

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-3044

Appeal MA13-160

The Corporation of the Town of Orangeville

May 2, 2014

Summary: The town received a request under the *Act* for access to a copy of the current employment contract between the town and a member of the Orangeville Police Services Board. After notifying the individual named in the request (the affected party) and receiving his representations, the town issued a decision, granting the requester full access to the responsive record. The affected party appealed the town's decision, claiming that the record is exempt from disclosure under section 14(1) (personal privacy) of the *Act*. This order decides that some of the employment contract contains the appellant's personal information, but that the majority of the personal information is not exempt from disclosure due to the application of section 14(4)(a) (employment information). With regard to the salary information that is exempt under section 14(1), this order finds that the public interest override in section 16 applies to the information and the entire employment contract is ordered to be disclosed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 14(1), 14(1)(d), 14(1)(f), 14(3)(f), 14(4)(a). *Public Sector Salary Disclosure Act*, 1996, S.O. 1996, c.1, Sched. A.

Orders and Investigation Reports Considered: Orders MO-1194, MO-2470, MO-2563, PO-2050 and PO-2519.

Cases Considered: *York (Police Services Board) v. (Ontario) Information and Privacy Commissioner*, 2012 ONSC 6175.

OVERVIEW:

[1] The Corporation of the Town of Orangeville (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

A copy of the contract between the Town of Orangeville and [named individual] of the Orangeville Police Service that is currently in effect, and includes the length of the contract and salary in accordance with s. 14(4) of [the *Act*].

[2] The town notified the individual named in the request (the affected party) under section 21 of the *Act*. Upon review of the affected party's submissions, the town advised the affected party and the requester that it had decided to grant the requester full access to the responsive record.

[3] The affected party, now the appellant, appealed the town's decision to this office.

[4] During mediation, the appellant's representative (the appellant) took the position that the record is excluded from the application of the *Act* pursuant to section 52(3) (labour relations) and, in the alternative, that the record is exempt from disclosure under section 14(1) (personal privacy). The appellant also claimed that the request should have been transferred to the Orangeville Police Services Board (the police) because the police have a greater interest in the record, in accordance with section 18(3) of the *Act*.

[5] Mediation did not resolve the issues in the appeal and it was moved to the adjudication stage of the appeal process where a written inquiry is conducted by an adjudicator.

[6] One of the issues identified by the appellant relates to the application of the transfer provision in section 18(2) of the *Act*, which states:

If an institution receives a request for access to a record and he head considers that another institution has a greater interest in the record, the head may transfer the request and, if necessary, the record to the other institution, within fifteen days after the request is received, in which case the head transferring the request shall give written notice of the transfer to the person who made the request.

Although the appellant raised section 18(3) as an issue in this appeal, I decided to not include it as an issue in this inquiry. As section 18(3) states, the institution may transfer the request; the institution is not required to do so. The town decided to not

transfer the request to the police and processed it according to its standard practice. Furthermore, even if the police have a greater interest in the record, this office has found that the institution that receives a request (in this case, the town) is under no obligation to transfer the request.¹ In any event, more than fifteen days have passed since the original request was filed and section 18(3) precludes the transfer of the request to the police after the expiration of that time.

[7] I began my inquiry by inviting the appellant and the police to make representations in response to issues set out in a Notice of Inquiry. The appellant submitted representations. In his representations, the appellant acknowledged that, by virtue of the operation of section 52(4) of the *Act*, the record is not excluded from the *Act* under section 52(3). Therefore, the application of the exclusion in section 52(3) to the record is no longer at issue in this appeal.

[8] I then invited the original requester and the town to make submissions in response to the issues raised in the Notice of Inquiry and the appellant's arguments, which were shared in accordance with section 7 of this office's *Code of Procedure and Practice Direction* number 7. Both the town and the original requester submitted representations. In its representations, the town raised the possible application of the public interest override in section 16 to the information at issue. The town's representations were shared with the appellant and he submitted representations in reply on the public interest override in section 16 of the *Act*.

