



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

ORDER MO-1749

Appeal MA-020380-1

Haldimand County



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NATURE OF THE APPEAL:

Haldimand County (the County) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for copies of employment contracts, written termination notices, expense account records, cash settlements and letters of recommendation relating to two named individuals. The requester also sought access to the minutes of an identified council meeting.

In response to the request, the County granted full access to certain records, partial access to the requested employment contracts and the termination notices, and denied access, in its entirety, to a settlement document. The County relied on section 14 of the *Act* (invasion of privacy) to deny access to these records or portions of records (with reference to sections 14(3)(d) and 14(3)(f)). Furthermore, after initially advising the requester that no letters of recommendation existed, the County subsequently located letters of reference for both named individuals, and denied access to these records under section 14, with reference to section 14(3)(g) of the *Act*.

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

During the mediation stage of the appeal a number of issues were resolved. Mediation did not resolve all of the issues, and the file was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the County and two affected parties, initially, and received representations from them. In its representations the County identified that it was modifying its position concerning disclosure of portions of the employment contracts at issue.

I then sent the Notice of Inquiry, along with a copy of the County's representations and a summary of the affected parties' positions, to the appellant. The appellant also provided representations which were, in turn, shared with the County and the two affected parties. In addition, the two affected parties were provided with a copy of the relevant portions of the County's representations, which identified the County's revised position on access to portions of the employment contracts. I received reply representations from the County and one affected party.

RECORDS:

The records remaining at issue are the severed portions of the employment contracts for the two affected parties, a letter of reference for each affected party, and a settlement document (including an Appendix) for one affected party.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the *Act*, the term "personal information" is defined as recorded information about an identifiable individual, including information relating to the employment history of the individual or information relating to financial transactions in which the individual has been involved (paragraph (b) of the definition) and the individual's name if 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 (paragraph (h) of the definition).

Records 1 and 2 consist of the severed portions of the employment contracts of two affected parties. Records 3 and 4 are reference letters for the two affected parties. Record 5 is a settlement document (including an Appendix) for one affected party.

The County states that in its view, all of the records contain the personal information of the affected parties, as defined in section 2 of the *Act*. The appellant does not address this issue.

Previous orders of this office have considered the contents of various types of agreements, such as employment contracts or settlement and/or severance agreements (Orders M-173, MO-1184, MO-1332, MO-1405 and P-1348). These orders have consistently held that information about the individuals named in the agreements, which include, *inter alia*, name, address, terms, date of termination and terms of settlement concern these individuals in their personal capacity and thus qualifies as personal information. I am satisfied that the same considerations apply in the circumstances of this appeal, and that the records contain the personal information of the affected parties.

INVASION OF PRIVACY

Section 14(1) - Introduction

Where a requester seeks personal information of another individual, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies.

Neither affected party consented to the release of the information contained in the records. Accordingly, the only exception which may apply in the present appeal is that set out in section 14(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.

Section 14(1)(f) is an exception to the section 14(1) prohibition against the disclosure of personal information. In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information at issue in this appeal would **not** constitute an unjustified invasion of personal privacy (see, for example, Order MO-1212).

In applying section 14(1)(f), sections 14(2), (3) and (4) 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. These sections provide, in part:

(2) 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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

(3) 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;
- (f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

(4) 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;

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 whose disclosure 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.

With respect to section 14(3) 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) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. In other words, once section 14(3) is found to apply, the factors in section 14(2) cannot be resorted to in favour of disclosure.

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption. [See Orders PO-2017, 2033-I and PO-2056-I]

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

The representations of the affected parties

The affected parties each identified a number of concerns relating to the disclosure of the information at issue. These are summarized as follows:

- the information at issue constitutes “personal information” and disclosure would constitute an unjustified invasion of privacy [pursuant to section 14(1)];
- the nature of the information includes “income” and “assets” [the disclosure of which is presumed to be an unjustified invasion of privacy under section 14(3)(f)];
- some information contains opinions or evaluations [the disclosure of which is presumed to be an unjustified invasion of privacy under section 14(3)(g)];
- there was an expectation of confidentiality, or the information was supplied in confidence [which is a factor set out in section 14(2)(h)].

