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

ORDER MO-2040

Appeal MA-050076-1

City of Toronto

Tribunal Services Department
2 Bloor Street East
Suite 1400
Toronto, Ontario
Canada M4W 1A8

Services de tribunal administratif
2, rue Bloor Est
Bureau 1400
Toronto (Ontario)
Canada M4W 1A8

Tel: 416-326-3333
1-800-387-0073
Fax/Téléc: 416-325-9188
TTY: 416-325-7539
http://www.ipc.on.ca

NATURE OF THE APPEAL:

The City of Toronto (the City) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of a settlement agreement between the City and a named individual. The request was also for the amount the City paid to the named individual to settle the claim that was the subject of the agreement.

In its decision letter, the City stated that it had located 2 pages of responsive records and denied access to them pursuant to sections 11 (economic and other interests) and 14(1) (personal privacy) of the *Act*. It further stated that section 11 was being relied upon to "withhold records that contain information, the disclosure of which could reasonably be expected to prejudice the economic interests and/or be injurious to the financial interests of the City."

The requester, now the appellant, appealed the City's decision to this office.

During mediation, the appellant submitted that there is a compelling public interest in the disclosure of the requested information. Accordingly, section 16, the public interest override was added as an issue in this appeal. No further mediation was possible and the appeal was moved to adjudication.

Having identified the named individual party to the lawsuit as an affected person (the affected person), I attempted to contact that individual. Repeated efforts to do so were unsuccessful. I commenced this inquiry by issuing a Notice of Inquiry to the City inviting the City to make representations on the issues in this appeal. In response to the Notice of Inquiry, the City provided me with representations.

I then sent a Notice of Inquiry to the appellant, together with a copy of the non-confidential portions of the city's representations, requesting representations on all issues raised in the Notice of Inquiry and a response to the City's representations by the end of August 2005. Due to a variety of circumstances, including a labour dispute involving the appellant and a change in the contact individual in the appellant's office, the appellant did not respond to the Notice of Inquiry until February 14, 2006.

RESPONSIVE RECORD:

The record that is at issue in this appeal is a 2-page settlement agreement entitled "Full and Final Release". The responsive record is referred to as the settlement agreement by the City and the appellant in their submissions. For clarity, I will use that same terminology in this order.

The settlement agreement is entitled "Full and Final Release" and resolves a civil action brought by the affected person against the Toronto Police Services Board and two named officers employed by the Toronto Police Service. The agreement sets out the amount to be paid to the affected person for releasing and discharging the Toronto Police Services Board and the two officers and outlines additional terms and conditions.

DISCUSSION:

ECONOMIC AND OTHER INTERESTS

The City submits that sections 11(c) and/or (d) apply to exempt the record from disclosure. Those sections provide:

> 11. A head may refuse to disclose a record that contains,
>
> (c) information whose disclosure could reasonably be expected to prejudice the economic interests of an institution or the competitive position of an institution;
>
> (d) information whose disclosure could reasonably be expected to be injurious to the financial interests of an institution;

Summary of the City's Representations

The City requested that certain portions of its representations be kept confidential. Consequently, the following is a summary of the non-confidential portions of the City's representations with respect to section 11 of the *Act*. However, I have also reviewed the confidential portions of the representations and will be taking all of this information into account in reaching my decision in this order.

In its representations, the City provides two grounds for relying on section 11. First, the City submits that disclosure of the settlement agreement would be a breach of its terms, which would therefore entitle the affected person to re-open his court action by claiming that the settlement agreement is void and to seek additional monetary damages arising from the unauthorized disclosure. Also, the City submits that a claim for punitive or other extraordinary damages may result from such a deliberate breach of the settlement agreement.

Second, the City submits that it has a reasonable expectation of prejudice to its economic interests and of injury to its financial interests if the record is disclosed because:

- disclosure will adversely affect the City's ability to find and maintain insurance coverage;
- it is not in the interests of the City's insurers to disclose information that will lead to an increase in claims activity; this has resulted in the City's insurers requiring that the claims activity be maintained as confidential.