[9] In the discussion that follows, I uphold the town's decision and dismiss the appeal. I find that portions of the employment contract contain the appellant's personal information within the meaning of that term in section 2(1), but that the majority of that personal information is not exempt under the exception to the personal privacy exemption in section 14(4)(a). I find that the remaining information at issue, namely the dates of the agreement and the salary information, to be exempt from disclosure under section 14(1). However, I find that there is a compelling public interest in the disclosure of that information that overrides the application of the section 14(1) exemption and I order the town to disclose the entire record to the original requester.

RECORDS:

[10] The record at issue is an employment contract between the appellant and the police.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

¹ See Order P-1498.

- B. Does the mandatory exemption at section 14(1) apply to the information at issue?
- C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[11] In order to determine whether section 14(1) of the *Act* applies, 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) as follows:

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

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (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,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where 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;

[12] 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.²

[13] Sections (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[14] 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.³

[15] 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.⁴

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[17] In his representations, the appellant submits that the employment contract between himself and the police contains specific personal information that relates to him. The appellant refers to Order MO-2174, where this office considered what

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

constitutes personal information in the context of employment contracts. Order MO-2174 found that information about individuals named in such agreements, along with information concerning their employment and related financial transactions generally qualifies as "personal information" under the *Act*. In addition, the appellant submits that Order PO-2050 illustrates that "specific information" regarding individuals in employment contracts constitutes their "personal information", as defined by the *Act*. The appellant also submits that in Orders P-1095 and MO-2470, this office held that enumerated benefits such as vacation and sick leave contained in an employment contract constitute "personal information". After referring to these orders, the appellant concludes that the employment contract contains "personal information" about himself, including the employment related benefits and entitlements he would receive from his employer.

[18] In its representations, the town submits that the record contains "personal information", as defined in paragraph (b) of section 2(1) of the *Act*. Specifically, the record contains "personal information" relating to the employment history of the appellant. The town also submits that the information contained in the record, if disclosed, would reveal something of a personal nature about the appellant, specifically the terms and conditions of his employment contract with the police, including his salary and benefits. However, the town submits that the record contains information relating to the appellant in a professional, official or business capacity because the record is a contract between the appellant and the police respecting the terms and conditions of his appointment and employment with the police. Finally, the town submits that it is reasonable to expect that the appellant will be identified if the information is disclosed as he is a party to the contract and his name is explicitly referred to therein.

[19] The original requester did not make representations on whether the record contains "personal information", as that term is defined in section 2(1) of the *Act*.

[20] The employment contract includes the names and job titles of the appellant and three other individuals, two who witnessed the signing of the contract and the individual who signed on behalf of the police. As noted above, section 2(2.1) of the *Act* stipulates that personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity. I find that the names and job titles of these individuals in the employment contract identifies them in a professional or official capacity, not a personal capacity. Accordingly, I find that this information does not qualify as "personal information" and cannot be exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*.

[21] With regard to the signature information of the individuals who signed or witnessed the contracts, I find that this information does not contain "personal information" as that term is defined by the *Act*. In Order MO-1194, former Assistant

Commissioner Tom Mitchinson discussed this office's treatment of handwriting and signatures:

In cases **where the signature is contained on records created in a professional or official government context, it is generally not "about the individual" in a personal sense, and would not normally fall within the scope of the definition.** (See, for example, Order P-773, [1994] O.I.P.C. No. 328, which dealt with the identities of job competition interviewers, and Order P-194 where handwritten comments from trainers were found not to qualify as their personal information.) [emphasis added]

....

In my view, whether or not a signature or handwriting style is personal information is dependent on context and circumstances

Adopting this context-driven approach, I find that the signatures of the individuals who signed or witnessed the contracts would not, if disclosed, reveal something that is inherently personal in nature. The signatures appear in the record created in an official context, that is, the signing of an employment contract between the police and the appellant. Accordingly, I find that the signatures contained in the records do not fall within the definition of personal information in section 2(1) of the *Act* and cannot be exempt from disclosure under the personal privacy exemption in section 14(1).

