Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4025-I

Appeal MA18-00894

The Corporation of the Town of Midland

March 15, 2021

Summary: This interim order deals with most of the issues raised as a result of an appeal of an access decision made by the Corporation of the Town of Midland (the town). The town granted access, in part, but denied access to three records, claiming a number of exemptions. In this interim order, the adjudicator finds that two settlement agreements contain the personal information of two identifiable individuals, and are exempt from disclosure under the mandatory exemption in section 14(1) (personal privacy). The adjudicator also finds that a third record does not contain personal information and is not exempt from disclosure under the discretionary exemption in section 11 (economic and other interests). However, the adjudicator reserves any findings regarding the possible application of the mandatory exemption in section 10(1) (third party information), pending notification of a third party. Lastly, the adjudicator finds that the public interest override in section 16 does not apply.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 10(1), 11(a), 11(c), 11(d), 11(e), 11(g), 14(1), 14(3)(d), 14(3)(f), 14(4)(a) and 16.

Orders and Investigation Reports Considered: Orders MO-1970, MO-2174 and PO-2519.

OVERVIEW:

[1] This interim order disposes of most of the issues raised as a result of an appeal of an access decision made by the Corporation of the Town of Midland (the town). The access request, received under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), was for copies of all Collective Agreements between the Midland Police Services Board (the board) and the Midland Police Senior Officers' Association

and/or its Members, over four specified years. The requester also indicated that should formal collective agreements not yet be ratified, he was requesting copies of any contracts, memoranda of understanding, addendums or agreements of any kind, that address collective bargaining or compensation matters for the same years.

[2] The town located four records responsive to the access request. It issued a decision granting access to one record. The town denied access to the other three records, claiming the application of the discretionary exemptions in sections 11(c) and 11(d) (economic or other interests).

[3] The requester (now the appellant) appealed the town's decision to this office.

[4] During the mediation of the appeal, the town issued a revised decision in which it confirmed that it was still denying access to the records under sections 11(c) and 11(d) of the *Act*. It also claimed, for the first time, the mandatory exemptions in sections 10(1)(a) and 10(1)(d) (third party information), as well as section 14(1) (personal privacy). Further, the town also added the application of the discretionary exemptions in sections 11(a), 11(e) (economic and other interests) and 11(g) (proposed plans, projects or policies).

[5] The appellant advised that he wished to proceed to the adjudication stage of the appeals process to seek access to the three withheld records. He further advised that he believed there was a public interest in the disclosure of the records. As such, section 16 (public interest override) of the Act was added as an issue in this appeal.

[6] The file was then transferred to the adjudication stage of the appeals process, where an adjudicator may conduct a written inquiry under the *Act*. The adjudicator assigned to the file initially sought and received representations from the town. In its representations, the town advised that the appellant is engaged in an ongoing arbitration with the board, which the town refers to as "ongoing litigation," and that this factors into the town's sections 10 and 11 claims.

[7] The file was then transferred to me to continue the inquiry. I sought and received representations from the appellant. I then sought reply representations from the town, but the town did not provide reply representations.

[8] For the reasons that follow, I find that Record 1 (see below) is not exempt from disclosure under sections 11 or 14(1). Conversely, I find that Records 2 and 3 (see below) are exempt from disclosure under section 14(1). I reserve judgment regarding the possible application of the mandatory exemption in section 10 to Record 1, pending notification of a third party.

RECORDS:

[9] The records at issue are three agreements. The first record is a three-page

Memorandum of Agreement between the board and the Midland Police Senior Officers' Association (the association (Record 1). The second record is a seven-page Supplemental Agreement between the board, the association and a named individual (Record 2). The third record is a five-page Supplemental Agreement between the board, the association and a named individual (Record 3).[1]

ISSUES:

A. Do the records 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 records 2 and 3?

C. Does the mandatory exemption at section 10(1) apply to Record 1?

D. Do the discretionary exemptions at sections 11(a), (c), (d), (e) and/or (g) apply to Record 1?

E. Is there a compelling public interest in disclosure of records 2 and 3 that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[10] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "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,

[1] During the inquiry, staff of this office sought further information from the town regarding the provision of policing services. In particular, the town advised that the Ontario Provincial Police took over policing services in Midland in February, 2018. The Midland Police Services Board is now a "section 10" board, and the Midland Police Senior Officers' Association no longer exists.

