

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4026

Appeal MA19-00152

Niagara Peninsula Conservation Authority

March 16, 2021

Summary: The appellant requested access, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), from the Niagara Peninsula Conservation Authority (the NPCA) for the employment agreements of the Interim CAO, Senior Director Corporate Resources, Director of Planning and Regulations and Director of Communications and Administration. The NPCA withheld the records, in part, claiming the mandatory personal privacy exemption in section 14(1) applied to the withheld portions. The appellant appealed the NPCA's decision and sought access to the employment agreements in full, asserting that there is a compelling public interest in disclosure under section 16. During the inquiry, the NPCA also raised the possible application of the discretionary exemption in section 11 (economic and other interests) with respect to information relating to vacation entitlement and termination allowance.

In this order, the adjudicator finds that section 14(1) applies to some of the information but that there is a compelling public interest in the disclosure of the salary information. She does not find that the information relating to vacation entitlement and termination allowance are exempt under section 14(1) or section 11. As a result, the adjudicator orders the NPCA to disclose the salary information and the non-exempt personal information to the appellant.

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"), 11, 14(1), 14(4)(a) and 16.

Orders Considered: Orders PO-2050, MO-2318, MO-2470, MO- 3368, MO-3844, MO-3883 and MO-3937.

OVERVIEW:

[1] Due to mounting criticism of the Niagara Peninsula Conservation Authority (the NPCA), the Standing Committee on Public Accounts of the Legislative Assembly of Ontario requested that the Ontario Auditor General conduct an audit of the NPCA.

[2] In September 2018, Ontario's Auditor General released her report in which she found a 49% increase in administrative support and corporate services at the NPCA while a 18% decrease spending on watershed services and management of conservation areas.¹

[3] In that context, the appellant made a request to the NPCA, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for the employment contracts and terms of release for the following positions:

- Interim Chief Administrative Officer (CAO)
- Senior Director Corporate Resources
- Director of Planning and Regulations
- Director of Communications and Administration

[4] In its decision, the NPCA granted partial access to the responsive records, which consisted of employment agreements, and relied on the exclusion at section 52(3) (employment or labour relations) and the mandatory exemption at section 14(1) (personal privacy) of the *Act* to withhold the remaining information.

[5] The appellant appealed the NPCA's decision to this office.

[6] Prior to the start of mediation, the NPCA notified four affected persons of the request and sought representations, regarding the potential disclosure of the responsive records, which may affect their interests.

[7] Following consideration of the affected persons responses, the NPCA revised its decision adding the consideration of the presumptions at sections 14(3)(d) (employment history) and 14(3)(f) (finances) to its section 14(1) claim with respect to the withheld records. The NPCA also granted partial access to some of the previously withheld information.

[8] During mediation, the appellant advised that he believes the public interest

¹ See page 10 of the Special Audit of the Niagara Peninsula Conservation Authority. An electronic copy is available at https://www.auditor.on.ca/en/content/specialreports/specialreports/NPCA_en.pdf.

override in section 16 of the *Act* applies to the withheld information. As such, section 16 was added as an issue in this appeal.

[9] As mediation did not resolve the issues, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[10] During the inquiry, I invited and received representations from the NPCA, the appellant and the four affected persons.² Pursuant to section 7 of the IPC's *Code of Procedure* and *Practice Direction Number 7*, a copy of the NPCA's and the appellant's representations were shared with each other. Three of the affected persons did not consent to sharing their representations, but they all objected to having their personal information disclosed to the appellant.

[11] The NPCA confirmed in its representations that it was no longer relying on the labour and employment exclusion in section 52(3). As such, section 52(3) is no longer an issue in this appeal. However, the NPCA raised the possible application of the discretionary exemption at section 11 (economic and other interests) to the information relating to vacation entitlement and termination allowance. As such, I added section 11 as an issue to this appeal, along with the issue of the late raising of a discretionary exemption.

[12] In this order, I find that section 14(1) applies to some of the information in the agreements but that there is a compelling public interest in the disclosure of the salary information. I find that the information relating to vacation entitlement and termination allowance is not exempt under section 14(1) or section 11. As a result, I order the NPCA to disclose the salary information and the non-exempt personal information to the appellant.

RECORDS:

[13] The withheld information at issue is contained in two offer letters/employment agreements, an offer letter/interim employment agreement, an offer letter and an interim executive employment agreement (the agreements).

ISSUES:

Preliminary issue: Late Raising of the Section 11 Discretionary Exemption

² For ease of reference, I will refer to the affected persons as affected person 1, affected person 2, affected person 3 and affected person 4.

- 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 the personal information in the agreements?
- C. Does the discretionary exemption at section 11 apply to the withheld information relating to vacation entitlement and termination allowance?
- D. Is there a compelling public interest in disclosure of the exempt information that clearly outweighs the purpose of the section 14(1) exemption or section 11 exemption?

DISCUSSION:

Preliminary issue: Late Raising of Discretionary Exemption

[14] The *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the *Code* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal.

[15] Section 11.01 states:

In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

[16] The purpose of the policy is to provide a window of opportunity for institutions to raise new discretionary exemptions without compromising the integrity of the appeal process. Where the institution had notice of the 35-day rule, no denial of natural justice was found in excluding a discretionary exemption claimed outside the 35-day period.³

[17] In determining whether to allow an institution to claim a new discretionary

³ *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).

exemption outside the 35-day period, the adjudicator must also balance the relative prejudice to the institution and to the appellant.⁴ The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.⁵

[18] The NPCA did not claim section 11 in its initial decision letter or in its revised decision letter. However, it claimed the application of this exemption in its representations dated September 25, 2019. In accordance with section 11.01 of the *Code*, the NPCA must claim new discretionary exemptions within 35 days after being notified of the appeal. As the NPCA was notified on March 14, 2019, I find that it was late in claiming the section 11 exemption.