With respect to this submission, the City states:

> The City submits that subs. 11(c) and (d) are also intended to allow the City to protect its ability to find and maintain insurance coverage. Further, the City, on

> behalf of all named insured including Toronto Police Service and Toronto Police Board, enters into the insurance policy contract in good faith with the intent to mitigate current and future claims exposures. It is not in the financial interest of the City's contractual insurers to disclose information that will knowingly lead to increased claims activity. As a result, the City's insurers require that claims activity information be maintained as confidential and that its insured assist and co-operate in this regard.

Summary of the Appellant's Representations

With respect to the alleged confidentiality provision in the settlement agreement, the appellant states:

> While it is difficult to address this without seeing the Agreement itself, the Requestor submits that the City has not referenced any provision in the Agreement which specifically calls for this result. If there is no such provision, then the agreement should not be interpreted as overriding the normal application of law, and specifically the law of Access to Information. If there is such a provision, then the Requestor submits that it ought not to be permitted to override Access to Information legislation.

The appellant addresses the City's submission regarding its ability to find insurance coverage and the potential increase in claims activity, by submitting that the City has not provided any evidence that the insurance policy will be affected by the disclosure of this information and that the settlement was paid for by a third party insurer. The appellant submits that the City has failed to establish by "detailed and convincing evidence that it would suffer a reasonable expectation of harm."

Analysis

In this appeal, the City submits that the exemptions in sections 11(c) and (d) of the *Act* apply to the responsive record. The purpose of section 11 is to protect certain economic interests of institutions. The report entitled *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (Toronto: Queen's Printer, 1980) (the Williams Commission Report) explains the rationale for including a "valuable government information" exemption in the *Act*:

> In our view, the commercially valuable information of institutions such as this should be exempt from the general rule of public access to the same extent that similar information of non-governmental organizations is protected under the statute . . . Government sponsored research is sometimes undertaken with the intention of developing expertise or scientific innovations which can be exploited.

For sections 11 (c) and/or (d) to apply, the City must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the City must

provide "detailed and convincing" evidence to establish a "reasonable expectation of harm". Evidence amounting to speculation of possible harm is not sufficient [*Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.)].

I have carefully reviewed the City's representations and the responsive record and I am not persuaded that the City has satisfied the requirements of sections 11(c) and (d), for the following reasons.

The first ground that the City has put forward for relying on section 11 is that the disclosure of the settlement agreement will result in a breach of the agreement and will be injurious to the financial interests of the City. The City states:

> The City bases its economic interests argument on the existence of a linkage of the agreement to the withdrawal of a civil lawsuit launched by the named individual against the Board and certain named individuals, employees of the Police Services. The City contends that if the record at issue is disclosed, the named individual would consider this a breach of the agreed settlement, entitling him to reopen his court action, thus voiding settlement, or he may claim some new monetary damages arising from that unauthorized disclosure.

I have had an opportunity to carefully review the agreement and I note that it does not contain any provision that would compel the City to maintain the record in confidence. If there is no obligation to keep the record confidential, then clearly the disclosure by the City will not constitute a breach of the agreement and the City's argument that the alleged breach would expose it to an action by the affected person therefore has no factual foundation.

Even if the settlement agreement did contain a confidentiality clause, that fact would not be determinative of the issue. Former Assistant Commissioner Tom Mitchinson considered the effect of a confidentiality clause in a settlement agreement in Order MO-1184 and made the following finding:

> However, in my view, the presence of a confidentiality clause in and of itself is not sufficient to bring the record within the scope of sections 11 (c) and (d); this or any other term of a settlement agreement, such as the one at issue in this appeal, cannot take precedence over the statutory right of access provided in the *Act*. Any increased costs to the City which would result from disclosure are speculative at best, and the evidence provided by the City is insufficient to establish a reasonable expectation of prejudice to the City's economic interest or injury to its financial interests.

I agree with the position taken by the former Assistant Commissioner. However, as mentioned, I do not need to rely on his reasoning in Order MO-1184 since the settlement agreement in this appeal does not contain a confidentiality clause.