I will now consider whether section 14(1) applies to each of the records at issue.

Records 1 and 2 – the severed portions of the employment agreements

With respect to the employment agreements, the County states:

The County has provided portions of the employment agreements [to the appellant] but has severed all personal information. The severed portion of the document contains information such as term of the agreement, salary and benefits and termination provisions. It is our opinion that disclosure of this information would constitute a presumed unjustified invasion of personal privacy under section 14(3)(d) of the *Act*.

After identifying that the County had modified its position concerning the disclosure of portions of the agreements that contain "benefits" as a result of the wording in section 14(4)(a) of the *Act*, the County summarizes its position by stating that all remaining sections of the employment agreements, other than the portions released and the "benefits" sections, are presumed to constitute an unjustified invasion of privacy because they either relate to employment or educational history under section 14(3)(d), or financial information under section 14(3)(f) of the *Act*.

The appellant's representations refer to the County's "double termination" of two senior employees, and identify that questions have been raised regarding why this happened, whether it was warranted, how much it cost the taxpayer, and whether the costs could have been mitigated. With respect to the employment contracts, the appellant specifically identifies the interest in information regarding the grounds for termination and the related costs to the taxpayers.

Findings

As noted above, Section 14(4)(a) of the *Act* provides:

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.

The parties appear to be in agreement that section 14(4)(a) applies to portions of the two employment agreements. Indeed the County has identified that, following its initial decision, it decided that certain clauses of the two employment agreements are considered "benefits", and that 14(4)(a) applies to them (specifically, clauses 4(a)(ii), (iii), (iv) and (vi) of Record 1, and clauses 4(a)(v), (vi), (vii) and (viii) of Record 2). I agree that these clauses of the agreements constitute "benefits" for the purpose of section 14(4)(a) as identified by the County.

Furthermore, upon reviewing the records, it is my view that additional clauses contained in the two employment agreements also constitute "benefits". The term "benefits" for the purpose of section 14(4)(a) has been given a fairly expansive definition, and includes life, health, hospital, dental and disability insurance as well as sick leave, vacation, leaves of absence, termination allowance, death and pension benefits (Orders M-23, M-378 and MO-1026). As stated by former Commissioner Wright in Order M-23:

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 will 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".... In my view, the disclosure of these clauses would not constitute an unjustified invasion of personal privacy.

I accept the interpretation of "benefits" set out in Order M-23. Based on that interpretation, I find that the entitlements in clauses 4(a)(v), 5(b)(iii), 6 and 16 of Record 1, and clauses 5(c) and 5(e) of Record 2 also constitute "benefits" for the purpose of section 14(4)(a). In addition, I find that clause 4(a)(i) of Record 2 discloses the "salary range" for the identified position, as specified in section 14(4)(a). Consequently, I find that the personal information relating to these entitlements contained in these clauses of the two employment agreements fall within the ambit of section 14(4)(a) of the *Act*.

With respect to the remaining information, I find that the salary information contained in clause 4(a)(i) of Record 1 and clause 4(a)(iii) of Record 2 refers to the exact salary of the affected persons. Because this information is not a "salary range", it does not fall within section 14(4)(a) (See Order M-1026). Furthermore, with respect to this information, in my view, the presumption in section 14(3)(f) is relevant. This section states:

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. [Emphasis added]

In the circumstances of this appeal, it is my view that disclosure of the salary information severed from clause 4(a)(i) of Record 1 and clause 4(a)(iii) of Record 2 would describe the affected persons' finances and/or income as set out in section 14(3)(f) and would, therefore, constitute a presumed unjustified invasion of personal privacy. The salary information is, therefore, exempt under section 14(1).

