

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3295

Appeal MA15-399

Algoma Public Health

March 10, 2016

Summary: Algoma Public Health (APH) received a request for access to the “final report of [the] 2015 KPMG Forensic Review” (the Report). The Report relates to whether a conflict of interest existed regarding the appointment of APH’s former interim CFO, and whether any funds were subsequently misappropriated or lost by APH. While APH determined that the exemption at section 14(1) (personal privacy) of the *Act* applied, it granted access to the Report pursuant to section 16 (public interest override).

An affected party appealed APH’s decision, claiming the application of the exemptions at section 14(1) and 8(2)(c) (disclosure would expose person to civil liability). The affected party also claimed that section 16 did not apply in the circumstances. This order decides that the personal privacy exemption at section 14(1) applies to the record, and that there is a compelling public interest in disclosure of the record. Further, this order dismisses the affected party’s claim under section 8(2)(c). Accordingly, APH’s decision to disclose the record is upheld.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 8(2)(c), 14(1), 14(2) and 16.

Orders Considered: PO-1705 and P-1137.

Cases Considered: *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403.

OVERVIEW:

[1] On May 8, 2015, Algoma Public Health (APH or the institution) received a request

under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to the final report of the 2015 KPMG Forensic Review (the Report).

[2] The Report is the result of KPMG's investigation into APH's potential conflict of interest with the selection of a consulting company which facilitated the appointment of APH's former interim Chief Financial Officer (CFO), and subsequent actions of the former interim CFO.

[3] Pursuant to section 21 of the *Act*, APH provided notice to seven parties whose interests may be affected by disclosure of the Report (the affected parties), inviting those parties to submit representations on disclosure. Four affected parties provided APH with written representations. Three of the affected parties expressed their general opposition to disclosure of the Report, whereas the remaining affected party opposed disclosure on the basis of sections 7(1) (advice or recommendations), 11(c) and (d) (economic and other interests), and 14(1) (personal privacy).

[4] Upon review of the affected parties' submissions, APH issued a decision to the requester granting access to the Report in its entirety on the basis of the public interest override in section 16 of the *Act*. The decision letter stated that disclosure of the Report would shed light on the operations of APH, an institution governed by the *Act*, in accordance with the *Act's* central purposes of fostering accountability and transparency. In addition, APH's decision letter stated that there is a public interest in disclosure that clearly outweighs the purpose of the section 14 exemption (personal privacy).

[5] One of the affected parties who provided written submissions on disclosure appealed APH's decision to this office, becoming the appellant in this appeal.

[6] This appeal was expedited from the intake stage to the adjudication stage of the appeal process, where an inquiry is conducted under the *Act*. I am the adjudicator assigned to this appeal, and I began my inquiry by sending APH and the requester a Notice of Inquiry seeking their representations on the applicability of sections 14(1) and 16 of the *Act*. Both parties submitted representations in response. I also sought and received representations from the appellant.

[7] I then sent a supplementary Notice of Inquiry, along with complete copies of the representations submitted by the original requester and APH, to the three other affected parties who were notified of the request by APH and initially provided submissions to it. All three affected parties declined to submit representations.

[8] In this order, I find that a substantial portion of the record is exempt from disclosure under section 14(1) of the *Act*. However, I find that there is a compelling public interest in the disclosure of the record under section 16 and order APH to grant the requester access to it.

RECORD AT ISSUE:

The record at issue in this appeal is the final report of the 2015 KPMG Forensic Review.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) apply to the record?
- C. Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 14 exemption?

DISCUSSION:

Preliminary Issue

Can the appellant raise the discretionary exemption in section 8(2)(c) in this appeal?

[9] The appellant submits that the discretionary exemption at section 8(2)(c) applies to the Report, and provides confidential representations on the application of that exemption. That section reads:

(2) A head may refuse to disclose a record,

(c) that is a law enforcement record if the disclosure could reasonably be expected to expose the author of the record or any person who has been quoted or paraphrased in the record to civil liability[.]