The second ground relied upon by the City is that disclosure of the responsive record will have an adverse impact on the City's ability to find and maintain insurance coverage and that it is required to maintain the record in confidence to avoid a potential increase in claims activity against the City.

The Information and Privacy Commissioner of Ontario, Dr. Ann Cavoukian, recently had an opportunity to consider an argument similar to the one made here by the City in Order MO-1947. In that appeal, the records in dispute consisted of charts revealing claims information over a period of six years that included the date of the loss, the number of claims in a given year and the amount paid out in claims per year. The Commissioner rejected the submission by the institution that the disclosure of the records fell within sections 11(c) and (d) of the *Act* and that the disclosure of the record would make it difficult for the institution to find and maintain by increasing claims activity. In doing so, she made the following finding:

> Given that the City has not adduced any fact-based evidence to support its assertion that the release of the types of claims information sought by the appellant could reasonably be expected to lead to a sudden rise in claims against the City, it does not logically follow that its insurer would demand increased premiums, that the City would lose its insurance coverage altogether, that there would be less funds available for much needed programs and services or that there would be an increase burden on taxpayers. Moreover, the City's submission that the disclosure of claims information may create an unacceptable risk to insurers, whether such a risk is real or perceived is further evidence that the City's submissions are based on speculation of possible harm, which is not sufficient to meet the requirements of sections 11(c) and (d).

With respect to the claim that the disclosure would result in additional claims activity, Commissioner Cavoukian stated:

> The City submits that the release of claims information often sparks widespread public debate and discussion as to when a person may commence an action against the City, which, in turn often leads to a sudden rise in claims against the City. However, it has not adduced any fact-based evidence to support this assertion. The City has not cited any other previous instances where the release of the types of claims information at issue in this appeal led to a sudden rise in claims against the City. Nor has the city pointed to any other cities or public bodies that have faced a sudden rise in claims after disclosing the types of claims information sought by the appellant.

I am led to a conclusion in this appeal similar to that of Commissioner Cavoukian in Order MO-1947. The City has not provided sufficient evidence to support its submission that there is a reasonable expectation of prejudice to the City's economic interest or injury to its financial interests. Without detailed and convincing evidence, I can only conclude that it is no more than pure speculation on the City's part to suggest that the release of the settlement agreement in this case could affect its ability to find and maintain insurance and result in an increase in claims

activity. I note that no evidence has been adduced from either the current insurers for the City or from insurance industry professionals to support the City's submissions in this appeal. As in Order MO-1947, the City has not cited previous instances in its own experience or that of other cities or public bodies where the disclosure of this type of information has had an adverse affect on the ability to find and maintain insurance and on claims activity. In the circumstances, therefore, I am unable to refer to "clear and convincing" evidence to make a finding of reasonable expectation of harm in this appeal.

The City's representations include confidential portions in support of its submission regarding the City's ability to find and maintain insurance and the effect of disclosure on claims activity. I will not reveal the substance of this confidential information in this order. However, I have taken the confidential portions of the City's representations into account in reaching my decision. I find that the confidential portions of the representations do not include "clear and convincing" evidence to establish a "reasonable expectation of harm."

In summary, I find that I have not been provided with "detailed and convincing evidence" and therefore am not persuaded that a reasonable expectation of the harms outlined in sections 11(c) or (d) has been established. I find that the settlement agreement is not exempt under these provisions.

PERSONAL INFORMATION

As noted above, the responsive record contains the name of the affected person, the amount paid by the City to the affected person to secure the settlement agreement and the names of the two members of the Toronto Police Services involved in the civil action.

Before information can be exempt under the personal privacy exemption at section 14(1) of the *Act*, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) of the *Act*. For the purposes of this appeal, the relevant provisions are:

"personal information" means recorded information about an identifiable individual, including,

> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (h) 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;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Summary of the City's Representations

The City submits that the record contains the "personal information of the [affected person], specifically his financial information and information regarding the two other named individual employees of the Police Services." The City also submits that the information of the two named individual employees of the Police Services is unrelated to their normal employment activities and concerns them in their personal capacity.

Summary of the Appellant's Representations

The appellant does not make any submissions on the issue of whether or not the name of the affected person and the amounts paid to him pursuant to the full and final release is personal information.