The remaining undisclosed personal information in Records 1 and 2 consists of information such as the duration of the agreements, general provisions relating to termination and renewal, and performance review processes. Having found that this information constitutes the "personal information" of the affected parties, and in the absence of any factors under section 14(2) which weigh in favour of the disclosure of this information (as it relates neither to the grounds for termination nor the related costs), I find that the disclosure of this additional information would result in an unjustified invasion of the personal privacy of the affected parties. Accordingly, I find that these clauses qualify for exemption under section 14(1).

Records 3 and 4 – letters of reference

With respect to the letters of reference, the County states:

They are recommendations, evaluations and references about, rather than by, the individuals in question. Section 14(3)(g) raises the presumption concerning recommendations, evaluations or references about an identifiable individual and ... these documents should not be disclosed.

Section 14(3)(g) states:

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

consists of personal recommendations or evaluations, character references or personnel evaluations

The appellant identifies in her representations some of the questions that are raised concerning the provision of letters of reference in these circumstances.

In my view, the information contained in the letters of reference clearly contains the type of information identified in the presumption under section 14(3)(g), and disclosure is presumed to constitute an unjustified invasion of privacy. I therefore find that these records are exempt under section 14(1) of the *Act*.

As an additional note, neither of the parties has raised the possibility that these records may fall outside the ambit of the *Act* by virtue of section 52(3) of the *Act*. Whether or not either section 52(3) or the exception to it found in section 52(4) applies to these records may be a legitimate issue. However, based on my finding that these records are exempt under section 14 of the *Act*, I decline to review this issue in this appeal.

Record 5 – A settlement document (a Release) including an appendix (a Schedule)

With respect to the Release, the County states that the Release “forms part of the individual’s employment history and speaks to the circumstances surrounding his departure. Therefore ... the presumption in section 14(3)(d) applies”.

Concerning the Schedule attached to the Release, the County states:

It contains information including termination date, salary, benefits and vacation entitlement pursuant to a settlement. It is our opinion that disclosure of this information would constitute an unjustified invasion of personal privacy under section 14(3)(d) of the *Act*. The document also contains information relating to finances, income and assets. It discloses the amount of salary to be received

during the salary continuation period.... This information is covered by the presumption in section 14(3)(f). As was found by adjudicator Sherry Liang in Order MO-1332, such a payment is distinguishable from a one-time payment to be conferred immediately or over a period of time that results from [a] retirement package.

The County then identifies that, in its view, paragraphs 1, 8 and 9 of the Schedule fit within the presumption under section 14(3)(d), and that paragraphs 2 through 7 fit within the section 14(3)(f) presumption.

Application of the presumptions in section 14(3)

Previous orders have reviewed the approach this office has taken to information similar to that contained in the Release and Schedule. In Order PO-2050, Adjudicator Cropley examined this issue in some detail, applying section 21 of the *Freedom of Information and Protection of Privacy Act* (the provincial equivalent to section 14 of the *Act*). I specifically referred to that Order when I invited the parties to provide representations on the issues. The relevant part of that Order reads:

Generally, previous orders have found that although one-time or lump sum payments or entitlements do not fall under the presumption found at sections 21(3)(f) or (d) (Orders M-173, MO-1184 and MO-1469), information such as start and finish dates of a salary continuation agreement fall within the presumption in section 21(3)(d) and references to the specific salary to be paid to an individual over that period of time fall within the presumption in section 21(3)(f) (Order P-1348).

In addition, information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has been found to fall within the section 21(3)(d) presumption (Orders M-173, P-1348, MO-1332, and PO-1885). Contributions to a pension plan have been found to fall within the presumption in section 21(3)(f) (Orders M-173 and P-1348).

Previous orders have found, however, that the address of an affected party, releases, agreements about the potential availability of early retirement, payment of independent legal fees and continued use of equipment, for example, do not fall within any of the presumptions in section 21(3) (Orders MO-1184 and MO-1332). In Order M-173, former Assistant Commissioner Irwin Glasberg found that much of the information in these types of agreements did not pertain to the “employment history” of the individuals for the purposes of section 14(3)(d) (of

the municipal *Act*), but could more accurately be described as relating to arrangements put in place to end the employment connection.