[10] As the institution has not claimed the discretionary exemption at section 8(2)(c), I must consider whether the appellant may raise a discretionary exemption when it was not claimed by the institution.

[11] This office has previously considered whether an affected party may raise a discretionary exemption.¹ As noted in Order PO-3063,

The *Act* contains both mandatory and discretionary exemptions. A mandatory exemption indicates that a head "shall" refuse to disclose a

¹ Please see Orders P-257, P-1137, PO-1705 and PO-3063.

record if the record qualifies for exemption under that particular section. A discretionary exemption uses the permissive "may". It is important to note that the legislature expressly contemplates that the head of the institution is given the discretion to claim, or not claim, these exemptions.²

[12] In Order PO-1705, this office considered an affected party's submission regarding the possible application of discretionary exemptions not claimed by the institution. He adopted the conclusions reached in Order P-1137, where the following determination was made:

The *Act* includes a number of discretionary exemptions within sections 13 to 22 which provide the head of an institution with the discretion to refuse to disclose a record to which one of these exemptions would apply. These exemptions are designed to protect various interests of the institution in question. If the head feels that, despite the application of an exemption, a record should be disclosed, he or she may do so. In these circumstances, it would only be in the most unusual of situations that the matter would come to the attention of the Commissioner's office since the record would have been released.

The *Act* also recognizes that government institutions may have custody of information, the disclosure of which would affect other interests. Such information may be personal information or third party information. The mandatory exemptions in sections 21(1) and 17(1) of the *Act* respectively are designed to protect these other interests. Because the Office of the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme, the Commissioner's office, either of its own accord, or at the request of a party to an appeal, will raise and consider the issue of the application of these mandatory exemptions. This is to ensure that the interests of individuals and third parties are considered in the context of a request for government information.

Because the purpose of the discretionary exemptions is to protect institutional interests, *it would only be in the most unusual of cases that an affected person could raise the application of an exemption which has not been claimed by an institution.* Depending on the type of information at issue, the interests of such an affected person would usually only be

² Order PO-3063, at page 7.

considered in the context of the mandatory exemptions in sections 17 or 21(1) of the *Act*.³

[13] I agree with these conclusions and adopt them for the purposes of this appeal.

[14] In my view, the interests of the appellant and other possible affected parties have been addressed through notification by APH at the initial request stage, pursuant to section 21(1). As I have outlined above, the appellant was provided with the opportunity to make representations to this office regarding the application of section 14 of the *Act*. I find that my consideration of the application of section 14 will address the appellant's interests. Therefore, I find that the circumstances of this appeal do not amount to an "unusual case", as contemplated in Order PO-1705, to allow an affected party to raise the possible applicability of a discretionary exemption.

[15] As I have found that the appellant may not raise the possible application of the discretionary exemption at section 8(2)(c), I need not further consider whether that section applies to the record at issue.

[16] In any event, I note that only a "law enforcement record" may qualify for the exemption at section 8(2)(c). Law enforcement is defined in section 2(1) of the *Act* as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or
- (c) the conduct of proceedings referred to in clause (b)[.]

[17] I am satisfied that the record was not "prepared in the course of a law enforcement investigation by an agency which has the function of enforcing and regulating compliance with a law," as contemplated in Order M-1036.⁴ I note that neither the author of the Report nor APH, the institution which commissioned the Report, have the function of enforcing and regulating compliance with a law in the context of the issues considered in the Report. Further, neither the Report's author nor APH have the power to impose a penalty or proceeding in this context.

[18] Accordingly, I dismiss this aspect of the appeal.

³ Order PO-1705, at pages 5-6 [emphasis added].

⁴ Order M-1036, and Reconsideration Order R-970004.

