as such, does not qualify as personal information.

INVASION OF PRIVACY

Where a requester seeks access to records which contain the personal information of other individuals, but not himself or herself, 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 "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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.

The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [Order P-1456, citing *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767].

The appellant submits that any personal information in the records should be disclosed on the basis of sections 14(4)(a) and (b). Those sections read:

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
- (b) discloses financial or other details of a contract for personal services between an individual and an institution.

In my view, none of the information at issue can be characterized as classification, salary range and benefits, or employment responsibility information and, therefore, section 14(4)(a) does not apply. In addition, I am not persuaded that the agreements in question constitute “contracts for personal services” (as opposed to employment contracts) for the purpose of section 14(4)(b) of the *Act*.

Section 14(3)(f) 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;

In my view, the dollar figures from pages 10, 17 and 18 clearly qualify as information relating to the affected persons’ finances and income, since they reveal specific payments made to these individuals. Therefore, this information is exempt under section 14.

The appellant submits that the factor favouring disclosure at section 14(2)(a) applies. That section reads:

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,

the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

The appellant makes reference to several newspaper articles which indicate that police salaries have been the subject of recent public debate in Elliot Lake.

While it may be the case that disclosure of the payments made to the affected persons is desirable for the purpose of public scrutiny of the activities of the Police, based on the *John Doe* decision described above, even if section 14(2)(a) applies, it cannot rebut the section 14(3)(f) presumption of an unjustified invasion of

personal privacy. In my view, the public scrutiny factor clearly does not apply to the remaining personal information and, therefore, all of the withheld personal information is exempt under section 14 of the *Act*.

PUBLIC INTEREST OVERRIDE

The appellant also submits that the information should be disclosed due to the operation of the section 16 “public interest override”. Section 16 reads:

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

The appellant states:

Given the recent, numerous changes in policing, and the state of the economy in general, any contract that is reported to be in the area of a 25% increase, will undoubtedly draw great attention from the community. The recent submission of an article by a Police Service Board Member is further indication that the “controversy” has not been forgotten by the public sector. It is imperative that the records be disclosed without severances for the purpose of subjecting the activities of the institution to public scrutiny, as provided in section 14(2)(a) of the *Act*.

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 exemption [Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 488 (C.A.)].

If a compelling public interest is established, it must then be balanced against the purpose of any exemptions which have been found to apply. Section 16 recognizes that each of the exemptions listed, while serving to protect valid interests, must yield on occasion to the public interest in access to information which has been requested. An important consideration in this balance is the extent to which denying access to the information is consistent with the purpose of the exemption [see Order P-1398].

In my view, there is a public interest in disclosure of the payment information in the records. However, I am not persuaded that this interest is sufficient in the circumstances to meet the “compelling” threshold, nor am I satisfied that any public interest in disclosure would “clearly outweigh” the purpose of the personal privacy exemption.

ORDER:

1. I uphold the decision of the Police to withhold the personal information in the records pursuant to section 14 of the *Act*.
2. I order the Police to disclose pages 10, 17 and 18 to the appellant, with the exception of the information highlighted on the copy of those pages included with the copy of this order sent to the Police, no later than **March 1, 2001**, but no earlier than **February 22, 2001**.
3. In order to verify compliance with provision 2, I reserve the right to require the Police to provide me with a copy of the material disclosed to the appellant.

Original signed by: _____
David Goodis
Senior Adjudicator

_____ January 25, 2001