[22] However, the fact that an individual's name and job title in a record constitutes professional or business information does not automatically mean that other information relating to that same individual in the record does not qualify as "personal information". In assessing whether the remaining information in the contract contains "personal information" within the meaning of section 2(1) of the *Act*, it is necessary to generally describe the contents of the record.

[23] The appellant's employment contract with the police includes language that addresses the following terms: purpose of the agreement, term of appointment and employment, termination of appointment and employment, salary, working conditions and general provisions relating to the appellant's ability to perform the duties required by his position, any modifications to the agreement, the proper interpretation of the agreement and any future events that may alter the agreement. In addition, Appendix A of the agreement includes language addressing the following terms: duties and responsibilities, salary and working conditions, retiree benefits, short term disability benefits, pension, statutory holidays bereavement leave, incidental expenses and professional membership fees, uniform allowances, vacation and legal indemnification. Finally, the record includes a "Letter of Intent" that serves as an appendix to the

provisions relating to salary and sets out the appellant's base salary and the components of his final salary.

[24] Previous orders of this office have consistently found that information about individuals in employment contracts or severance agreements generally constitutes their "personal information"⁶ as that term is defined in section 2(1) of the *Act*.

[25] I note that there is some information in the employment contract that does not constitute the appellant's "personal information," because it either relates to management rights (i.e., the rights of the police), or are generic clauses about a non-personal matter, such as the laws that the contract shall be interpreted with.⁷ Based on my review of the record, I find that the entire employment contract, with the exception of the agreement date, the termination date in clause 2.01, and clause 6.09 contains standard or generic clauses that would appear in most employment contracts. I find that this information does not qualify as "personal information" and cannot be exempt from disclosure under the personal privacy exemption in section 14(1) of the *Act*.

[26] The remaining information in the record relates mainly to the specific benefits that the appellant receives under his employment contract (e.g., vacation, sick leave, uniform allowances, bereavement leave, pension, incidental expenses, etc.) contained in Appendix A, the dates the agreement was signed and will be terminated, and information relating to his salary, located in section A.2.0 of Appendix A and the Letter of Intent. Reviewing the record, I find that this information constitutes the "personal information" of the appellant, as that term is defined.

[27] I will now consider whether the "personal information" in the record qualifies for exemption under the personal privacy exemption in section 14(1) of the *Act*.

B. Does the mandatory exemption at section 14(1) apply to the information at issue?

[28] Where a requester seeks the personal information of another individual, as is the case here, section 14(1) prohibits the disclosure of this information unless one of the exceptions listed in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of those paragraphs, it is not exempt from disclosure under section 14(1).

Section 14(1)(d)

[29] In its representations, the town submits that section 14(1)(d) of the *Act* applies to the salary information contained in the record. This provision states:

⁶ Orders M-173, P-1348, MO-1184, MO-1332, MO-1405, MO-1622, MO-1749, MO-1970, MO-2318, PO-2519 and PO-2641.

⁷ Order MO-2470.

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

under an Act of Ontario or Canada that expressly authorizes the disclosure

Ontario's *Public Sector Salary Disclosure Act* (the *PSSDA*) requires organizations that receive public funding from the Ontario government to disclose annually the names, positions, salaries and total taxable benefits of employees paid \$100,000 or more in a calendar year. The *PSSDA* covers a range of public bodies, including provincial government ministries, hospitals, universities and colleges, municipalities (including police services) and other public sector employers who receive a significant level of funding from the Ontario government.