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

[19] The institution and the appellant agree that the mandatory personal privacy exemption at section 14(1) is applicable. The requester declined to make submissions on this issue. Before I can determine whether the personal privacy exemption may apply to the record, I must decide whether the record contains “personal information” and, if so, to whom it relates.

[20] The term “personal information” is defined in section 2(1) of the *Act* 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 view of the individual except where 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 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[.]

[21] 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.⁵

[22] 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.⁶

[23] 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.⁷

[24] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁸

[25] I have reviewed the record and find that portions of the information contained in it consist of the personal information of the appellant and another named individual.

[26] A substantial portion of the Report contains the author’s opinion on the appellant and another named individual, as contemplated by paragraph (g) of section 2(1) of the *Act*. I also find that a large portion of the record includes the names of the appellant and the other individual alongside other personal information about both individuals, falling within the meaning of paragraph (h) of section 2(1). Additionally, certain portions of the Report contain information falling within paragraphs (a) and (b) of section 2(1) relating to the appellant and the named individual.

[27] Therefore, I find that a substantial portion of the record contains the personal information of the appellant and another identifiable individual.

[28] Due to my finding below in relation to the application of the “public interest override” at section 16 of the *Act*, it is not necessary to identify exactly which portions of the Report constitute personal information.

Issue B: Does the mandatory exemption at section 14(1) apply to the record?

[29] Where a requester seeks the personal information of another individual, as is the case in this appeal, section 14(1) prohibits an institution from releasing this information

⁵ Order 11.

⁶ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁷ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (CA).

unless one of the exemptions in paragraphs (a) to (f) of section 14(1) applies. Under section 14(1)(f), if disclosure of the information at issue would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[30] Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(2) provides some criteria for the institution to consider in making its determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[31] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.⁹

[32] Both APH and the appellant agree that disclosure of the personal information in the Report would constitute an unjustified invasion of privacy. Neither party made submissions on the applicability of the factors in sections 14(2), or the presumptions in sections 14(3) and (4). The requester did not make any submissions on the application of section 14.

[33] Having considered the personal information in the record, I agree with APH and the appellant that disclosure of the personal information contained in the Report would constitute an unjustified invasion of privacy.

[34] Section 14(2) of the *Act* reads, in part, as follows:

(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,

(f) the personal information is highly sensitive; [and]

(h) the personal information has been supplied by the individual to whom the information relates in confidence[.]

[35] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.¹⁰ Having reviewed the

⁹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

¹⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

Report and the nature of the personal information it contains, I find that the majority of the personal information is highly sensitive, as contemplated by section 14(2)(f). In addition, based on my review of the Report and the circumstances within which it was prepared, I am satisfied that some of the information was supplied with the reasonable expectation that the information would be treated confidentially, as required for the factor at section 14(2)(h) to apply.¹¹

[36] Neither APH nor the requester have provided representations on any factors which may weigh against a finding that disclosure of the personal information in the Report would constitute an unjustified invasion of privacy. Given the highly sensitive nature of the personal information in the record, and the confidential manner in which it was supplied, I find that disclosure of the information would constitute an unjustified invasion of privacy of the two individuals named therein, pursuant to section 14(1), subject to my review of the “public interest override” below.

Issue C: Is there a compelling public interest in disclosure of the record that clearly outweighs the purpose of the section 14 exemption?

General principles

[37] Section 16 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.¹²

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

[39] The *Act* is silent as to who bears the burden of proof in respect of section 16. In this appeal, both APH and the requester submit that the record should be disclosed pursuant to section 16. Accordingly, this office will review the record with a view to determining whether there is a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.¹³

¹¹ As determined in Order PO-1670, the factor at section 14(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances.

¹² Emphasis added.

¹³ Order P-244.

COMPELLING PUBLIC INTEREST

Representations

[40] In its representations on whether there is a public interest in disclosure of the record, APH notes that the Report is the result of a forensic investigation into whether it complied with its policies, or was influenced by potential conflicts of interest, when it hired a named interim CFO and financial consultant. APH states that the Report also documents the results of an investigation into whether it suffered any losses, including the misappropriation of funds, as a result of actions of the interim CFO during his tenure with APH. Accordingly, APH submits that there is a relationship between the Report and the *Act's* central purpose, namely, to shed light on the operations of the institution.