> (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 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;

[11] 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]

[12] 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]

[13] 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]

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[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.

Representations

[14] The town's representations do not directly address if the records contain personal information. However, in its representations, it relies on the personal privacy exemption with respect to records 2 and 3. By inference, the town argues that those records contain the personal information of former employees of the board, including information about their employment history and finances.

[15] The appellant's position with respect to records 2 and 3 is that the association is the sole bargaining agent for its members, including the individuals referred to in these records, and that negotiations are not held with the individuals but with the association. The appellant further submits that records 2 and 3 have limited or non-existent personal information, arguing that their past collective agreements always referred to positions, not individuals.

Analysis and findings

[16] I have reviewed the records at issue, and I find that records 2 and 3 contain the personal information of identifiable individuals. Turning initially to Record 1, I find that it does not contain any information that qualifies as personal information of an identifiable individual. Record 1 is an agreement between the board and the association, which is an overarching agreement about a collective agreement. Having found that this record does not contain personal information, the personal privacy exemption in section 14(1) cannot apply. I will consider whether this record is exempt from disclosure under the other exemptions applied by the town.

[17] Conversely, I find that records 2 and 3 contain extensive recorded information that qualifies as the personal information of two identifiable individuals. Contrary to the appellant's position, I find that these records do not consist of "collective agreements" between the board and the association. It is clear from my review of these records would be better characterized as settlement agreements between the parties to the agreement, including the identifiable individuals involved. In particular, I find that both records contain information about the individuals' marital status, which falls within paragraph (a) of the definition of "personal information" in section 2(1) of the *Act*. In addition, both records contain information about the individuals' employment history, falling within paragraph (b) of the definition. Further, both records contain the names of the individuals with other personal information about them, falling within paragraph (h) of the definition. Lastly, although these records are in relation to the individuals in a professional capacity, I find that these records, in the circumstances of this appeal, reveal something of a personal nature about them.

[18] Having found that records 2 and 3 contain personal information of individuals other than the appellant, I will now determine whether they are exempt from disclosure under the mandatory exemption in section 14(1).

Issue B: Does the mandatory exemption at section 14(1) apply to records 2 and 3?

[19] 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.

[20] The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14.

[21] If the information fits within any of paragraphs (a) to (e) of section 14(1), it is not exempt from disclosure. Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[22] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[23] 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 a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2).[5] In addition, 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.[6]

Representations

[24] The town submits that the presumption in section 14(3)(d) applies, as records 2 and 3 relate to the individuals' employment history. In addition, the town submits that the presumption in section 14(3)(f) applies, as these records contain information about the individuals' income. The town further submits that it contacted the individuals named in records 2 and 3, who did not provide their consent to the disclosure of the records.

[25] The appellant submits that he has spoken to the individuals named in records 2 and 3, and he believes their refusal to consent to the disclosure of these records is due to fear of repercussions if they violate the confidentiality clauses contained in the records. The appellant further submits that the presumption of an invasion of privacy

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[5] *John Doe*, cited above.
[6] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

will be rebutted if disclosure is expressly authorized by another statute, such as the *Public Service Salary Disclosure Act*. He also submits that section 14(4) provides that the disclosure of certain types of information in an employment contract, such as classification, benefits and employment responsibilities are not considered to be an unjustified invasion of privacy.

Analysis and findings

14(3)(d): employment or educational history

[26] Information which reveals the dates on which former employees are eligible for early retirement, the start and end dates of employment, the number of years of service, the last day worked, the dates upon which the period of notice commenced and terminated, the date of earliest retirement, entitlement to and the number of sick leave and annual leave days used and restrictive covenants in which individuals agree not to engage in certain work for a specified duration has been found to fall within the section 14(3)(d) presumption.[7]

14(3)(f): finances

[27] To qualify under this section, information about an asset must be specific and must reveal, for example, its dollar value or size.[8] Lump sum payments that are separate from an individual's salary have consistently been found not to fall within section 14(3)(f).[9] Contributions to a pension plan have been found to fall within section 14(3)(f).[10]