[30] In its representations, the town submits that section 14(1)(d) is applicable to the salary information contained in the record. The town states that, as a municipal corporation in Ontario, it is subject to the *PSSDA*, pursuant to the definition of "public sector" in section (b). The town states that the appellant's annual salary, as provided in the record, falls within the scope of the *PSSDA*, as it is greater than \$100,000. The town states that pursuant to section 3 of the *PSSDA*, it is obligated to disclose the appellant's annual salary. The town also submits that the salary information at issue should be disclosed as the situation is identical to that in Order PO-2641, in which Assistant Commissioner Brian Beamish found that the current precise salary of an employee which was subject to the *PSSDA* was ordered to be disclosed pursuant to section 14(1)(d).

[31] For section 14(1)(d) to apply, there must be specific authorization in the statute for disclosure of the information at issue. Section 3 of the *PSSDA* states, in part:

- (1) Not later than March 31 of each year beginning with the year 1996, every employer shall make available for inspection by the public without charge a written record of the amount of salary and benefits paid in the previous year by the employer to or in respect of an employee to whom the employer paid at least \$100,000 as salary.
- (2) The record shall indicate the year to which the information on it relates, shall list employees alphabetically by surname and show for each employee,
 - (a) the employee's name as shown on the employer's payroll records;
 - (b) the office or position last held by the employee with the employer in the year;

(c) the amount of salary paid by the employer to the employee in the year;

(d) the amount of benefits reported to Revenue Canada, Taxation, under the *Income Tax Act* (Canada) by the employer for the employee in the year.

The salary information at issue in the records contains the appellant's base salary and a formula through which his salary is to be calculated each year the contract is in effect. It is not the "amount of salary paid by the employer to the employee" as required by the *PSSDA*. "Salary" is defined in section 2 of the *PSSDA*, in part, as "an amount required by section 5 of the *Income Tax Act* (Canada) to be included in the employee's income from an office or employment". As discussed by former Adjudicator Bernard Morrow in Order MO-2563, the amounts to be reported under the *PSSDA* represent total salary and taxable benefits earned in a calendar year. The *PSSDA* does not address the component part of a public sector employee's total salary, including any pay for performance or other bonus amounts earned.⁸ Based on my review of the information at issue, I find that the salary information at issue is not the same as the information that is contemplated by section 3 of the *PSSDA*. The salary information at issue is not the amount of salary paid to the appellant for each year; rather, the salary information contains the component parts of the appellant's salary. I find, therefore, that section 3 of the *PSSDA* did not "expressly authorize" the disclosure of the salary information contained in the records.

[32] Consequently, this information does not fit within the exception in paragraph (d) of section 14(1), and it must be determined whether any of the other exceptions in paragraphs (a), (b), (c), (e) or (f) might apply to this information.

Section 14(1)(f)

[33] Based on my review of the record, I find that the only other paragraph in section 14(1) that could apply to the record is paragraph (f). This provision states:

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.

[34] 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 personal privacy under section 14(1)(f).

⁸ Order MO-2563, page 14.

[35] The appellant submits that the disclosure of the record would constitute an unjustified invasion of his personal privacy. He argues that the employment contract, which contains his personal information relating to his income, falls within the presumption in section 14(3)(f) of the *Act*, which states that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if it describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. In addition, the appellant submits that the exception to the personal privacy exemption in section 14(4)(a) does not apply to the personal information at issue. The appellant submits that the specific salary information contained in the record has been found to fall outside of the scope of section 14(4)(a) in previous orders of this office.

[36] In its representations, the town submits that section 14(4)(a) applies to the record and, as such, its disclosure would not constitute an unjustified invasion of personal privacy. The town submits that the record at issue details the employment contract between the appellant and the police and contains details with respect to his salary, benefits and responsibilities, all of which relate to his employment. The town lists the provisions in the record that contain what it submits are "benefits" as per section 14(4)(a) and submits that this information should be disclosed.

[37] The requester submits that section 14(4)(a) applies to the record and, therefore, the disclosure of the record would not constitute an unjustified invasion of privacy.