[19] I sought submissions from the appellant on this issue. In his submissions, he stated that he is not prejudiced by the NPCA's late claiming of section 11. As such, I have decided to allow the NPCA to rely on section 11. I will consider its potential application to the information relating to vacation entitlement and termination allowance in the records under Issue C, below.

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

[20] In order to determine whether section 14(1) of the *Act* applies, it is necessary to decide whether the records contains "personal information" and, if so, to whom it relates.

[21] The NPCA submits that the withheld information qualifies as personal information and cites paragraphs (b) and (h) of the definition of "personal information" in section 2(1) of the *Act*. These paragraphs, along with paragraph (d), read as follows:

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

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

(d) the address, telephone number, fingerprints or blood type of the individual,

⁴ Order PO-1832.

⁵ Orders PO-2113 and PO-2331.

(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;

[22] The list in section 2(1) is not exhaustive and IPC adjudicators have held that other types of information may also qualify as personal information.⁶

[23] The *Act* states that the name, title, contact information or designation of an individual in a business, professional or official capacity is not personal information under section 2(2.1). This applies even if the individual carries out their business responsibilities from their dwelling and their contact information relates to the dwelling (section 2(2.2)). Nevertheless, if this type of information reveals something of a personal nature about the individual, it may still qualify as personal information.⁷

[24] The NPCA states that the records contain information about identifiable individuals, namely, their employment history information and financial information.

[25] The appellant does not address whether the records contain the personal information of identifiable individuals in his representations. He states generally that the records may contain personal information.

[26] Affected person 1 and affected person 2 submit that the records at issue contain personal information as contemplated by section 2(1) of the *Act* as they contain information about an identifiable individual, namely, employment history information and financial information.

Analysis and findings

[27] At issue in this appeal is the withheld information contained in the agreements.

[28] Previous orders of this office have found that some information commonly found within employment agreements, such as boilerplate or terms for the benefit of the employer, do not qualify as personal information unless it contains some detail particular to the employee at issue.⁸

[29] I will now determine whether any of the withheld information qualifies as personal information.

⁶ Order 11.

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

⁸ See for instance, Orders MO-3684-I and MO-2318.

Home address

[30] Although the NPCA does not address the withheld information referencing the home address of one of the affected persons, I find that this information qualifies as “personal information” as defined in paragraph (d) of the section 2(1) definition of this term. There is no evidence before me that this affected person conducted his business from his home so as to engage the exception in section 2(2.2) of the *Act*.

Other personal information

[31] Based on my review of the agreements, I have identified additional types of information that qualify as personal information within the meaning of that term as defined in section 2(1). The withheld information in (almost) all of the agreements reference the following:

- specific salary information;
- specific classification information;
- specific vacation entitlement; and
- specific termination allowance.

[32] The withheld information in two of the agreements also references to whom the office holder must report to and the duration of their interim agreement.

[33] I find that these provisions are personal information under paragraphs (b) and (h) of the definition of “personal information”.

Other terms and conditions

[34] On my review of the agreements, I find that the withheld information referencing contract extensions and payment schedules are standard contractual terms. They do not contain specific details relating to a particular employee. As such, they do not qualify as personal information.

[35] The NPCA argues that the withheld information referencing “probationary period” is the personal information of identifiable individuals. In this circumstance, I find that this information is personal information.

[36] In addition, I find that the withheld information referencing the date of return to their permanent role is a contractual term that relates to the individual personally. This reference is contained in the two interim employment agreements in which the employee was in an interim position. However, I am satisfied that the withheld information referencing their previous title is information about the affected persons in their professional capacity.

[37] The remaining withheld information in the agreements consists of other contractual terms, which do not qualify as personal information.

[38] In summary, I find that the following types of information in the agreements qualify as personal information under section 2(1): home address, specific salary information, specific classification, specific vacation entitlement, specific termination allowance, the duration of the two interim agreements, the reporting duties of two of the officer holders, the probationary periods, and the date of return to their permanent role for two of the affected persons. I will consider under Issue B, below, whether this personal information is exempt from disclosure.

[39] As the section 14(1) exemption only applies to personal information, none of the remaining withheld information in the agreements is exempt from disclosure under section 14(1). Furthermore, as the NPCA has not claimed any discretionary exemptions for this information and no other mandatory exemptions apply, I will order this information disclosed.

[40] I will now consider whether the mandatory exemption at section 14(1) applies to the information that I have found to be personal information.

B: Does the mandatory exemption at section 14(1) apply to the personal information in the agreements?

[41] I found above that the following information in the records is personal information: home address, specific salary information, specific classification, specific vacation entitlement, specific termination allowance, the duration of the two interim agreements, the reporting duties of two of the office holders, the probationary periods, and the return to their permanent role for two of the affected persons.

[42] Section 14(1) of the *Act* requires institutions to withhold personal information unless an exception applies. The only exception relevant to this appeal is section 14(1)(f) which says that personal information can be disclosed if its disclosure would not constitute an unjustified invasion of personal privacy.

[43] Sections 14(2) and (3) help in determining whether disclosure would constitute an unjustified invasion of personal privacy. If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the personal information is presumed to be an unjustified invasion of personal privacy under section 14(1). Section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[44] 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" in

section 16 applies.⁹

[45] Where no section 14(3) presumption applies, the factors in section 14(2) assist in determining whether disclosure would constitute an unjustified invasion of personal privacy. Some of the section 14(2) factors, if present, weigh against disclosure while others weigh in favour of disclosure.