[28] I find that the disclosure of records 2 and 3 would constitute an unjustified invasion of privacy of the individuals to whom those records relate and are, therefore, exempt from disclosure under the mandatory exemption in section 14(1). On my review of these records, I find that the records, as a whole, relate to and are "about" the individuals named in them. I also agree with the town, finding that the presumptions in sections 14(3)(d) and 14(3)(f) apply to them. In particular, with respect to the presumption in section 14(3)(d), I find that these records contain information about last day worked, date of earliest retirement, sick leave, leave days and restrictive covenants. Turning to the presumption in section 14(3)(f), I find that the records contain information about pension plan contributions. As previously stated, once a presumption in section 14(3) is established, it cannot be rebutted by any of the factors in section 14(2). I further find that none of the exceptions in section 14(1) apply. The appellant

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[7] Orders M-173, P-1348, MO-1332, PO-1885 and PO-2050; see also Orders PO-2598, MO-2174 and MO-2344.
[8] Order PO-2011.
[9] Orders M-173, MO-1184, MO-1469, MO-2174 and MO-2318.
[10] Orders M-173, P-1348 and PO-2050.

carries the belief that the individuals in the records did not provide their consent to the disclosure of the records because due to fear of repercussions. This belief is not relevant. The fact of the matter is that the individuals named in records 2 and 3 were contacted by the town, and declined to provide their consent to the disclosure of the records in their entirety. In response to the appellant's argument regarding the *Public Sector Salary Disclosure Act*, I note that the dollar amount of the salaries of the individuals is not contained in the record.

[29] Turning to the possible application of section 14(4), as previously stated, section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. In my view, section 14(4)(a) is relevant to this appeal: That section states:

> Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> > (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

[30] Having reviewed records 2 and 3, these settlement agreements do not contain the classification, salary range, or the employment responsibilities of the named individuals. Accordingly, the exception at section 14(4)(a) cannot apply unless I determine that any information contained in these records qualifies as a "benefit" as contemplated by section 14(4)(a).

[31] 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 lists the following as examples of "benefits":
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> - insurance-related benefits;
> - sick leave, vacation;
> - leaves of absence;
> - termination allowance;
> - death and pension benefits; and/or
> - right to reimbursement for moving expenses.

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

- incentives and assistance given as inducements to enter into a contract of employment;[11] or

- all entitlements provided as part of employment or upon conclusion of employment.[12]

[33] This office has also held that the exception in section 14(4)(a) does not apply to entitlements that have been negotiated as part of a retirement or termination package, except where it can be shown that the information reflects benefits to which the individual was entitled as a result of being employed. As Adjudicator Catherine Corban stated in Orders MO-1970 and MO-2174:

> [T]he common thread in these orders appears to be that section 14(4)(a) applies to benefits negotiated as part of a retirement or termination agreement, so long as they are benefits the individual received while employed and are continuing post-employment.

[34] I am satisfied that the contents of records 2 and 3 containing releases, agreements and undertakings which have been negotiated as part of the settlement agreements, do not qualify as "benefits" under section 14(4)(a).

[35] For all of these reasons, I find that records 2 and 3 are exempt from disclosure under section 14(1), subject to my finding regarding the possible application of the public interest override in section 16 of the *Act*.

Issue C: Does the mandatory exemption at section 10(1) apply to record 1?

[36] The town is relying on sections 10(1)(a) and 10(1)(d) to deny access to Record 1. These sections state:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,
>
> > (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
> >
> > . . .

[11] Order PO-1885.
[12] Order P-1212.

> (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[37] Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.[13] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.[14]

[38] For section 10(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), and/or (d) of section 10(1) will occur.

Representations

Section 10(1)(a)

[39] In its representations, the town quotes the text of section 10(1)(a) and then submits that given the ongoing litigation, the disclosure of the requested information will prejudice significantly the bargaining position of the institution. The town does not specify if the institution is the board or the town.

[40] The appellant submits that the board demonstrated no concern with monetary losses when negotiating with the association to complete the collective agreement, and negotiated so long after the collective agreements were due that the association was able to view historical collective agreements from almost every police service in the province. The appellant further submits that the board failed to negotiate with the association when the association requested in late 2014, delaying discussions until late 2017 into 2018.

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[13] *Boeing Co. v. Ontario (Ministry of Economic Development and Trade),* [2005] O.J. No. 2851 (Div. Ct.)], leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).
[14] Orders PO-1805, PO-2018, PO-2184 and MO-1706.

Section 10(1)(d)

[41] In its representations, the town quotes the text of section 10(1)(d) and then submits that a mediator was appointed to resolve a labour relations dispute between the board and the association. The mediator's subsequent award, the town argues, contained an express provision to maintain confidentiality. As a result, the town submits, disclosure of the requested information will reveal information that was expressly desired to be kept confidential.