Section 14(4)(a)

[38] Section 14(4) of the *Act* lists the types of personal information that fall within the exception in paragraph (f) of section 14(1), irrespective of whether any of the presumptions in section 14(3) are present. This office has also found that the application of section 14(4) cannot be "overridden" or "rebutted" by the factors listed in section 14(2).⁹ If any of paragraphs (a) to (c) of section 14(4) apply, disclosure does not constitute an unjustified invasion of personal privacy and the information is, therefore, not exempt under section 14(1).

[39] Both the town and the original requester submit that the personal information in the record falls within section 14(4)(a). This section states:

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.

⁹ Order PO-1763.

[40] I will first consider whether section 14(4)(a) applies to the "benefits" information in the record. A disclosure of personal information does not constitute an unjustified invasion of personal privacy if it discloses the "benefits" that the appellant receives under the employment contract. In Order PO-2519, Adjudicator Steven Faughnan reviewed the definition of "benefits" applied in previous orders of this office and stated:

The Commissioner's office has interpreted "benefits" to include entitlements, in addition to base salary, that an employee receives as a result of being employed by the institution [Order M-23]. Order M-23 lists the following as examples of "benefits":

- insurance-related benefits
- sick leave, vacation
- leaves of absence
- termination allowance
- death and pension benefits
- right to reimbursement for moving expenses

In subsequent orders, adjudicators have found that "benefits" can include:

- incentives and assistance given as inducements to enter into a contract of employment [Order PO-1885]
- all entitlements provided as part of employment or upon conclusion of employment [Order P-1212]

These principles and reasoning have been applied in previous orders issued by this office including MO-1405, MO-1749 and MO-1796.

[41] More recently, in Order MO-2470, Adjudicator Colin Bhattacharjee reviewed the terms of two employment contracts between the Essex Police Services Board and their Chief and Deputy Chief. In that decision, Adjudicator Bhattacharjee found that the following terms constituted "benefits" for the purpose of section 14(4)(a):

I am satisfied that the information under the following headings in the Chief's employment contract qualifies as "benefits" for the purposes of section 14(4)(a): court time, other assignments, clothing and equipment, professional development, legal indemnification, vacations, holidays, sick leave, life insurance, workplace safety and insurance, health and welfare, bereavement leave, survivor's pension, separation, incidental expenses allowance, membership and participation in professional associations.

Similarly, I am satisfied that the information under the following headings in the Deputy Chief's employment contract qualifies as "benefits" for the purposes of section 14(4)(a): court time, other assignments, uniforms,

equipment, clothing and cleaning allowances, professional development, legal indemnification, vacation, holidays, sick leave, life insurance, workplace safety and insurance, health and welfare, bereavement leave, survivor's pension, separation, membership fees, physical fitness, home office expense, and Appendix B (memorandum of understanding with respect to the Deputy Chief's pension).

[42] In its representations, the town submits that the following information contained in the record qualifies as "benefits" and its disclosure would, therefore, not constitute an unjustified invasion of personal privacy:

- Insurance-related benefits (Appendix "A", clauses A.2.1, A.2.2 and A.2.3);
- Pension benefits (Appendix "A", clause A.2.4);
- Leaves of Absence (Appendix "A", clauses A.2.6.0, A.2.6.1 and A.2.6.2);
- Vacation (Appendix "A", clause A.3.5);
- Termination allowance (clause 3.01 and Letter of Intent); and
- Other entitlements in addition to a base salary (Letter of Intent).

[43] The appellant refers to Order M-204 to demonstrate that this office has held that elements in a record including the continuation of current salary, sick leave, vacation credits, health and dental and other entitlements did not constitute benefits for the purpose of section 14(4)(a) as they did not derive from the original employment contract.

[44] However, I note that the record at issue in Order M-204 was not an employment agreement, but rather, a release agreement. As a result, I will distinguish and not adopt the analysis in that order for the purposes of this appeal.