Analysis and findings

[46] The issue I must determine is whether section 14(1)(f) applies to the personal information in the agreements. That is, whether disclosure of the personal information constitutes an unjustified invasion of personal privacy. If so, the section 14(1)(f) exception does not apply and the NPCA is required to withhold the personal information under section 14(1) of the *Act*. As described above, disclosure of certain type of personal information described in section 14(3) is presumed to be an unjustified invasion of personal privacy, while disclosure of some types of personal information set out in section 14(4) is not an unjustified invasion of personal privacy. If the exceptions in section 14(4) applies, it overrides any of the presumptions at section 14(3) and any factors weighing against disclosure at section 14(2). If neither section 14(3) or (4) apply, I must then review the circumstances in section 14(2) of the *Act* to determine the issue.

[47] I will first consider whether any of the personal information falls within the exceptions in section 14(4), specifically section 14(4)(a) as it is the only exception potentially applicable in this appeal. If any of the personal information falls under the section 14(4)(a) exception, disclosure would not be an unjustified invasion of personal privacy and the exemption at section 14(1) does not apply.

Section 14(4)(a) exception

[48] Based on my review of the personal information at issue, and for the following reasons, I find that the following information is caught by the section 14(4)(a) exception:

- Vacation entitlement
- Termination allowance
- Duration of the two interim agreements
- Reporting duties of two of the office holders

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

[49] Section 14(4)(a) reads:

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;

Employment responsibilities

[50] Under section 14(4)(a), a disclosure of personal information does not constitute an unjustified invasion of personal privacy if it discloses the "employment responsibilities" of the affected persons.

[51] In Order MO-2470, Adjudicator Colin 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, hours of work and the organizational responsibilities of the Chief and Deputy Chief. I agree with this reasoning, and similarly here, I am satisfied that the personal information in the agreements which relates to whom the affected persons report to qualifies as "employment responsibilities" for the purposes of section 14(4)(a). Since section 14(4)(a) applies to this personal information, its disclosure is not considered to be an unjustified invasion of personal privacy under section 14(1)(f) and the section 14(1) exemption does not apply. Therefore, I find that this personal information is not exempt under section 14(1) and I will order it disclosed.

[52] With respect to the duration of the two interim agreements, the NPCA states that any references in these agreements to contract start and end dates relate directly to the employment history of the two affected persons. It relies on Order MO-3368 in which Senior Adjudicator Gillian Shaw found that the start and end dates of employment in that case fall within the scope of section 14(3)(d). However, as I noted above, a section 14(3) presumption is overcome by a finding that section 14(4)(a) applies, and so I am considering first whether section 14(4)(a) applies. It is not clear that section 14(4)(a) was argued or would have applied to the records in Order MO-3368, which were not employment agreements.

[53] The IPC has previously found, for example in Orders MO-2470 and MO-3684-I, that start and end dates found in employment agreements qualify as "employment responsibilities" for the purposes of section 14(4)(a). I agree with the findings in those orders and adopt them for the purposes of this appeal.

[54] In this appeal, the two interim employment agreements state the specific duration of the agreement. Accordingly, based on past decisions of this office, I find that the duration of these two interim employment agreements qualifies as "employment responsibilities" for the purposes of section 14(4)(a). Accordingly, this

information is not exempt under section 14(1) and I will order it disclosed.

Benefits

[55] With respect to “benefits”, this office has interpreted it to include entitlements, in addition to base salary, that an employee receives as a result of being employed by the institution.¹⁰ 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

[56] On my review of the agreements, I am satisfied that the personal information relating to vacation entitlement¹¹ and termination allowance may be characterized as “benefits” for the purpose of section 14(4)(a), and the exception in this section therefore applies to it. Since section 14(4)(a) applies to this personal information, its disclosure is not considered to be an unjustified invasion of personal privacy under section 14(1)(f) and the section 14(1) exemption does not apply. I note that the NPCA concedes that the vacation entitlement information and termination allowance information are “benefits” but argues instead that this information is properly exempt under sections 11(c) and (d) of the *Act*. Therefore, I find that this personal information is not exempt under section 14(1) and I will consider the NPCA’s claim that the information should be withheld under section 11 under Issue D, below.

Salary ranges

[57] Based on the plain wording of section 14(4)(a), salary ranges are distinct from a person’s specific salary. As the agreements contain the specific salary information for the affected persons and do not refer to a salary range, this information does not fall within the section 14(4)(a) exception.¹²

¹⁰ Order M-23.

¹¹ I note that information relating to vacation entitlement is only stated for three of the four affected persons.

¹² Orders M-18, MO-2470 and MO-3044.

Classification

[58] With respect to classification, the NPCA argues that if the pay grades of the affected persons are disclosed, they would reveal the affected persons' specific salary information.

[59] This office has interpreted "classification" to include pay grades for the purpose of section 14(4)(a).¹³ However, in this case, I agree with the NPCA that disclosure of the affected persons' pay grade would reveal their specific salary information. As stated above, salary information is distinct from salary ranges. Only salary ranges fall within the section 14(4)(a) exception. Therefore, I find that the pay grades in this circumstances do not fall within the section 14(4)(a) exception.

[60] I am also satisfied that the remaining personal information, such as probationary periods, the date of return to their permanent role and the home address, does not fall under the exception in section 14(4)(a).

[61] Having found that the exception in section 14(4)(a) does not apply to the personal information relating to the home address, probationary periods, the date of return to their permanent role, salary information and classification, I will now consider whether its disclosure represents a presumed unjustified invasion of privacy under section 14(3).

Section 14(3) presumptions

[62] The NPCA takes the position that disclosure of the personal information at issue is presumed to be an unjustified invasion of personal privacy under sections 14(3)(d) and 14(3)(f) of the *Act*.

[63] The appellant does not address the application of any of the presumptions in his representations.

[64] One of the affected persons submits that the presumptions in sections 14(3)(d), (f) and (g) applies to disclosure of the personal information at issue.

[65] Sections 14(3)(d), (f) and (g) state:

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

(d) relates to employment or educational history;

¹³ Order MO-2318.

