

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4156

Appeal MA20-00086

The Corporation of the City of Brampton

January 31, 2022

Summary: The appellant requested access under the *Municipal Freedom of Information and Protection of Privacy Act* to the employment contract of the city's current CAO. The city denied access to the contract claiming that it qualified for exemption under sections 6(1)(b) (closed meeting) and 14(1) (personal privacy). The appellant appealed the city's decision and took the position that the public interest override in section 16 would apply to require disclosure of any information found exempt under the *Act*.

In this order, the adjudicator finds that section 6(1)(b) does not apply and that section 14(1) only applies to the CAO's starting salary stated in the contract. However, she finds that there is a compelling public interest in the disclosure of the salary and orders the city to disclose the entire contract to the appellant, but for the portion that contains his home address which the appellant did not pursue.

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"), sections 6(1)(b), 14(1), 14(2)(h), 14(3)(d), 14(3)(f), 14(4)(a) and 16.

Orders and Investigation Reports Considered: Orders MO-2563, MO-3844, MO-4026, MO-4060 and MO-4098.

OVERVIEW:

[1] This order determines the issues raised by the decision of the Corporation of the City of Brampton (the city) to deny access to the employment contract for its current

Chief Administrative Officer (CAO).

[2] The appellant filed a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the employment contract (contract) of the city's CAO. The city notified the CAO as an affected party under section 21(1), and he objected to the disclosure of the contract.

[3] The city subsequently issued a decision letter denying the appellant access to the contract. In its decision letter, the city claimed that the record is excluded from the scope of the *Act* by reason of sections 52(3)2 and 52(3)3 (labour relations or employment records). The city also claimed that the record would qualify for exemption under section 6(1)(b)(closed meeting) and 14(1)(personal privacy) if it is not excluded under section 52(3).

[4] The appellant filed an appeal with the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore settlement with the parties.

[5] During mediation, the appellant raised the possible application of the public interest override in section 16. Mediation did not resolve the appeal and the matter was transferred to the adjudication stage of the appeal process in which an adjudicator may conduct an inquiry.

[6] I decided to commence my inquiry by inviting the representations of the city and the affected party, initially. In its representations, the city conceded that the exception to the labour relations or employment records exclusion found in section 52(4)3¹ applied in the circumstances of this appeal. Accordingly, as the city no longer takes the position that the contract is excluded from the *Act*, I have removed this issue from the scope of this appeal.

[7] However, the city confirmed in its representations that it continues to take the position that the exemptions under sections 6(1)(b) and 14(1) apply to the record. The affected party submitted brief representations confirming that he continues to oppose the release of the record.

[8] The appellant also had an opportunity to make representations and the city and affected party were afforded an opportunity to make representations in reply to them. The appellant confirmed in their representations that they continue to seek access to all portions of the record except for the affected party's home address. Accordingly, the affected party's home address has been removed from the scope of this appeal. The parties' representations were shared in accordance with the IPC's *Code of Procedure*

¹ Section 52(4) states:

This Act applies to the following records:

3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.

and Practice Direction 7.²

[9] In this order, I find that section 6(1)(b) does not apply to any of the information in the contract and that section 14(1) only applies to the CAO's starting salary. However, I find that there is a compelling public interest in the disclosure of the CAO's salary that clearly outweighs the purpose of the section 14(1) exemption. Accordingly, I order the city to disclose the entire contract to the appellant, but for the portion that contains the CAO's home address which was not at issue.

RECORD:

[10] The record at issue consists of a one-page cover letter signed by a city official and the affected party, attaching a three-page document entitled "Appendix A: Specified Terms and Conditions of Employment" which contains the affected party's signature indicating his acceptance of the terms and conditions of employment. The parties referred to the four-page document as the "employment contract or agreement" and for the remainder of this order, I will refer to it as the "contract."

ISSUES:

- A. Does the discretionary closed meeting exemption at section 6(1)(b) apply to the record?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the mandatory personal privacy exemption at section 14(1) apply to the personal information in the record?
- D. Is there a compelling public interest in disclosure of the exempt information that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

A. Does the discretionary closed meeting exemption at section 6(1)(b) apply to the record?

[11] Section 6 protects certain records relating to a municipal institution's legislative function or closed meetings of a council, board, commission or other body. In this case, the city claims that disclosure of the record would reveal the deliberations of a closed

² The affected party's submissions, which were made in a series of emails to the IPC, were not shared with the appellant, because I accepted that they met the confidentiality criteria.

meeting.