I agree with the reasoning in these orders and find that the termination date in clause 1(i), references to the benefits the affected person was entitled to as an employee and which were to be continued or not upon termination in clause 2(iii) and clause 3(iii) which makes references to the affected person's obligations arising from his previous employment fall within the presumption in section 21(3)(d). In addition, a portion of clause 2(iii) also makes reference to the affected person's actual salary and thus describing his income, falls within the presumption in section 21(3)(f).

I find that none of the presumptions in section 21(3) apply to the remaining information in this record, including information describing lump sum or one time payments relating to the affected person's termination and in relation to legal fees (in clauses 2(i), (ii) and (viii)).

I adopt the approach taken by Adjudicator Cropley. Applying the principles set out in Order PO-2050, I find that portions of the Schedule fall within the presumptions in section 14(3). Specifically, I find the termination date (paragraph 1), amount of vacation credits (paragraph 2), and references to the benefits the affected person was entitled to as an employee and which were to be continued or not (paragraphs 5 and 6) fall within the presumption in section 14(3)(d). In addition, the references to the affected person's actual salary (two portions of the introduction to paragraph 3 – one containing the exact salary and one containing an amount from which the exact salary could be calculated, and paragraphs 3(a) and 3(b)), fall within the presumption in section 14(3)(f).

In my view, the remaining information does not fall within section 14(3).

Section 14(4)

I must also decide whether the exceptions found in section 14(4) apply to the information contained in the record. Again, Order PO-2050 addresses this in some detail. After referring to the analysis of the term "benefits" from M-23 (found above) Adjudicator Cropley states:

The information [at issue] pertains to the continuation of specific benefits and I find that this information is clearly about "benefits" within the meaning of section 21(4)(a) of the *Act*. In general, previous orders have held that the exception in section 21(4)(a) does not apply to entitlements which have been negotiated as part of a retirement or termination package (Orders M-173, M-419, M-797 and MO-1332). In Order PO-1885, however, Adjudicator Sherry Liang considered this issue from a somewhat different perspective:

Record 3 consists of a statement of the pension available to the primary affected party as of a given retirement date, under the ROM's pension plan and supplemental pension plan for executive employees. This document contains information such as the social insurance number and date of birth of the primary affected party, dates of commencement and termination of employment, normal retirement and early retirement dates, name of spouse, date of birth of spouse, beneficiary, amount of monthly and supplemental monthly pension and commuted value of pension and supplemental pension.

It is true that the statement was generated as a result of the termination of employment, and that the amount of the benefits is limited by the date of termination. However, participation in the pension plans was specifically provided for in the original contract of employment, as part of a package of entitlements in return for services. To this extent, I am satisfied that the pension benefits described in Record 3 are benefits to which the primary affected party is entitled "as a result of being employed" by the ROM.

My finding is supported by the conclusions reached in Order P-1212, in which all of the entitlements provided to a former president of a college "as part of his employment or upon conclusion of his employment" were found to constitute "benefits" for the purpose of section 21(4)(a). It is also consistent with Order M-23, excerpted above, which refers to "pension benefits".

In my view, the information [at issue] is similar in nature to that described by Adjudicator Liang. Therefore, although included as part of the severance agreement, this information simply reflects benefits to which the affected person was entitled and was receiving while he was employed with the Commission. I find that in these circumstances, with one exception, this information constitutes "benefits" for the purpose of section 21(4)(a) and its disclosure would, accordingly, not constitute an unjustified invasion of privacy.

I adopt the approach taken in Orders PO-1885 and PO-2050. In my view, paragraphs 5 and 6 contained in the Schedule are "benefits" to which the affected party is entitled "as a result of being employed" by the County. Accordingly, section 14(4)(a) applies to these paragraphs and they should be disclosed.