[45] Based on my review of the records and adopting the analysis in Order MO-2470, I find that the information contained in the following headings in Appendix A of the appellant's employment contract qualifies as "benefits" for the purposes of section 14(4)(a): Benefits (A.2.1), Short Term Disability Benefits (A.2.2), Retiree Benefits (A.2.3), Pension (A.2.4), Statutory Holidays (A.2.5), Bereavement Leave (A.2.6), Other Matters (A.3) and Legal Indemnification (A.4). In addition, I find that clause 6.09 of the employment contract contains information that qualifies as "benefits" for the purposes of section 14(4)(a). As section 14(4)(a) applies to the "benefits" information that is found in the appellant's employment contracts, disclosure of this personal information does not constitute an unjustified invasion of the appellant's personal privacy.

[46] Additionally, under section 14(4)(a), a disclosure of personal information does not constitute an unjustified invasion of personal privacy if it disclosed the "employment

responsibilities” of the appellant. In Order MO-2470, Adjudicator Bhattacharjee found that the information under the following headings of a Chief and Deputy Chief of Police’s employment contract qualified as “employment responsibilities for the purposes of section 14(4)(a): preamble, position, duration, hours of work and the organizational responsibilities of the Chief and Deputy Chief. Adopting the reasoning of Adjudicator Bhattacharjee to a similar employment contract, I am satisfied that the information under “Duties and Responsibilities” (Appendix “A”, A.1) qualifies as “employment responsibilities” for the purposes of section 14(4)(a).

[47] Section 14(4)(a) also provides that disclosure of personal information does not constitute an unjustified invasion of personal privacy if it discloses the “salary range” of the employee in an employment contract. The appellant concedes that previous decisions of this office interpreted the meaning of benefits more expansively outside the context of retirement contracts. However, the appellant submits that the reference to a specific salary as opposed to a salary range has consistently been held to fall outside of section 14(4)(a). As such, the appellant submits that the “explicit delineations of salary” contained in the record would not fall within the section 14(4)(a) exception.

[48] I agree with the appellant’s submission and find that the employment contract does not contain the “salary range” of the appellant. Instead, section A.2.0 of Appendix A and the Letter of Intent set out the appellant’s base salary and how his future salary will be calculated.

[49] In summary, I find the personal information relating to “benefits” and “employment responsibilities” in the Appendix fits within the exception in paragraph (f) of section 14(1) of the *Act*. This personal information is not, therefore, exempt from disclosure under section 14(1) and must be disclosed to the appellant.

[50] However, because the salary information in the Appendix does not refer to a “salary range”, section 14(4)(a) does not apply to the salary information contained in the employment contract. I also find that section 14(4)(a) does not apply to the agreement date or the termination date of the agreement, as these dates do not contain the “salary range”, “benefits” or “employment responsibilities” of the appellant.

[51] In their representations, the appellant and the town made representations on the application of the presumptions in sections 14(3)(d) and (f) and the factor favouring disclosure in 14(2)(a). However, based on the discussion that follows regarding the application of the public interest override to the information that remains at issue, I find that I am not required to review the application of the factors in section 14(2) or the presumptions in section 14(3) to it.

[52] Accordingly, I find that the information that remains at issue, namely, the start and termination dates of the agreement and the salary information contained in section A.2.0 of Appendix A and the Letter of Intent, qualifies for exemption under section

14(1) of the *Act*. I will now consider whether the public interest override in section 16 applies to this information.

C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

[53] I will now consider whether there exists a compelling public interest in disclosure of the information that qualifies for exemption under section 14(1), namely, the start and termination dates of the agreement and the salary information contained in section A.2.0 of Appendix A and the Letter of Intent. As the information that remains at issue shows the salary of the appellant for the duration of the contract, I will refer to the remaining information at issue, collectively, as the "salary information".