[12] Section 6(1)(b) reads:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

[13] For this exemption to apply, the institution must show that:

1. a council, board, commission or other body, or a committee of one of them, held a meeting,
2. a statute authorizes the holding of the meeting in the absence of the public, and
3. disclosure of the record would reveal the actual substance of the deliberations of the meeting.³

[14] The institution must show that it held a meeting, and that it was authorized by law to hold the meeting *in camera*.⁴ For the meeting to be authorized to be held *in camera*, its purpose must have been to deal with a matter for which a closed meeting is authorized by statute.⁵

[15] The city says that its CAO Recruitment Committee met on October 17 and 18, 2019 and that a Special Meeting of City Council was called later the day on October 18, 2019. In support of its position that the above meetings took place, the city provided the links of the meeting minutes found on its website. The minutes of the Special Meeting indicate that “the purpose of the Special Meeting to consider recommendations arising from the CAO Recruitment Committee Meeting of October 17 and 18, 2019”.

[16] The city submits that section 239(2)(b) of the *Municipal Act* authorized it to hold the three meetings in the absence of the public. Section 239(2)(b) of the *Municipal Act* states:

A meeting or part of a meeting may be closed to the public if the subject matter being considered is personal matters about an identifiable individual, including municipal or local board employees.

[17] The city also referred to the meeting minutes which cite section 239(2)(b) and document that motions were made and seconded to subsequently close the meetings in support of its position that it was authorized to hold the three meetings in the absence

³ Orders M-64, M-102 and MO-1248.

⁴ Order M-102.

⁵ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div. Ct.).

of the public.

[18] For the exception at section 6(1)(b) to apply, all three parts of the test must apply. For the following reasons, I find that part 3 of the test has not been met and find that the exception at section 6(1)(b) cannot apply to the contract. Accordingly, it is not necessary that I also make a finding as to whether parts 1 and 2 of the test have been met.

Part 3 of the test

[19] For section 6(1)(b) to apply, it must be established that disclosure of the record would reveal the actual substance of deliberations that took place at the *in camera* meetings, and not just the subject of the meeting or the deliberations.⁶ "Deliberations" refer to discussions conducted with a view towards making a decision.⁷

[20] Section 6(1)(b) does not protect records merely because they refer to matters discussed at a closed meeting, and it does not protect the names of individuals attending meetings, and the dates, times and locations of meetings.⁸

[21] The city was asked to provide a response to the question of how disclosure of the contract would reveal the actual substance of the deliberations at the meetings in question. In response, the city stated:

Attributes and considerations related to the resulting employment agreement were discussed as part of the closed session deliberations during both the CAO Recruitment Committee meetings and Special Meeting of City Council.

[22] Having regard to the record and city's submissions, I am not satisfied that disclosure of the record would reveal the actual substance of the deliberations or discussions which took place at the CAO Recruitment Committee meetings or subsequent Special Meeting.

[23] I have reviewed the minutes of the three meetings the city says were convened related to the subject-matter of this request and confirm that city's CAO Recruitment Committee met on October 17 and 18, 2019. In addition, I am satisfied that a Special Meeting of City Council was called the evening of October 18, 2019 to discuss the CAO's Recruitment Committee's recommendation. All three meetings were held in the absence of the public and as such, the minutes of these meetings do not contain specifics about what was discussed in those meetings.

[24] I note that shortly after the Special Meeting of City Council took place, the city

⁶ Orders MO-703, MO-1344, MO-2389 and MO-2499-I.

⁷ Order M-184.

⁸ Order MO-1344.

announced on its website that the affected party had been selected to act as its new CAO. However, I reject the city's position that disclosure of the contract would reveal the actual substance of deliberations that took place at the meetings in question. In my view, the city's evidence only confirms the purpose and subject-matter of the meetings in question. Furthermore, I have reviewed the contract and am satisfied that its disclosure to the appellant would not reveal the actual substance of the deliberations or discussions of council.

[25] Accordingly, I find that part 3 of the test has not been met.

[26] As all three parts of the test must be met for the exemption under section 6(1)(b) to apply, I find that the closed meeting exemption can not apply in the circumstances of this appeal.

[27] I will go on to determine the city's and affected party's claim that disclosure of the record would be exempt under the mandatory personal privacy exemption in section 14(1).