(f) describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations;

[66] As stated above, the NPCA argues that the presumption at section 14(3)(d) applies to the personal information relating to the duration of the interim employment agreements. As I had found that the duration of the interim agreements fall within the ambit of section 14(4)(a), I will not consider this presumption any further for that information.

[67] However, I find that the presumption at section 14(3)(d) applies to the personal information relating to probationary periods and the date of return to their permanent role for the two affected persons.

[68] In the circumstances of this appeal, I find that the probationary period falls within the section 14(3)(d) presumption. The probationary period is a period of time where the employee must work to a certain level or standard of performance or they may potentially be let go or fired from their position. I accept that the probationary period for an individual is caught by the term "employment history".

[69] I also find that the date for return to their permanent roles falls within "employment history" because it contains a date when the two affected persons were to return to their permanent roles following their interim appointments. As such, I accept that the date for return to their permanent roles falls within the meaning of "employment history".

[70] With respect to section 14(3)(g), the records at issue do not contain or consist of personal recommendations, evaluations, character references or personnel evaluations. Therefore, I find that the presumption at section 14(3)(g) does not apply to the remaining personal information at issue.

[71] As noted above, the NPCA and some of the affected persons rely on the presumption in section 14(3)(f).

[72] Based on the plain language of section 14(3)(f), I find that the specific salary information of the affected persons falls within this presumption. As the pay grades will reveal the affected persons' actual salary, I also find that it falls within this presumption. Therefore, disclosure of the affected persons' actual salary and pay grade is a presumed unjustified invasion of personal privacy and this information will be withheld under section 14(1) unless the exemption is overcome by the public interest override in section 16.

[73] In sum, I find that certain personal information – vacation entitlement,

termination allowance, duration of the interim agreements, and reporting duties - fits within the exception under 14(4)(a) and that therefore this information does not qualify for exemption under section 14(1). Other personal information – specifically salary, and specific classification (pay grades) – does not fit within the section 14(4)(a) exception and falls within the presumption in section 14(3)(f). As well, other information - probationary periods, and the date of return to their permanent role – does not fit within the section 14(4)(a) exception and falls within the presumption in section 14(3)(d). The latter two information are therefore exempt under section 14(1). I must now review the remaining personal information (the home address) to determine whether any of the listed factors found in section 14(2), as well as all other considerations that are relevant in the circumstances of the case, apply to this personal information.

Section 14(2) factors as they relate to the home address

[74] Affected person 1 submits that the factors in sections 14(2)(a), (e), (f), and (i) are applicable.

[75] None of the other parties have addressed the application of the factors in section 14(2) in their representations.

[76] Sections 14(2)(a), (e), (f) and (i) read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

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

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(f) the personal information is highly sensitive;

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

[77] The factor at section 14(2)(a), if established, would tend to support disclosure of the home address, and it is not clear why affected person 1, who opposes disclosure, raises it. The other factors listed above, if established, would tend to support non-disclosure of the home address.

[78] As noted above, for the section 14(1)(f) exception to be established, at least one factor favouring disclosure must be present. I do not find that the factors in section 14(2)(a) is applicable. Clearly, the disclosure of the home address does not subject the activities of the NPCA to any public scrutiny as it is not about the NPCA.

[79] Affected person 2 submits that his offer letter and interim executive employment agreement are protected by a non-disclosure agreement attached to the mutual separation agreement between him and the NPCA. In other words, he argues that disclosure of these records de facto violates the mutual separation agreement. As this factor does not fit within any of the listed factors in section 14(2), I will consider it as an unlisted factor.

[80] In any event, I give little weight to this unlisted factor due to the following reason. This office has frequently stated that institutions cannot lawfully contract out of their duties under the *Act*. In Order PO-2497, Adjudicator Daphne Loukidelis states:

Neither the access regime nor the oversight role of this office established by the *Act* can be qualified, neutralized or contracted out of by such an agreement.

[81] Accordingly, I do not find that the NPCA could lawfully contract out of its duties under the *Act*. For that reason, I give this unlisted factor little weight.

[82] I note that the appellant has not raised any other factors, listed or unlisted, that would apply to the home address, and I find that none apply.

[83] On my review of the remaining listed factors in section 14(2), I do not find that there is any evidence that any of the factors favouring disclosure apply. I note that none of the other parties have raised any unlisted factors and, in my view, none seem to apply in this situation. For the section 14(1)(f) exception to be established, at least one factor favouring disclosure must be present.¹⁴ Since there are none present here, I find that the mandatory exemption in section 14(1) applies to exempt the home address and it is exempt from disclosure subject to my finding on the public interest override in section 16.

C: Does the discretionary exemption at section 11 apply to the withheld information relating to vacation entitlement and termination allowance?

[84] The NPCA claims that sections 11(c) and (d) are applicable to the current appeal.

[85] These sections read:

A head may refuse to disclose a record that contains,

¹⁴ In light of my finding that there are no factors favouring disclosure, it is not necessary for me to address any of the factors weighing against disclosure that the affected persons and the NPCA relied on.

(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;

[86] 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

[87] In this case, for sections 11(c) and (d) to apply, the NPCA 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

[88] The failure to provide detailed evidence will not necessarily defeat the NPCA'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

[89] The fact that disclosure of contractual arrangements may subject individuals or corporations doing business with an institution to a more competitive bidding process does not prejudice the institution's economic interests, competitive position or financial interests.¹⁸

[90] 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.¹⁹

[91] Section 11(c) is arguably broader than section 11(a) in that it does not require

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.

¹⁸ Orders MO-2363 and PO-2758.

¹⁹ Orders P-1190 and MO-2233.