[42] The appellant submits that the *Police Services Act* requires collective agreements to be promptly filed with the Police Arbitration Commission where they are made public and available upon request. The appellant further submits that the fact that other processes are in place, this does not negate the board's responsibility to disclose the collective agreement, as required.

[43] Lastly, the appellant submits that the board has disclosed the association's collective agreement in the past when a freedom of information request was made.

Analysis and findings

[44] During the inquiry of this appeal, the town was asked in the Notice of Inquiry to provide information about any third parties that may wish to claim the application of the exemption in section 10(1). The town did not provide that information to this office. As a result, staff of this office contacted the town, which advised that the association no longer exists, but the board does. As a result, I defer my decision regarding the possible application of the mandatory exemption in section 10(1) to Record 1, pending notification of the board.

Issue D: Do the discretionary exemptions at sections 11(a), (c), (d), (e) and/or (g) apply to Record 1?

[45] Section 11 states, in part:

> A head may refuse to disclose a record that contains,
>
> > (a) trade secrets or financial, commercial, scientific or technical information that belongs to an institution and has monetary value or potential monetary value; …
> >
> > (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;

> (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of an institution; …
>
> (g) information including the proposed plans, policies or projects of an institution if the disclosure could reasonably be expected to result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person; …

[46] The purpose of section 11 is to protect certain economic interests of institutions. Generally, it is intended to exempt commercially valuable information of institutions to the same extent that similar information of non-governmental organizations is protected under the Act.[15]

[47] For sections 11(c), (d) or (g) to apply, the institution must provide detailed evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.[16]

[48] The failure to provide detailed evidence will not necessarily defeat the institution's claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 11 are self-evident or can be proven simply by repeating the description of harms in the Act.[17]

[49] For the following reasons, I find that Record 1 is not exempt from disclosure under section 11.

Section 11(a): information that belongs to government

[50] For section 11(a) to apply, the institution must show that the information:

1. is a trade secret, or financial, commercial, scientific or technical information;belongs to an institution; and
2. belongs to an institution; and
3. has monetary value or potential monetary value.

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[15] *Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980*, vol. 2 (the Williams Commission Report) Toronto: Queen's Printer, 1980.
[16] *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.
[17] Order MO-2363.

Part 1: type of information

[51] The types of information listed in section 11(a) have been discussed in prior orders:

> *Financial information* refers to information relating to money and its use or distribution and must contain or refer to specific data. Examples of this type of information include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.[18]

Part 2: belongs to

[52] For information to "belong to" an institution, the institution must have some proprietary interest in it either in a traditional intellectual property sense – such as copyright, trade mark, patent or industrial design – or in the sense that the law would recognize a substantial interest in protecting the information from misappropriation by another party.

[53] Examples of information belonging to an institution are trade secrets, business-to-business mailing lists,[19] customer or supplier lists, price lists, or other types of confidential business information. In each of these examples, there is an inherent monetary value in the information to the organization resulting from the expenditure of money or the application of skill and effort to develop the information. If, in addition, the information is consistently treated in a confidential manner, and it derives its value to the organization from not being generally known, the confidential business information will be protected from misappropriation by others.[20]

Part 3: monetary value

[54] To have "monetary value", the information itself must have an intrinsic value. The purpose of this section is to permit an institution to refuse to disclose a record where disclosure would deprive the institution of the monetary value of the information.[21]

[55] The mere fact that the institution incurred a cost to create the record does not mean it has monetary value for the purposes of this section.[22] Nor does the fact, on its

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[18] Order PO-2010.
[19] Order P-636.
[20] Order PO-1736, upheld on judicial review in *Ontario Lottery and Gaming Corporation v. Ontario (Information and Privacy Commissioner)*, [2001] O.J. No. 2552 (Div. Ct.); see also Orders PO-1805, PO-2226 and PO-2632.
[21] Orders M-654 and PO-2226.
[22] Orders P-1281 and PO-2166.

own, that the information has been kept confidential.[23]

[56] In its representations, the town quotes the text from section 11(a), underlining the word "financial," and submits that the appellant is seeking financial information, the disclosure of which may lead to a loss of monetary value to the institution. The appellant submits that the town has suggested that it will save over one million dollars per year by disbanding the police service and, therefore, there is no reason to believe that there will be a net financial impact.