[54] Section 16 of the *Act* states:

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. [emphasis added]

[55] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[56] The *Act* is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.¹⁰

[57] In its representations, the town submits that, due to the high profile nature of the appellant's position, it is important to provide the public with the opportunity to scrutinize the employment contract at issue. The town also submits that the opportunity to scrutinize the record is a significant factor in maintaining public confidence in the appellant and the police. Further, the town submits that the disclosure of the record will provide the public with information on how public funds are being spent on the provision of police services within the town. Finally, the town submits that there is a compelling public interest in the record sought due to the appellant's position and that this interest outweighs the purpose of the section 14(1)

¹⁰ Order P-244.

exemption as it will inform the public of the activities of the police and may help the public in making political choices.

[58] The appellant submits that the personal information at issue in this appeal is highly sensitive and individually specific. The appellant distinguishes the record at issue from the information at issue in Order MO-2563, in which Adjudicator Bernard Morrow found that there was a compelling public interest in the exact salary of identified employees that were subject to the *PSSDA*. The appellant submits that, unlike the information at issue in Order MO-2563, the entire employment contract is at issue and it includes details such as the appellant's vacation and leave entitlement, salary, legal indemnification, pension benefits, termination of employment procedures and working conditions. In addition, the appellant submits that the requester was motivated by private, rather than public interests and as a result, lacks a compelling public rationale.

[59] Finally, the appellant submits that there is already a significant amount of information with respect to his employment contract that is presently publicly available. For example, the appellant states that the term of the appellant's contract was made public through a press release and his total salary and taxable benefits are available online pursuant to the *PSSDA*. The appellant submits that the information that is publicly available is more than sufficient to address any public interest considerations in how funds are used with respect to municipal employees. The appellant submits that, to require any further disclosure, in the context of the request being driven by a private interest and where the information at issue is of a highly sensitive and personal nature, would be inappropriate in the circumstances.

Compelling public interest

[60] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.¹¹ Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, 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.¹²

[61] A public interest does not exist where the interests being advanced are essentially private in nature.¹³ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.¹⁴ A public interest is

¹¹ Orders P-984 and PO-2607.

¹² Orders P-984 and PO-2556.

¹³ Orders P-12, P-347 and P-1439.

¹⁴ Order MO-1564.

not automatically established where the requester is a member of the media.¹⁵ The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.¹⁶

[62] Any public interest in *non*-disclosure that may exist also must be considered.¹⁷ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling”.¹⁸

[63] In his representations, the appellant refers to Order MO-2563, in which Adjudicator Bernard Morrow determined that, based on the nature of the salary information at issue and the fact that the named individual employees were subject to the *PSSDA*, the exact salary information in the employment contracts ought to be disclosed. Reviewing the information at issue, Adjudicator Morrow found that there was a compelling public interest in the disclosure of the information. In his decision, Adjudicator Morrow found as follows:

The wording of section 16 makes it clear that any public interest in disclosure must be “compelling”. As noted above, the word “compelling” has been defined in previous orders as “rousing strong interest or attention” [Order P-984]. Moreover, any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. NO. 4636 (Div. Ct.)]. In my view the allocation of taxpayers’ money for the payment of senior level public sector salaries “rouses strong interest and attention,” which means that the public interest in disclosure is “compelling”. In addition, I have considered whether there is any public interest in the non-disclosure of the withheld portions of the record at issue and have concluded that none exists.

[64] I adopt these findings for the purposes of this analysis. Although the appellant submits that the record at issue in this appeal is distinguishable from the salary information considered by Adjudicator Morrow in Order MO-2563, I disagree. I have already found that the *Act* does not apply to exempt the majority of the information in the appellant’s employment contract from disclosure and the only information that qualifies for exemption consists of salary information and the start and end dates of the agreement. The information that I have found to be exempt from disclosure under section 14(1) is substantially similar to the information considered in Order MO-2563. As a result, I find that Adjudicator Morrow’s analysis to be applicable in this appeal.

[65] While I appreciate the appellant’s concern with regard to the requester’s motivation, I do not agree that the requester’s potentially private interest in the

¹⁵ Orders M-773 and M-1074.

¹⁶ Order P-984.