The appellant submits that the information relating to the two named employees is not personal information because it relates to them in their professional employment or official capacity. The appellant states in its representations:

> To suggest otherwise is to ignore the record in this case. Their impugned actions were conducted in their capacities as police officers, wherein lies the scandal in the case. Charges were thrown out because of their alleged misbehaviour as investigating police officers. The Requestor cannot understand how it can be suggested that this information is somehow personal.

Analysis

I find that the record in this case contains the personal information of the affected person. It clearly includes the name of the individual, along with details of the amount of the payment to him pursuant to the full and final release, and other terms and conditions of the release. I am satisfied that this information qualifies as his personal information under paragraphs (b) and (h) of the definition in section 2(1) of the *Act*.

I have arrived at a different conclusion with respect to the information relating to the two named police officers. This information is not personal information as it is defined in section 2(1) of the *Act* as it is not information "about the individual" in a personal capacity. It is information about the two individuals in their professional and official capacity as members of the Toronto Police Services. I make this finding for the following reasons.

Recently, in Order PO-2435, I had the opportunity to consider this issue and noted that it was important to look at both the *capacity* in which the individual was acting and the *context* in which their name appears. In that order, I referred to the comments of former Assistant Commissioner Mitchinson in Order PO-2225 as support for my analysis. In that appeal, former Assistant Commissioner Mitchinson posed two questions:

> Based on the principles expressed in these orders, the first questions to ask in a case such as this is: "in what context do the names of the individuals appear"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
>
> …
>
> The analysis does not end here. I must go on to ask: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

If I apply this analysis to this appeal, I find that the *capacity* in which the two named individuals were acting was a professional and official capacity. The two named individuals were employed by and were representing the Toronto Police Services when the actions that were the subject matter of the litigation took place. Further, there is no evidence before me to suggest that the two named police officers were acting outside the bounds of their authority when the impugned actions took place. Their involvement in the matter in dispute was not the result of their personal activities or capacities.

Nor does it logically follow from a review of the *context* in which their names appear that the disclosure would reveal something of a personal nature about the individuals. This settlement agreement was prepared as a result of an agreement reached to settle a proceeding brought by the affected person against the City and the two named individuals for actions taken by them in the course of their duties as police officers. The context of the record at issue is the settlement of a dispute that arose out of the exercise of the professional duties and responsibilities of the two named police officers.

In conclusion, I find that the responsive record does not contain the personal information of the two named employees of the Toronto Police Services. In view of this, it is not necessary for me to consider the application of section 14 to that information.

PERSONAL PRIVACY

Once it has been determined that a record contains personal information, section 14(1) of the *Act* prohibits the disclosure of this information except in certain circumstances. Specifically, section 14 provides that where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

If the information fits within any of paragraphs (a) to (f) of section 14 (1), it is not exempt from disclosure under section 14. In the circumstances of this appeal, section 14(1)(f) is relevant. Section 14(1) (f) states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information would not constitute an unjustified invasion of personal privacy. The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). Section 14(2) sets out some criteria for the head 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. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2).

In view of my finding with respect to the two named employees of the Toronto Police Services, it is not necessary for me to consider the applications of section 14(1) of the *Act* to that information.

It is necessary though for me to address the application of section 14(1) as it relates to the personal information of the affected person.

Summary of the City's Representations

The City submits that the presumption in section 14(3)(f) applies to this appeal and that the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy as the personal information describes the "individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness." The City submits that the settlement agreement "arises out of a contemplated court action which contains personal financial settlement information, promises by the named individual and confidential agreements towards other named individuals."

Summary of the Appellant's Representations

The appellant submits that the disclosure would not constitute an unjustified invasion of personal privacy; that the disclosure is "desirable for the purpose of subjecting the activities of the institution to public scrutiny" (14(2)(a)); the personal information is not highly sensitive; and, the disclosure would not unfairly damage the reputation of any person referred to in the record as it would simply be a revelation of the truth of the settlement itself. Further, the appellant submits that the disclosure would not be covered by section 14(3)(f) as it is a one-time settlement.