[41] APH submits that the public interest in disclosure of the Report is compelling, as the issues addressed in the record have roused strong interest and attention from the public, the province and the municipal government. APH notes that both the provincial Minister of Health and Long-Term Care (the Minister) and the Sault Ste. Marie Member of Provincial Parliament David Oraziotti have publically urged APH to disclose the report to the public "in the interests of transparency" and to "establish public confidence in APH."¹⁴ The institution also notes that the Sault Ste. Marie City Council passed a resolution seeking information contained in the Report.¹⁵ In light of the various requests for disclosure of the Report, APH submits that disclosure would "inform the citizenry about the activities of the institution during a time when its integrity was in question."

[42] The requester states that he is seeking access to the Report because it may shed light on the operations of a government agency on an issue that has developed strong opinions in the community. He also notes that both APH and the Minister have determined that the Report should be disclosed to the public.

[43] The requester submits that "APH's selection of a consulting company, the subsequent actions of its interim chief financial officer, and the devastating consequences of those actions on the broader community, have been of enormous, perhaps unprecedented, public interest here." The requester notes the folding of two significant business opportunities either initiated or advanced by the interim CFO following the publication of information relating to the interim CFO's past, and the effects of these events on the local community. Additionally, the requester notes that APH's board has faced restructuring following the Minister's recommendation that four board members resign. In short, the requester submits that the various events that

¹⁴ Elaine Della-Mattia, "Health Ministry urges APH to release report" (2015) online: <http://www.saultstar.com/2015/05/29/health-minister-urges-aph-to-release-report>.

¹⁵ Elaine Della-Mattia, "Council not satisfied with APH report" (2015) online: <http://www.saultstar.com/2015/04/27/council-not-satisfied-with-aph-report>.

have unfolded as a result of the former interim CFO's appointment to APH have roused strong public interest.

[44] The appellant submits that there is minimal public interest in disclosure of the personal information relating to her, and no compelling public interest in disclosure, as significant information has already been disclosed and adequately addresses any public interest considerations. Further, the appellant submits that there has already been "wide public coverage" of the issue, and cites Order M-381, in which this office determined that "a significant factor to be considered in determining the relevance of section 16 is the degree of public disclosure which has already taken place concerning this matter."

[45] The appellant references the "Scott Report", which was commissioned by the Ministry of Health and Long-Term Care and made public on June 16, 2015. The appellant submits that the issues addressed in the Scott Report substantially overlap with those considered in the record.

[46] In response to APH's submission that the public has a right to know whether taxpayer dollars have been lost or misappropriated as a result of the actions of public servants at senior levels, the appellant states that she does not object to the disclosure of any portions of the report that address this issue, so long as no personal information relating to her is disclosed.

[47] The appellant notes that this office is required to consider any public interest in the non-disclosure of the record sought when making a determination on the applicability of section 16. The appellant provides confidential representations referring to specific reasons why, in her view, there is a public interest in non-disclosure of the Report.

[48] Lastly, the appellant makes representations in response to the argument that both APH and the minister have concluded that the Report should be publically disclosed, as submitted by APH and the requester. In this regard, the appellant submits that there is no evidence of any exhaustive review by APH or the minister. Further, the appellant notes that this office's jurisdiction is to apply the applicable sections of the *Act*, not to give serious consideration to external parties' opinions on disclosure.

Analysis

[49] In considering whether there is a "public interest" in the 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.¹⁶ Previous orders have stated that in order to find a compelling public interest in disclosure, the

¹⁶ Orders P-984 and PO-2607.