¹⁷ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

¹⁸ Orders PO-2072-F, PO-2098-R and PO-3197.

disclosure of the record results in a diminished public interest in the information that remains at issue. The IPC has found that a public interest may be found to exist where a private interest in disclosure raises issues of more general application. In this appeal, I find that even if the requester has a private interest in the disclosure, the town has raised issues that have general application to the fact that public funds are being spent for police services. In the case of Order MO-2563, Adjudicator Morrow noted that the appellant in that appeal appeared to be motivated by a private interest. Regardless, Adjudicator Morrow found that "the information at issue is also of broader interest to all taxpayers as a means of shedding light on the affairs of government and, in particular, ensuring accountability for the allocation of public funds". I agree with Adjudicator Morrow's analysis and adopt it.

[66] Reviewing the salary information that remains at issue, I find that the public has a right to know to the fullest extent possible how public money has been allocated to public servants' salaries, particularly when the public servant is working at a senior level and earning a significant amount of money. In addition, I find that there is a compelling interest in the information that remains at issue and a need for transparency about the amount of the salary paid to the appellant. With regard to the information at issue, I agree with the town that its disclosure will inform the public of the activities of the police and may assist the public in making political choices. I have also considered whether there is any public interest in the non-disclosure of the salary information and conclude that none exists.

[67] Accordingly, I find that the first requirement under section 16 has been met. I will now examine whether this interest clearly outweighs the purpose of the section 14(1) exemption.

Purpose of the Exemption

[68] In my view, the compelling public interest in disclosure of the information that remains at issue clearly outweighs the purpose of the section 14(1) exemption in this case. As Adjudicator Morrow found in Order MO-2563:

The public has a right to know the fullest extent possible how taxpayer dollars have been allocated to public servants' salaries, and this has particular force with respect to public servants at senior levels who earn significant amounts of money paid out of the public purse. Certainly, the *PSSDA* is one important tool for ensuring such openness and transparency. However, in my view, to limit disclosure to only those amounts that are disclosed under the *PSSDA* seems incongruent with the government's commitment to openness and transparency and, in turn, accountability for the allocation of public resources. In my view, when an individual enters the public service he/she accepts that his/her salary may be exposed to public scrutiny. In this case, the amounts at issue exceed

the *PSSDA* \$100,000 threshold and the impact on the affected parties' privacy is limited to the amounts provided for pay for performance in 2009, which can be extrapolated from a comparison of the base salary amounts in the records with the salaries published under the *PSSDA* for that year. In my view, the need for complete transparency in this case outweighs the limited privacy interests of the affected parties.

[69] Upon judicial review, the Divisional Court upheld Adjudicator Morrow's decision in *York (Police Services Board) v. (Ontario) Information and Privacy Commissioner*.¹⁹

[70] I adopt Adjudicator Morrow's analysis for the purposes of this appeal. The salary information that remains at issue is similar to that considered in Order MO-2563, in that it consists of a base salary and other components used to calculate the final salary of the appellant. I agree with Adjudicator Morrow's statement that when an individual enters the public service he/she accepts that his/her salary may be exposed to public scrutiny. As the appellant's salary exceeds the *PSSDA* \$100,000 threshold and has, therefore, been released to the public, I find that the impact of disclosure on his privacy is limited to the component parts of his salary. In my view, the need for transparency with regard to a high level public sector employee's salary and the allocation of public funds outweighs the limited privacy rights of the appellant in this case.

[71] Accordingly, I find that the public interest override in section 16 of the *Act* applies to the salary information that remains at issue and must be disclosed to the requester.

ORDER:

1. I uphold the town's decision and dismiss the appeal.
2. I order the town to disclose the employment contract in its entirety to the requester by **June 9, 2014** but not before **June 2, 2014**.
3. In order to verify compliance with this order, I reserve the right to require a copy of the information disclosed by the town pursuant to order provision 2 to be provided to me.

Original signed by: _____
Justine Wai
Adjudicator

_____ May 2, 2014

¹⁹ 2012 ONSC 6175.