Analysis

Previous orders have considered the application of section 14(3)(f) to one-time payments made by employers to employees in accordance with the terms of a settlement of other claims. In Order MO-1184 former Assistant Commissioner Tom Mitchinson reviewed a number of those orders and found that:

> Previous orders of this office have dealt with monetary entitlements relating to retirement agreements. These orders found that "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 the retirement packages" cannot be described as an individual's "finances, income, assets, net worth, financial history or financial activities for the purpose of section 14(3)(f) of the Act." (See Orders M-173 and M-1082). In Order M-1160, I found that section 14(3)(f) also did not apply to the one-time amount agreed to in the settlement of an individual's human rights complaint against a municipality. Similarly, I find that in the present case, with respect to the one-time amounts agreed to in the settlement of the named individual's claim of wrongful dismissal against the City, the presumption in section 14(3)(f) does not apply.

This reasoning applies equally to the appeal before me. The record details a one-time payment to the affected person in consideration for the affected person signing the settlement agreement. This one-time payment does not fall within section 14(3)(f) of the *Act* as it cannot be characterized as relating to the individual's "finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness."

Considerations in section 14(2)

As I find that there is no presumption against the disclosure of the personal information under section 14(3) of the *Act*, I must now consider whether the disclosure would constitute an unjustified invasion of privacy having regard to the factors set out in section 14(2). Section 14(2) sets out the criteria to be considered when considering whether the disclosure of personal information constitutes an unjustified invasion of personal privacy. The list of criteria in section 14(2) is not exhaustive and the head is required to consider all the relevant circumstances in reaching a conclusion [Order 99]. This appeal raises the possible application of the following criteria in section 14(2):

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

(f) the personal information is highly sensitive;

(i) the disclosure may unfairly damage the reputation of any person referred to in the record.

The City's Representations

Although the City's representations do not refer to section 14(2) specifically, it appears to rely on this section based on the following statements:

> On balancing the considerations, the City submits that the factors favouring the protection of privacy of the named individual and other affected individuals/employees outweigh those factors favouring disclosure.
>
> For the reasons above, the city submits that specific settlement information contained in the agreement is highly sensitive information and, it is reasonable to believe that if disclosed, is likely to prejudice and harm the City's financial and economic interests.
>
> Also for the reasons outlined above, the City submits that there is no evidence of a compelling public interest in the disclosure of the requested information that would outweigh the purpose of the exemptions found under subs. 11(c) and (d) of MFIPPA.

The Appellant's Representations

The appellant makes specific reference to section 14(2) and, as noted previously, submits that the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny; the information is not highly sensitive; and, the information would not unfairly damage the reputation of any person referred to in the record.

Analysis

Section 14(2)(a): public scrutiny

In order for section 14(2) (a) to apply in the circumstances of an appeal, it must be established through evidence provided by the appellant, and following a review of the relevant records, that disclosure of the personal information found in the records is desirable for the purpose of subjecting the activities of the institution to public scrutiny. [See Order P-828]

The appellant submits that the settlement agreement relates to a case that was "noteworthy, significant and deserving of special public attention and scrutiny" and the public has the right to know "what a mistake of this nature costs the City's citizens, so they can determine how to react to it." The appellant further submits that disclosure of the settlement agreement is essential to ensure public discussion of the consequences of the actions that led to it and the "value of remedies that can be instituted to ensure these problems do not re-emerge."

I am persuaded that the disclosure of the information requested in this appeal is desirable for the purpose of subjecting the activities of the City and its police services to public scrutiny. Public confidence in the integrity of the police service is an essential part of a free and democratic society. Absent any suggestion that the disclosure of information will have an impact on the ability of the police to carry out their law enforcement responsibilities, public confidence can only be achieved when the activities of the police services are open and transparent. When there is an alleged failure by the police service to exercise power and authority in a fair, just and proper manner, those activities must be subject to the scrutiny and evaluation of the public to the fullest extent possible.