Section 14(2) - factors and considerations

I decided above that certain information contained in the Schedule falls within the presumptions under section 14(3), and that other information fits within the exception under 14(4). I must now

review the remaining information contained in the Schedule and Release to determine whether any of the listed factors found in section 14(2), as well as all other considerations that are relevant in the circumstances of the case, apply to the information.

I identified above that the affected parties took the position that the information was supplied in confidence, and that section 14(2)(h) applies. Based on my review of the contents of the Schedule and Release, I find that the consideration listed in section 14(2)(f) (the personal information is highly sensitive) may also apply. I find that each of these factors are applicable in the circumstances and are to be afforded some weight in balancing the privacy interests of the affected party against the appellant's right of access.

The appellant takes the position that the consideration in 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 states:

The settlement document for the employee who has reached an agreement upon termination is requested to provide the public with information on how much of their tax dollars were spent on this.

The appellant then refers to the fact that the taxpayers must pay for the costs of the severance, and also refers to previous orders of this office which support the position that information of this nature ought to be disclosed. The appellant states:

From Order PO-2050, I read that in Order MO-1984 Assistant Commissioner Tom Mitchinson refers to public scrutiny related to public accountability in operation of government's planning and development approval process. Orders MO-1184, MO-1332 and MO-1405 are offered as examples where "all government institutions are obliged to ensure that tax dollars are being spent wisely."

Adjudicator Donald Hale in Order MO-1469 concluded that a severance agreement represented a significant expenditure of public funds. The climate of spending restraints in the period the agreements were negotiated placed an obligation on ensuring public dollars were spent wisely.

In addition, the appellant refers to an additional factor identified by Adjudicator Hale in Order MO-1469. She states:

Mr. Hale also said that the public confidence consideration applies in the circumstances referred to in Order MO-1469. In [the case of this termination], I believe the public has a right to know what ... is paid when the [employment] agreements are terminated.

In Order MO-1469, Adjudicator Hale stated:

It has been well-established in a number of previous decisions that the contents of agreements entered into between institutions and senior employees represent the sort of records for which a high degree of public scrutiny is warranted (Order M-173, M-953). Based on this, and the appellant's desire to scrutinize how the Municipality compensated a senior management employee upon his termination, I find that section 14(2)(a) is a relevant consideration in the circumstances of the present appeal. I further find that this is a significant factor favouring the disclosure of the information contained in the record.

Previous orders issued by the Commissioner's office have identified another circumstance which should be considered in balancing access and privacy interests under section 14(2). This consideration is that "the disclosure of the personal information could be desirable for ensuring public confidence in the integrity of the institution". (Orders 99, P-237, M-129, M-173, P-1348 and M-953).

The severance agreement which forms the record at issue involved a significant expenditure of public funds on behalf of a senior employee. Further, the climate of spending restraints in which these agreements were negotiated placed an obligation on the Municipality's officials to ensure that tax dollars were spent wisely. On this basis, I conclude that the public confidence consideration also applies in the present circumstances.

I adopt the approach outlined in Order MO-1469 for the purposes of the present appeal.

I find that the consideration under section 14(2)(a) favouring the disclosure of the personal information in a portion of the Schedule is a relevant and significant factor. The appellant has provided information supporting the position that the issue of compensation for senior County employees upon their termination has been the subject of public attention. In my view, the disclosure of information contained in the first part of paragraph 3, and in paragraph 4, is desirable for the purpose of shedding some light on the details of this particular agreement. Specifically, that information relates to the method of calculation of the severance payment to the affected person, including the payment options. In my view, disclosing this information will assist the appellant in addressing the "public scrutiny" concerns identified.

Furthermore, based on the appellant's representations, I find that the "public confidence" consideration applies and carries significant weight in respect of information pertaining to the affected person's termination of employment.