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.²⁰

Representations

[92] The NPCA submits that disclosure of the information relating to the vacation entitlement and termination allowance would prejudice its economic interests and competitive position, and be injurious to its financial interests. It submits that it operates in a competitive job market and uses benefits such as vacation entitlements and termination allowances to attract and retain employees in the director-level positions. Moreover, the NPCA submits that the vacation entitlements and termination allowances at issue were specifically negotiated with the affected persons to whom they relate, unlike the monthly vehicle allowances. In other words, it submits that these provisions were not "standard" clauses that are offered to all employees.

[93] The NPCA submits that its economic interest and competitive position would be prejudiced in two ways. First, entities competing for suitable candidates in the Niagara-region would be aware of what the NPCA offers in terms of its benefit packages. The NPCA submits that this would allow competing organizations in both the public and private sector to tailor their offer letters to "outbid" it when attempting to recruit employees. Second, disclosure of this information would also make the NPCA less competitive in that prospective employees will have a benchmark for what they will offer in terms of benefit packages when being hired by the NPCA.

[94] In addition, the NPCA submits that disclosure of this information would be injurious to its financial interests in that it would be forced to compete in the marketplace with unequal bargaining power. It submits:

Other entities competing to hire employees will know information about the benefit packages offered by the NPCA, while the NPCA will not have this same information about the competing entities. By the same token, prospective employees will enter into discussions with the NPCA with prior knowledge of what benefit packages are available from the NPCA, putting the NPCA at an immediate disadvantage in any negotiations with these prospective employees.

[95] In response, the appellant relies on Interim Order MO-2103-I and submits that the NPCA has not provided "detailed and convincing evidence" that establishes "a

²⁰ Orders PO-2014-I, MO-2233, MO-2363, PO-2632 and PO-2758.

reasonable expectation of harm”, and in the absence of that evidence it has provided speculation.

[96] In addition, the appellant submits that the same logic in Interim Order MO-2103-I applies to the NPCA as it is not in a position where it is earning money or competing for business with other public or private entities but is rather soliciting for staff.

[97] In response, the NPCA points out that in *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)*,²¹ the Court of Appeal explained the test to conclude about whether the disclosure of information could result in a “reasonable expectation of possible harm.” It also points out that the IPC has also held that detailed and convincing evidence is not required where it can be reasonably inferred that the harm will occur.

[98] In addition, the NPCA acknowledges that it may not be in a position where it is earning money but sections 11(c) and (d) exemptions also serve to protect commercially valuable information. It submits that the information about vacation entitlement and termination allowance is commercially valuable information in that it is used in negotiations for employees in director-level positions.

[99] Finally, the NPCA reiterates that it is competing with other businesses for staff and employees. It argues that disclosure of the information at issue would make it more likely to inflate its benefits packages to compete with other organizations and because prospective staff would have a starting point to begin negotiations with the NPCA in any future discussions. The NPCA also submits that disclosure would have the effect of lowering its “profits” (i.e. the percentage of revenues available for initiatives) by increasing staffing costs.

[100] In response, the appellant submits that the NPCA’s arguments for withholding information is not analogous in that they do not deal with the disclosure of staff compensation. He submits that the NPCA has not put forth anything to demonstrate that employment compensation information must be viewed in the context of “commercially valuable information” in government institutions.

[101] In addition, the appellant relies on Interim Order MO-2768-I for the principle that the fact that individuals or corporations doing businesses with an institution may be subject to a more competitive bidding as a result of the disclosure of their contractual arrangements does not prejudice the institution’s economic interests, competitive position or financial interests.

²¹ 1998 CanLII 7154 (ON CA).

Analysis and findings

[102] In this appeal, the NPCA argues that the exemptions in sections 11(c) and (d) of the *Act* apply to the information about the vacation entitlement and termination allowance. The purpose of section 11 is to protect certain economic interests of institutions.

[103] For sections 11 (c) and/or (d) to apply, the NPCA must demonstrate that disclosure of the information about the vacation entitlement and termination allowance “could reasonably be expected to” lead to the specified result. To meet this test, the NPCA must provide detailed evidence to establish a “reasonable expectation of harm”.²²

[104] I have carefully reviewed the NPCA’s representations and I am not persuaded that the NPCA has satisfied the requirements of sections 11(c) and (d), for the following reasons.

[105] The NPCA argues that disclosure would reveal information about its compensation package, and as such, potential employees would have a benchmark for what they will ask for in terms of compensation packages when being hired. While the NPCA submits that there will be a power imbalance between itself and potential candidates when negotiating employment contracts, I am not convinced that this is more than speculation.

[106] The NPCA also argues that disclosure would allow entities competing for suitable candidates in the Niagara-region to be aware of its benefits packages, and as such, competing organizations in both the public and private sector could “outbid” it when attempting to recruit employees.

[107] I note that a similar argument was made in Order P-380, when the Teachers’ Pension Plan Board (the board) argued that disclosure of its compensation plans would enable other pension plans to lure away its executive, by offering comparable or superior compensation and, therefore, the performance of the pension plan fund would suffer. In that order, former Assistant Commissioner Tom Mitchinson found that the evidence submitted in support of this claim under section 18(1)(c) (the provincial equivalent of section 11(c)) was speculative and not sufficient to establish a reasonable expectation of prejudice to the board’s economic interests or competitive position.

[108] Similarly, I also find that the evidence submitted by the NPCA with respect to this claim to be speculative and insufficient to establish a reasonable expectation of prejudice to the NPCA’s economic interests or competitive position.

²² *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

[109] In sum, I find that the NPCA's representations fall short of the sort of detailed evidence that is required to establish a reasonable expectation of harm to its economic interests or injury to its financial interests. Accordingly, I find that the information relating to the vacation entitlement and termination allowance does not qualify for exemption under sections 11(c) and 11(d) of the *Act* and I will order it disclosed.

D: Is there a compelling public interest in disclosure of the exempt information that clearly outweighs the purpose of the section 14(1) exemption?