[57] I find that the town has not provided sufficient evidence to meet all three requirements of the three-part test in section 11(a). The town has not provided sufficient information about what information in the record is "financial," how it "belongs to" the town and how it has "monetary value" to the extent that the disclosure of the record would deprive the town of the monetary value of the record. As a result, I find that section 11(a) does not apply.

Section 11(c): prejudice to economic interests

[58] The purpose of section 11(c) is to protect the ability of institutions to earn money in the marketplace. This exemption recognizes that institutions sometimes have economic interests and compete for business with other public or private sector entities, and it provides discretion to refuse disclosure of information on the basis of a reasonable expectation of prejudice to these economic interests or competitive positions.[24]

[59] This exemption is arguably broader than section 11(a) in that it does not require the institution to establish that the information in the record belongs to the institution, that it falls within any particular category or type of information, or that it has intrinsic monetary value. The exemption requires only that disclosure of the information could reasonably be expected to prejudice the institution's economic interests or competitive position.[25]

[60] The town submits that given the ongoing litigation, the disclosure of the record will prejudice the economic interests of the "institution."

[61] I find that the town has not provided sufficient evidence to demonstrate how the ongoing litigation relates to Record 1, or how its disclosure would prejudice the town's or any other institution's economic interests.

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[23] Order PO-2724.
[24] Orders P-1190 and MO-2233.
[25] Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.

Section 11(d): injury to financial interests

[62] The town submits that given the ongoing litigation, the disclosure of the record can reasonably be expected to be injurious to the financial interests of the "institution."

[63] As was the case with the possible application of section 11(c), I find that the town has not provided sufficient evidence to demonstrate how the ongoing litigation relates to Record 1, or how its disclosure would be injurious to the town's or any other institution's financial interests.

Section 11(e): positions, plans, procedures, criteria or instructions

[64] In order for section 11(e) to apply, the institution must show that:

1. the record contains positions, plans, procedures, criteria or instructions,
2. the positions, plans, procedures, criteria or instructions are intended to be applied to negotiations,
3. the negotiations are being carried on currently, or will be carried on in the future, and
4. the negotiations are being conducted by or on behalf of an institution.[26]

[65] Section 11(e) applies to financial, commercial, labour, international or similar negotiations, and not to the development of policy with a view to introducing new legislation.[27]

[66] The terms "positions, plans, procedures, criteria or instructions" suggest a pre-determined course of action. In order for this exemption to apply, there must be some evidence of an organized structure or definition to the course of action.[28] This office has adopted the dictionary definition of "plan" as a "formulated and especially detailed method by which a thing is to be done; a design or scheme".[29]

[67] The section does not apply if the information at issue does not relate to a strategy or approach to the negotiations but rather simply reflects mandatory steps to follow.[30]

[68] The town submits that positions, criteria and instructions were provided by the

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[26] Order PO-2064.
[27] Orders PO-2064 and PO-2536.
[28] Orders PO-2034 and PO-2598.
[29] Orders P-348 and PO-2536.
[30] Order PO-2034.

board and the town to its legal representatives during the labour relations negotiations with the association. Those positions, criteria and instructions, the town argues, resulted in the framing of the collective agreement. The town goes on to argue that if the information is disclosed, the positions, criteria and instructions would be revealed and would provide an unfair advantage against the "institution."

[69] I find that Record 1 consists of a negotiated agreement between the board and the association. In other words, this record is the end product of negotiations between those parties. I also find that the town has not provided sufficient evidence to demonstrate how this record reveals the "positions, plans, procedures, criteria or instructions," suggesting a pre-determined course of action to be taken in the course of negotiations. In order for this exemption to apply, there must be some evidence of an organized structure or definition to the course of action, of which the town has not provided evidence. Further, the town has not explained how this negotiated agreement would provide an unfair advantage against it or any other institution.

Section 11(g): proposed plans, policies or projects

[70] In order for section 11(g) to apply, the institution must show that:

1. the record contains information including proposed plans, policies or projects of an institution; and

2. disclosure of the record could reasonably be expected to result in:

    i. premature disclosure of a pending policy decision, or

    ii. undue financial benefit or loss to a person.[31]

[71] The term "pending policy decision" refers to a situation where a policy decision has been reached, but has not yet been announced.[32]

[72] The town submits that if the record is disclosed, the proposed plans and policies that the institution intends to use during the arbitration with the appellant would be revealed and used against the institution to its detriment. This may lead, the town argues, to an undue financial benefit to the appellant and resulting financial loss to the institution.