Weighing the considerations favouring the non-disclosure in sections 14(2)(f) and (h) against the factors favouring disclosure (both the one found in section 14(2)(a) and the unlisted "public confidence" factor), I find that the disclosure of information contained in some of the introductory portion of paragraph 3, and in paragraph 4, is desirable for the purpose of shedding some light on the details of this particular agreement. That information relates to the method of calculation of the severance payment to the affected person, including the payment options. Although it does not identify the specific monetary amounts that the appellant is interested in obtaining, I am satisfied that disclosure of this information is sufficient to address a number of the public scrutiny and public confidence concerns raised by the appellant.

By way of summary, I have found that paragraphs 1 and 2 of the Schedule fall within the presumption in section 14(3)(d). In addition, the references to the affected person's actual salary (portions of paragraph 3) fall within the presumption in section 14(3)(f). I have also found that paragraphs 5 and 6 fit within section 14(4)(a) and ought to be disclosed, and that a portion of the first part of paragraph 3, and paragraph 4, should be disclosed based on the factors in section 14(2).

I find that the remaining undisclosed personal information in the Release and Schedule consists of other general provisions relating to the agreement between the affected party and the County, and does not contain the type of information to which the factors identified by the appellant apply. Having found that this information constitutes the "personal information" of the affected party, on balance, I find that these portions of the Release and Schedule qualify for exemption under section 14(1).

PUBLIC INTEREST OVERRIDE

General principles

The appellant has taken the position that a public interest in the disclosure of the records exists. Based on my findings set out above, I must determine whether a public interest exists in the records remaining at issue, and to which section 14 applies.

The public interest override found at section 16 of the *Act* reads as follows:

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.

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.)].

In Order P-984, Adjudicator Holly Big Canoe discussed the first requirement referred to above:

"Compelling" is defined as "rousing strong interest or attention" (Oxford). In my view, the public interest in disclosure of a record should be measured in terms of the relationship of the record to the *Act's* central purpose of shedding light on the operations of government. In order to find that there is a compelling public interest in disclosure, the information contained in a record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.

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. [Order P-1398]

Section 14 is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. In my view, where the issue of public interest is raised, one must necessarily weigh the costs and benefits of disclosure to the public. As part of this balancing, I must determine whether a compelling public interest exists which outweighs the purpose of the exemption. [Order PO-1705]

The appellant submits that the purpose of the request is to provide the public with information relating to the termination of the two identified individuals. The appellant takes the position that the disclosure of the information contained in the records would provide the public with information it is interested in regarding the circumstances surrounding the terminations, including, in particular, the costs to the taxpayers.

Although I accept the appellant's position that the public has an interest in some of the information contained in the records, in my view there does not exist a compelling public interest in the disclosure of the information remaining at issue in this appeal. As identified above, much of the remaining undisclosed personal information in the records does not contain the type of information which the appellant claims the public has an interest in. Furthermore, the disclosure of the information required to be disclosed pursuant to this order will, in my view, address the public interest concerns raised by the appellant to some extent.

Accordingly, I find that the public interest override provision in section 16 does not apply to the personal information remaining at issue in this appeal.

ORDER:

1. I uphold the County's decision to deny access to:
 - clauses 2, 4(a)(i), 4(b), 5(a) and 5(b)(i) and (ii) of Record 1;
 - clauses 2, 4(a)(ii), (iii), (iv), 4(b) and 5(a), (b) and (d) of Record 2;
 - Records 3 and 4; and
 - the non-highlighted portions of Record 5.

2. I order the County to disclose to the appellant the remaining portions of Records 1 and 2 and the highlighted portions of Record 5 by providing the appellant with copies by **March 11, 2004**, but not before **March 5, 2004**. For greater certainty, I have provided the County with a highlighted copy of the relevant portion of Record 5 indicating those portions which shall be disclosed.

3. In order to verify compliance with the terms of this Order, I reserve the right to require the County to provide me with copies of the records which are disclosed to the appellant, upon request.

Original signed by: _____
Frank DeVries
Adjudicator

February 5, 2004 _____