An alleged failure of this nature can also subject the City to additional and unnecessary costs that must be borne by the taxpayers of the City. The public has a right to scrutinize and evaluate the significant and potentially unnecessary expenditures incurred by the City as a result of the activities of its police force; a right made more relevant by the current economic climate. In this regard, the comments of Commissioner Cavoukian in Order MO-1947 are highly relevant:

> Ultimately, taxpayers are responsible for footing the bill for any lawsuits that the City settles with litigants or loses in the courts. Consequently, taxpayers have a right to know, at a minimum, how many lawsuits or claims have been filed against the City, and how much money the City has paid out in damages or in settling such matters in specific years. Without such information, citizens would be in the dark and have no meaningful way of scrutinizing whether the City is processing such claims in a financially responsible manner.

For all of the reasons outlined above, I place significant weight on this factor favouring disclosure of the record.

Section 14(2)(f): highly sensitive personal information

The City has not identified any particular evidence to suggest that the personal information in the agreement is highly sensitive. In Order P-434, former Assistant Commissioner Tom Mitchinson found that for personal information to be regarded as highly sensitive, it must be established that its release would cause excessive personal distress to the individuals affected (see Orders M-1953 and PO-1736). It is not sufficient that release might cause some level of embarrassment to those affected (Order P-1117).

I have reviewed the record and considered its context. I am unable to find that the disclosure of the personal information of the affected person is highly sensitive. The litigation that was commenced by the affected person was initiated by a statement of claim that is available as a matter of public record. The circumstances surrounding the claims of the affected person were the subject of an investigation by the Internal Affairs Special Task Force and received media attention. The existence of a settlement agreement ending the litigation between the affected person and the City is clearly known to the appellant. In the circumstances, the amount paid to the affected person, and the other terms of the settlement agreement, cannot, in my view, be characterized as highly sensitive information. I am not satisfied that disclosure of the information "would cause excessive personal distress" to the affected person. I therefore find that section 14(2)(f) does not apply in this case.

Section 14(2)(i): unfair damage to reputation

Previous orders of this office indicate that section 14(2)(i) is not established simply on the basis that the damage or harm envisioned by this section is present or foreseeable; in addition, it must be demonstrated that this damage or harm would be "unfair" to the individual involved (Order P-256 and M-347).

In the current appeal, the only personal information at issue is the name of the affected person and the amount paid to him pursuant to the terms of the full and final release. Given that the circumstances of the litigation against the City are disclosed in a public document, i.e. the statement of claim, and that the circumstances surrounding the litigation have been the subject of some media attention, I cannot conclude on the evidence before me that any "unfair harm" or "damage to the reputation" of the named individual will logically flow from the disclosure of the personal information. For this reason, I find that section 14(2)(i) does not apply in this case.

I have found, above, that the presumed unjustified invasion of privacy in section 14(3)(f) and the factors favouring privacy protection in sections 14(2)(f) and (i) do not apply. I have also found that the factor in section 14(2)(a), which favours disclosure, does apply. I find, therefore, that disclosure of the personal information in the settlement agreement does not constitute an unjustified invasion of personal privacy. Even if I had found that the factors in section 14(2)(f) or (i) did have some application, I would have reached this same conclusion because section 14(2)(a) has greater weight in the circumstances of this appeal. As noted previously, the exception to the personal privacy exemption found in section 14(1)(f) indicates that personal information is *not* exempt if disclosure is not an unjustified invasion of personal privacy. Having reached that conclusion here, I therefore find that the personal information is not exempt under section 14(1).

In view of my findings above that the settlement agreement is not exempt under sections 11(c) and (d) and that the personal information is not exempt under section 14(1), the entire record in this appeal should be disclosed to the appellant.

Given that I have found that the City has failed to discharge the burden of proving that the records at issue fall within the exemptions in sections 11(c), (d) and 14(1) of the *Act*, it is not necessary for me to consider whether the public interest override in section 16 of the *Act* applies to the records at issue.

ORDER:

1. I order the City to disclose the record to the appellant by May 12, 2006 .

2. In order to verify compliance with the provisions of the order, I reserve the right to require the City to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by: April 6, 2006
Brian Beamish
Assistant Commissioner