[110] I found above that some of the withheld personal information in the agreements qualifies for exemption under section 14(1) of the *Act*. This information consists of the specific salary information, specific classification/pay grade information, probationary periods, the date of return to their permanent role and the home address of one of the affected persons.

[111] The appellant argues that it is in the public interest that this exempt personal information be disclosed.

[112] Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 9.1, 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]

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

[114] 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.²³

Compelling public interest

[115] 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*

²³ Order P-244.

central purpose of shedding light on the operations of government.²⁴ 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.²⁵

[116] A public interest does not exist where the interests being advanced are essentially private in nature.²⁶ Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.²⁷

[117] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.²⁸

[118] Any public interest in *non*-disclosure that may exist also must be considered.²⁹ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling”.³⁰

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

- the records relate to the economic impact of Quebec separation³¹
- the integrity of the criminal justice system has been called into question³²
- public safety issues relating to the operation of nuclear facilities have been raised³³
- disclosure would shed light on the safe operation of petrochemical facilities³⁴ or the province’s ability to prepare for a nuclear emergency³⁵

²⁴ Orders P-984 and PO-2607.

²⁵ Orders P-984 and PO-2556.

²⁶ Orders P-12, P-347 and P-1439.

²⁷ Order MO-1564.

²⁸ Order P-984.

²⁹ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

³⁰ Orders PO-2072-F, PO-2098-R and PO-3197.

³¹ 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.).

³² Order PO-1779.

³³ 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.

³⁴ Order P-1175.

³⁵ Order P-901.

- the records contain information about contributions to municipal election campaigns³⁶

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

- another public process or forum has been established to address public interest considerations³⁷
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations³⁸
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding³⁹
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter⁴⁰
- the records do not respond to the applicable public interest raised by the appellant⁴¹

Purpose of the exemption

[121] 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.

[122] 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.⁴²

Representations

[123] The NPCA states that, as it is not subject to the disclosure requirements of the *Public Sector Salary Disclosure Act (PSSDA)*,⁴³ there must be a presumption that disclosure of this information is not in the public interest. It states that it asked the

³⁶ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

³⁷ Orders P-123/124, P-391 and M-539.

³⁸ Orders P-532, P-568, PO-2472, PO-2614, PO-2626.

³⁹ Orders M-249 and M-317.

⁴⁰ Order P-613.

⁴¹ Orders MO-1994 and PO-2607.

⁴² 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.).

⁴³ 1996, S.O. 1996, Chapter 1, Schedule A.

Ontario Government's Public Sector Salary Disclosure Department if this information could be voluntarily disclosed and it was told this was not an option.

[124] The NPCA states that there exists no legislative authority for the NPCA to disclose the information at issue and the affected persons have not given their consent to the disclosure. As such, it states that it would be a violation of the personal privacy rights of these individuals if the NPCA were to disclose this information.

[125] The NPCA submits that by enacting legislation that allows organizations to fall within two distinct groups, either inside or outside the scope of the *PSSDA*, the province has signaled its intention to exclude certain organizations from the disclosure obligations of the *PSSDA*.

[126] It states that by enacting the *PSSDA*, the province has already defined what salary information the public has an interest in.

[127] The NPCA acknowledges that there may be some public interest in the details of the "benefit" information contained in the records at issue but the public interest is not enough to outweigh the legitimate privacy concerns of the affected persons. It also submits that it is not enough to outweigh the reasonably expected prejudice to its economic interests or competitive position.

[128] Moreover, the NPCA submits that it has satisfied any public interest through previous disclosure. It points out that it has disclosed the following:

- yearly audited financial statements
- numerous other financial documents (including executive employment agreements, minus the salary information and expenses of executives)
- the salary ranges of officers and employees in 2018 in response to the appellant's initial request
- portions of the records at issue relating to the amount of the monthly vehicle allowance

[129] As well, the NPCA points out that the Ontario Auditor General's recent report provides a detailed breakdown of its operations.

[130] In the alternative, the NPCA submits that any compelling public interest in the information at issue does not outweigh the purpose of the section 14(1) exemption. It states that in a situation like this where the appellant has only made the bald allegation that section 16 of the *Act* should apply, any public interest cannot be said to outweigh the legitimate privacy interests of the affected persons.

[131] In response, the appellant states that the Ontario Auditor General's report found that there was a "management crisis" at the NPCA. He explains:

...The apex of the management crisis at the NPCA occurred following the municipal election of 2018, when following a focused effort by citizen activists to oust the elected officials and Board members of the NPCA an apparent power struggle broke out within the organization. The resulting chaos saw senior management officials fired, rehired and shuffled around including three different CAO's in six weeks.

[132] As such, the appellant argues that public trust in the NPCA and senior management has been lost, and this loss of public trust creates a compelling public interest in how the affairs of this chaos has been managed. More specifically, he argues that the public has a right to know exactly how these managers have been rewarding themselves with public funds.

[133] All the affected persons objected to the disclosure of their personal information as being an invasion of their personal privacy. Only one of them consented to the sharing of their representations, but I have taken all of their representations into account.

[134] Affected person 3 and affected person 4 provided representations that they did not consent to sharing, but which included the following general submissions:

- Employment terms are a private agreement between the employer and me, and ruling in favour of releasing the details would set a dangerous precedent for all public sector workers in Ontario.
- The NPCA has already publicly shown the titles and salaries of NPCA staff that made over \$100,000 a year for both 2018 and 2019. [It] can be seen not only on the NPCA website but has also been placed in various media outlets.
- The salaries were within budget and fair in comparison to similar positions elsewhere.

[135] Affected person 2, who did not consent to sharing his representations, surmises that the appellant is a known critic of his, having opposed him throughout his tenure in his interim position and even after he left the NPCA. He states that the appellant has attacked him in newspaper advertisements and on social media. As such, he argues that the appellant's access request is a personal vendetta against him and it serves only a private interest.