[73] As previously stated, Record 1 is a negotiated agreement between the board and the association. I find that the town has not established or provided sufficient evidence

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[31] Order PO-1709, upheld on judicial review in *Ontario (Minister of Health and Long-Term Care) v. Goodis*, [2000] O.J. No. 4944 (Div. Ct.).
[32] Order P-726.

as to how Record 1 contains proposed plans, policies or projects of it or any other institution, how its disclosure could reasonably be expected to prematurely disclose a pending policy decision, or undue financial benefit or loss to a person.

[74] For all of the foregoing reasons, I find that Record 1 is not exempt under section 11.

Issue E: Is there a compelling public interest in the disclosure of records 2 and 3 that clearly outweighs the purpose of the section 14 exemption?

[75] The appellant's position is that the public interest override in section 16 applies to all of the records. Given that I have found that Record 1 is not exempt under either sections 11 or 14(1), it is not necessary to consider whether the public interest override applies to those exemptions as regards Record 1. However, given that I have deferred my finding regarding the possible application of section 10(1) to Record 1, I will also defer my determination regarding the possible application of section 16 to Record 1.

[76] Turning to records 2 and 3, I will now consider whether the public interest in section 16 applies them. As previously stated, I found these records to be exempt from disclosure under section 14(1).

[77] 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.

[78] 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.

[79] 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.[33]

[80] 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

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[33] Order P-244.

central purpose of shedding light on the operations of government.[34] 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.[35]

[81] A public interest does not exist where the interests being advanced are essentially private in nature.[36] Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.[37]

[82] The word "compelling" has been defined in previous orders as "rousing strong interest or attention".[38]

[83] Any public interest in *non*-disclosure that may exist also must be considered.[39] A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling".[40]

[84] The appellant submits that the "Collective Agreement" of the association should be disclosed under the *Police Services Act*. He also argues that there is significant public interest in one of the individual's income, as it had been disclosed in the past under the *Public Sector Salary Disclosure Act*.

[85] Further, the appellant submits that in a previous access request, the board obtained a legal opinion, which stated that the disclosure of collective agreements is desirable for the purposes of subjecting the activities of the institution to public scrutiny, and that the legal opinion was supported by a number of "adjudicators." He then submits that the legal opinion further stated that the allocation of taxpayers money for the payment of senior level public sector salaries rouses strong interest. He concludes that the public interest in disclosure is compelling, stating:

> There has been significant public interest in the cost of disbanding the police service including the associated costs of collective agreements. The matter was and continues to be discussed frequently on social media

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[34] Orders P-984 and PO-2607.
[35] Orders P-984 and PO-2556.
[36] Orders P-12, P-347 and P-1439.
[37] Order MO-1564.
[38] Order P-984.
[39] *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).
[40] Orders PO-2072-F, PO-2098-R and PO-3197.

> platforms and at Town Council meetings. Community meetings on the topic were well attended.[41]

[86] The town's representations do not address the possible application of the public interest override in section 16.

[87] I accept that the disclosure of portions of the settlement agreements might serve the purpose of informing the citizens of the town about the past activities of the board, adding to the information they have available and upon which they may base political choices. I am not convinced that this interest is particularly "compelling". I have no evidence before me to suggest that the details of the settlement arrangements for these individuals has roused strong interest or attention. There is nothing to suggest that there is anything particularly noteworthy about these individuals, their employment with the board, or their settlement arrangements. I conclude, therefore, that there is no compelling public interest in disclosure which would clearly outweigh the personal privacy rights of these individuals protected by section 14(1) of the *Act*.

ORDER:

1. I uphold the town's access decision regarding Records 2 and 3 and find that they are exempt from disclosure under the mandatory exemption in section 14(1).
2. I reserve my finding regarding Record 1, pending notification of the board regarding the possible application of section 10(1) to this record. I remain seized of this matter pending my disposition regarding Record 1.

Original signed by: March 15, 2021
Cathy Hamilton
Adjudicator

[41] According to the appellant, the Ontario Provincial Police took over policing activities in the town from the Midland Police Services Board. The town's representations do not directly address this issue.