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.¹⁷

[50] A public interest is not automatically established where the requester is a member of the media.¹⁸

[51] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.¹⁹

[52] Any public interest in *non*-disclosure that may exist also must be considered.²⁰ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling”.²¹

[53] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation;²²
- the integrity of the criminal justice system has been called into question;²³
- public safety issues relating to the operation of nuclear facilities have been raised;²⁴
- disclosure would shed light on the safe operation of petrochemical facilities²⁵ or the province’s ability to prepare for a nuclear emergency;²⁶
- the records contain information about contributions to municipal election campaigns.²⁷

[54] A compelling public interest has been found *not* to exist where, for example:

¹⁷ Orders P-984 and PO-2556.

¹⁸ Orders M-773 and M-1074.

¹⁹ Order P-984.

²⁰ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

²¹ Orders PO-2072-F, PO-2098-R and PO-3197.

²² Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

²³ Order PO-1779.

²⁴ Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

²⁵ Order P-1175.

²⁶ Order P-901.

²⁷ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

- another public process or forum has been established to address public interest considerations;²⁸
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;²⁹
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding;³⁰
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter;³¹
- the records do not respond to the applicable public interest raised by the appellant.³²

[55] Having reviewed the parties' representations and considered the record, I am satisfied that there is a compelling public interest in the record's disclosure.

[56] As noted by the parties, the circumstances giving rise to the Report have been a subject of concern for the public, the media, the institution and both the provincial and municipal governments. There has been substantial media coverage and public discussion regarding allegations of conflict of interest and financial mismanagement within APH, which suggest that the circumstances have generated "strong interest or attention." I agree with APH's submission that disclosure of the Report would "inform the citizenry about the activities of the institution during a time when its integrity was in question."

[57] The institution's decision to disclose the Report pursuant to the public interest override is another important consideration in this appeal. I find that the institution is in a strong position to assess whether there is a compelling public interest in disclosure, given its familiarity with the issues considered in the Report, its knowledge of the local community and the fact that it sought and received the views of the affected parties prior to making its decision.

[58] The Report concerns two key issues: whether there was a conflict of interest in relation to the appointment of the interim CFO, and whether any funds were lost or misappropriated by APH during the relevant timeframe. The appellant submits that disclosure of the portions of the Report which relate to whether public funds were lost

²⁸ Orders P-123/124, P-391 and M-539.

²⁹ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

³⁰ Orders M-249 and M-317.

³¹ Order P-613.

³² Orders MO-1994 and PO-2607.

or misappropriated by senior officials at APH, with the exception of the appellant's personal information, adequately addresses the public interest. However, I find that there is substantial information contained within the record which does not appear in the public version of the Scott Report, particularly in relation to whether a conflict of interest existed in relation to the interim CFO's appointment. I also find that the appellant's personal information is essential to the determination of whether a conflict of interest existed. Both of these factors point to the existence of a compelling public interest in disclosure.

[59] As noted by the appellant, I must also consider whether there is a public interest in non-disclosure of the Report. I have considered the appellant's confidential representations in support of the position that there is a public interest in non-disclosure. However, I am not persuaded that there is a sufficiently significant interest in non-disclosure. I also note that the Report contains information about whether a conflict of interest existed in the appointment of the interim CFO, and whether any funds were lost or misappropriated. Both of these issues are inextricably tied to the responsibilities generally carried out by officers of public bodies, and for which officers are accountable to their respective board or governing body.

[60] Accordingly, I find that there is a compelling public interest in disclosure of the full Report.

PURPOSE OF THE EXEMPTION

[61] The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

[62] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.³³

Representations

[63] The institution cites the Supreme Court of Canada's decision in *Dagg v. Canada (Ministry of Finance)*,³⁴ in which the court determined that the "overarching purpose" of access to information legislation is to "facilitate democracy", and that "rights to state-held information are designed to improve the workings of government; to make it more

³³ 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.).