[136] He also argues that, even if this was a bona fide request, there is no compelling public interest in disclosure of the records due to the amount of information that has already been disclosed. He points out that there is already a significant amount of information detailing the NPCA's management compensation and, more specifically, the NPCA has released the salaries for the requested positions into the public domain.

[137] Affected person 1 submits that the appellant has not provided any basis for why

there is a public interest in the disclosure of the records relating to him. He also submits that the appellant has not explained why the amount of public information already available and the amount of information disclosed from his employment agreement is not sufficient to satisfy any public interest in the record.

[138] Affected person 1 relies on Order MO-3883, where Adjudicator Steven Faughnan found that only a small portion of the severance agreement qualified for exemption under section 14(1), and that there was no public interest in the disclosure of this small portion. He argues that this appeal is similar to Order MO-3883 as there is a significant amount of information regarding the operations of the NPCA that is publicly available, and there is only a small portion of his information in the employment agreement that he is requesting be exempted under section 14(1). Moreover, he argues that his salary information is already public.

[139] In response to the appellant's arguments, the NPCA submits the appellant has only put forward general allegations that there is a compelling public interest in the disclosure of the records. It submits that public interest has to be grounded in the specific records in issue, rather than in the general subject matter of the access request.

[140] The NPCA relies on Order MO-2206, where the appellant alleged that the subject matter of the request, a light-rail project in Ottawa, "continues to be an issue of significant interest to the residents of Ottawa." In that order, Senior Adjudicator Frank DeVries found that the test under section 16 was not met where the appellant raised the issue of public interest in a matter generally. Similarly, the NPCA submits that the appellant argues that the apparent loss of public trust has created a public interest in the records but there is not sufficient evidence to indicate that there is a compelling public interest in these specific records.

[141] The NPCA reiterates that there is no compelling public interest where a significant amount of information has already been disclosed. Since filing its first representations in this appeal, it has disclosed the salary information for specific positions⁴⁴ at the NPCA as of November 2018, in compliance with a previous order, Order MO-3844. The NPCA submits that simply because a public interest was found in a separate decision (Order MO-3844), relating to separate records, does not mean that a public interest will be found in a subsequent decision. Moreover, it submits that the fact that further information has been disclosed to the appellant should be considered as a factor in favour of non-disclosure of the information at issue here.

[142] In addition, the NPCA submits that the news articles referenced by the appellant show that there has already been wide public coverage and debate of loss of public

⁴⁴ I note these are not all the same position as those at issue in this appeal.

trust in it.⁴⁵

[143] Finally, the NPCA submits that the appellant has not provided any evidence or arguments as to how the information requested would shed further light on the matter. It also submits that the appellant has not demonstrated that the information in the records would add in some way to the information the public already has available.

[144] In response, the appellant submits that the NPCA fails to acknowledge that none of the previous disclosures relates in any way to this specific request. He states:

The senior management debacle at the NPCA resulted in lower level employees being appointed as directors and managers with no competition and no merit based reasoning has been discussed and speculated about in the public forum. ...Three different CAO's in a matter of 6-8 weeks, people being fired and rehired, people being promoted with no due process, people being appointed to senior positions by personnel who may not have legal standing in the organization as they were reportedly fired from the institution, it is drama worthy of a Shakespearean farce and the public has an extremely compelling interest.

[145] As such, the appellant submits that the public has a compelling interest in knowing how much senior people rewarded themselves, the depth of the problem and what it cost them to settle these issues.

Analysis and findings

[146] I will first consider whether there is a compelling public interest in disclosure of the exempt personal information (specifically, the home address, salary information, pay grades/classification, probationary periods and the date of return to their permanent role). If I find that there is a compelling public interest, I will then also consider whether this interest clearly outweighs the purpose of the established exemption claim in the specific circumstances.

[147] In Order MO-3844, Adjudicator Diane Smith grappled with similar issues as the ones present in this appeal.⁴⁶ In that order, the appellant requested that the NPCA provide the current salaries of every position that receives a salary of \$100,000 or more. The record at issue in that appeal was dated November 2018 and lists the titles and salaries of six staff members at the NPCA (not any of the affected persons in this appeal) who earn \$100,000 or more in salary.

⁴⁵ It relies on Order P-613 in this regard.

⁴⁶ I note that the institution and the appellant in Order MO-3844 are the same ones in this appeal but the affected persons are different individuals in the two appeals.

[148] In Order MO-3844, Adjudicator Smith states the following about the NPCA and the *PSSDA*:

The purpose of the *PSSDA* is to assure the public disclosure of the salary and benefits paid in respect of employment in the public sector to employees whose salary is \$100,000 or more in a year. As noted above, the NPCA is not subject to the *PSSDA* as it does not meet the funding threshold set out in therein.

...

I...agree that to limit disclosure of salary information 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. I find that the need for complete transparency in this appeal outweighs the limited privacy interests of the affected persons.

[149] In coming to the conclusion that the public interest override in section 16 applied to the specific salary amounts at issue before her, Adjudicator Smith states the following:

The appellant provided numerous news articles, as well as an Auditor General's report, that indicate that there is public interest in the expenses and other costs incurred by the NPCA, including the salaries of NPCA staff. There has been concern over irregularities related to salary increases, as well as concern about the hiring and firing of key senior personnel, including related litigation involving the NPCA.

...

I also agree with the appellant that the turmoil at the NPCA is of an epic proportion and under these circumstances the public has a right to know exactly what management is doing regarding compensating themselves.

I find that the appellant has demonstrated that there is a compelling public interest in the salary information requested. I accept that not only are there financial mismanagement concerns at the NPCA, but also salary-related concerns about unfair hiring practices and improper compensation packages for the top administrators at the NPCA.

[150] I agree with and adopt the findings in Order MO-3844 for the purposes of this appeal.

[151] I have considered the parties' representations and find that, although the salary information at issue is subject to the personal privacy exemption in section 14(1), there

is a compelling public interest in its disclosure.

[152] The appellant provided a number of news articles surrounding the events occurring at the NPCA in late November to mid-December 2018, along with the Ontario Auditor General's report. These articles indicate that there was chaos and confusion at the NPCA during this period. To summarize briefly, in late November, the CAO at the time fired the Director of Corporate Services then in early December the outgoing NPCA board fired the same CAO and appointed someone who was formerly the NPCA's clerk as the acting CAO. One of the articles provided by the appellant points out that the NPCA's clerk has no senior leadership experience. At the time, this acting CAO was on bereavement leave. She then rehired the former Director of Corporate Services, who was then appointed the interim CAO. He then promoted three NPCA employees to executive positions. It is this interim CAO's interim executive employment agreement and the three employees' agreements that are the subject of this request.

[153] I agree with the appellant's submissions that there continues to be a loss of public trust in the NPCA. The events occurring in late November to mid-December 2018 do not reassure the public that the NPCA is making progress in dealing with its management crisis. In fact, these events demonstrate the turmoil at the NPCA was of "an epic proportion," as the appellant puts it. In my view, under these circumstances, the public has a right to know exactly what management was doing regarding compensating themselves and who the interim CAO was promoting.

[154] I find that the appellant has demonstrated that there is a compelling public interest in the salary information at issue. As Adjudicator Smith also noted in Order MO-3844, there are salary-related concerns about unfair hiring practices and improper compensation packages for executives at the NPCA.

[155] I acknowledge that the NPCA has voluntarily disclosed on its website the positions where the total compensation is in excess of \$100,000 in 2019. It has also disclosed on its website, in compliance with Order MO-3844, the salaries of staff earning \$100,000 or more as of November 2018 (which does not capture the records at issue in this appeal as they are dated December 2018).

[156] I note that the disclosed salary information on the NPCA's website does not overlap with all the positions in the records at issue in this appeal. For example, in 2018, the salary information disclosed is only for the CAO and the Senior Director of Corporate Services while in 2019 the salary information disclosed is only for the CAO. As such, the salary information for two of the four positions have not been previously disclosed.

[157] I do not find that the appellant has raised the public interest in a general matter. He has raised the public interest with respect to records that resulted from what occurred during a specific period at the NPCA.

[158] I acknowledge that there has been media coverage of what happened during the

period between late November and mid-December 2018 at the NPCA. However, in my view, there remains public interest in the disclosure of the salary information at issue. Media coverage indicates that the public wants to know whether the executives in question were being overly compensated by the interim CAO or the outgoing NPCA board.

[159] As such, I find that disclosure of the salary information would shed light on the operations of the NPCA and that the amount of information already disclosed about salaries is not adequate to address the public interest considerations. I acknowledge that the salaries for two of the four positions have been previously disclosed. However, there remains public interest in the remaining salaries because these salary amounts vary from the amounts in November 2018 and 2019. Based on my review of the salary information and the parties' representations, I find that there is a compelling public interest in the disclosure of the salary information in the records at issue.

[160] As previously discussed, section 14(1) is a mandatory exemption whose fundamental purpose is to ensure that the personal privacy of individuals is maintained except where infringements on this interest are justified. 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. Therefore, it is important to carefully balance the public interest against the privacy interests of the individuals identified in the record.⁴⁷

[161] In balancing the public and privacy interests in this appeal, I find that the compelling public interest in disclosure of the salary information clearly outweighs the purpose of the section 14(1) personal privacy exemption. The salary information at issue in the records comprise a significant portion of the NPCA's budget and evidence from the Ontario Auditor General's report indicates that there exist financial mismanagement concerns on the part of the NPCA.

[162] In finding that compelling public interest in disclosure of the salary information clearly outweighs the purpose of the section 14(1), I also have taken into account that the salary amounts that exceed \$100,000 of NPCA staff have been disclosed in previous years (including the disclosure in compliance with Order MO-3844). I have also considered the robust and continued interest on the part of the media, the Auditor General, and the public regarding the management of the financial affairs of the NPCA.

[163] Accordingly, I find that the public interest override in section 16 applies to override the application of the section 14(1) exemption to the salary information.

[164] I do not find, however, that the appellant has established that there is a public

⁴⁷ See Order PO-3164.

interest in the home address, the pay grades/classification, the probationary periods and the date of return to their permanent role for two of the affected persons. As stated above, the home address is one of the affected person's home address, and I do not see how disclosure of it would shed light on the operations of the NPCA. As well, I find that there is no public interest in the probationary periods and the date of return to the permanent roles as disclosure of this information would not shed any light on the operations of the NPCA. Finally, as I find that the public interest will be served by the disclosure of the specific salary information, the disclosure of the classification (pay grades) is unnecessary. As mentioned above, the classification, in this circumstances, would reveal the specific salary information of the affected persons.

[165] In sum, I will order the salary information, the vacation entitlement, termination allowance, duration of the two interim agreements and the reporting duties of two of the office holders disclosed. I will also order disclosure of the information that I found at the outset is not the personal information of any of the affected persons.

ORDER:

1. I order the NPCA to disclose to the appellant the information I have found not exempt under section 14(1) and section 11 by providing him with a copy of the records by **April 21, 2021**, but not before **April 15, 2021**. I have provided a highlighted copy of the records with the NPCA's copy of this order. To be clear, only the highlighted information should be disclosed to the appellant.
2. In order to verify compliance with this order, I reserve the right to require the NPCA to provide me with a copy of the information disclosed to the appellant.
3. The timelines noted in order provision 1 may be extended if the NPCA is unable to comply in light of the current COVID-19 situation, and I remain seized to consider any resulting extension request.

Original Signed by: _____
Lan An
Adjudicator

_____ March 16, 2021