³⁴ [1997] S.C.R. 403 [*Dagg*].

effective, responsible and accountable."³⁵ APH notes the need to balance the values of open government and personal privacy, and submits that in the circumstances of this case, the public interest in disclosure of the Report clearly outweighs the relevant personal privacy interests.

[64] The appellant states that, should a compelling public interest in disclosure be established, the interest must clearly outweigh the purpose of the established exemption claim in the specific circumstances. The appellant submits that the purpose of the section 14 exemption is self-evident, and is informed by a review of sections 14(2) and (3). Generally, the appellant submits that the purpose of the section 14 exemption is to ensure that individuals' personal privacy is maintained except where invasions of privacy are justified.

[65] In the present case, the appellant notes that APH has already acknowledged that disclosure of the Report would constitute an unjustified invasion of the appellant's personal privacy within the meaning of section 14(1)(f). The appellant submits that as the information at issue is already largely public, and because of events that have transpired since the events giving rise to the Report, some of the public accountability concerns are no longer present. In addition, the appellant notes that disclosure would constitute an admitted unjustified invasion of personal privacy contrary to the purpose of section 14, any public interest in disclosure does not outweigh the purpose of the exemption.

[66] The requester did not provide representations on this particular issue.

Analysis

[67] I have found that the personal information of the appellant and another named individual in the Report qualifies for exemption under section 14(1) of the *Act*.

[68] As previously discussed, section 14(1) is a mandatory exemption with the fundamental purpose of ensuring that the personal privacy of individuals is maintained except where infringements on this interest are justified.³⁶ The exemption reflects one of the two key purposes of the *Act*: to protect the privacy of individuals with respect to personal information about themselves held by institutions.³⁷ Therefore, it is important to carefully balance the public interest against the privacy interests of the individuals identified in the record.

[69] After reviewing the parties' representations, I am satisfied that the compelling public interest in disclosure of the Report clearly outweighs the purpose of the section

³⁵ *Ibid* at para 63.

³⁶ Order P-568.

³⁷ Order PO-2805.

14(1) exemption in these circumstances. The public has an interest in knowing whether there was a conflict of interest in relation to the appointment of APH's former interim CFO, and whether APH lost or misappropriated public funds during the relevant time period, particularly in light of ongoing controversy surrounding financial mismanagement at APH. I find that the Report provides information on these issues that is not otherwise publically available.

[70] I acknowledge the importance of the personal privacy exemption at section 14(1), namely, the protection against unjustified invasions of personal privacy. However, I also note that both of the individuals whose personal information appears in the record held positions which required them to be accountable to the community, the board and the ministry. I have also considered whether any portions of the record ought to be withheld, and find that there is a compelling public interest in disclosure of the Report in its entirety.

[71] I am persuaded by APH's submission that, in line with the Supreme Court's determination in *Dagg v. Canada (Ministry of Finance)*, the key purpose of access to information legislation is to facilitate democracy and make government "more effective, responsible and accountable."³⁸ Controversy surrounding the management of APH, and in particular, allegations of financial wrongdoing and conflict of interest, has prompted both the ministry and APH to commission investigations which form the respective bases of the Scott Report and the record. As noted above, the appellant's personal information is inextricably linked to whether a conflict of interest existed in relation to the appointment of the former interim CFO. In the circumstances, I find that the important public policy basis for the personal privacy exemption must yield to a stronger and more compelling public interest in disclosure of the record which directly speaks to the effectiveness and integrity of APH and its former officers.

[72] For these reasons, I find that the public interest override in section 16 of the *Act* applies to the Report.

ORDER:

1. I uphold Algoma Public Health's decision to disclose the entire record to the requester under section 16, and I dismiss this appeal.
2. I order Algoma Public Health to disclose the record at issue to the requester by **April 19, 2016**, but not before **April 14, 2016**.

Original Signed by: _____

Brian Beamish

March 10, 2016

³⁸ *Dagg*, *supra* note 36 at para 63.

Commissioner