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

[28] Since the city has claimed the section 14(1) personal privacy exemption, I must first decide whether the contract contains "personal information," and if so, to whom the personal information relates.

[29] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

[30] "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.⁹

[31] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.¹⁰ See also sections 2(2.1) and (2.2), which state:

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

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their

⁹ See the definition of "record" in section 2(1).

¹⁰ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

dwelling and the contact information for the individual relates to that dwelling.

[32] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about the individual.¹¹

[33] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.¹²

Representations of the parties

[34] In its representations, the city takes the position that the contract contains the affected party's personal information, such as his:

- home address
- salary
- vacation entitlement
- signature
- vehicle expenses (parking charge coverage, vehicle allowance, mileage rate and toll expense coverage)
- employment contract length
- separation provisions
- relocation allowance

[35] In addition, the city claims that the signature of the individual signing the contract on behalf of the city constitutes this individual's personal information.

[36] As mentioned above, the affected party provided brief representations registering his objection to the release of any information in the contract, arguing that disclosure would constitute an unjustified invasion of his personal privacy. The affected party did not specifically address the issue of whether the contract contains his personal information. Instead, he argued that his salary is public information and that there is "no public interest [in the] balance of my contract details, vacation entitlements, termination clauses, etc."

¹¹ Orders P-1409, R-980015, PO-2225 and MO-2344.

¹² Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.).

[37] As stated above, the appellant submits that they are not interested in pursuing access to the affected party's home address. However, the appellant takes the position that any remaining information found to constitute the personal information of the affected party should be ordered disclosed as there is a compelling public interest in the disclosure of such information.

Decision and Analysis

[38] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual," including information such as: an individual's age or marital status (paragraph (a)), an individual's employment history of financial transactions in which they have been involved (paragraph (b)), any identifying number, symbol or other particular assigned to the individual (paragraph (c)), the address or telephone number of the individual (paragraph (d)), or the individual's name if it appears with other personal information about the individual (paragraph (h)).

[39] The contract contains the following information about the affected party: salary, vacation entitlements, benefits, contract length, separation provisions, relocation allowance, homes address, name and signature.

[40] Having reviewed the record, I find that the employment contract contains the affected party's personal information. I am satisfied that the record contains information relating to the affected party's employment history or financial transactions (paragraph (b)) which appears with his signature (paragraph (c)) and name (paragraph (h)).¹³ These portions of the contract contain information "about" the affected party and reveal something of a personal nature about him, namely details of his employment with the city.

[41] However, I reject the city's argument that the signature of the individual who signed the contract on its behalf constitutes this individual's personal information. This individual's signature appears in connection with their professional or official capacity with the city and thus cannot be said to reveal anything of a personal nature.¹⁴ As this information does not constitute the personal information of any identifiable individual, the exemption at section 14(1) cannot apply and I will order the city to disclose this

¹³ Section 2(1) of the *Act* gives a list of examples of personal information:

"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;
- (c) any identifying number, symbol or other particular assigned to the individual;
- (d) the address, telephone number, fingerprints or blood type of the individual;
- (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.

¹⁴ Order MO-4060.

information to the appellant.

[42] I will go on to determine whether the mandatory personal privacy exemption under section 14(1) applies to the affected party's personal information.

C. Does the mandatory personal privacy exemption at section 14(1) apply to the personal information in the record?

[43] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[44] Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions.

[45] If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information. None of the parties claimed that these exceptions applied in the circumstances of this appeal and I am satisfied that none apply.

[46] Accordingly, the only exception that could apply is section 14(1)(f). Under section 14(1)(f), if disclosure of the personal information would not be an unjustified invasion of personal privacy, the personal information is not exempt from disclosure.

[47] Sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy. Sections 14(3)(a) to (h) should generally be considered first.¹⁵ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[48] The city claims that the presumptions at sections 14(3)(d) and (h) apply in the circumstances of this appeal.

[49] If it is found that one of these presumptions applies, the personal information cannot be disclosed unless:

- there is a reason under section 14(4) that disclosure of the information would not be an "unjustified invasion of personal privacy," or
- there is a "compelling public interest" under section 16 that means the information should nonetheless be disclosed (the "public interest override").¹⁶

[50] If the personal information being requested does not fit within any presumptions

¹⁵ If any of the section 14(3) presumptions are found to apply, they cannot be rebutted by the factors in section 14(2) for the purposes of deciding whether the section 14(1) exemption has been established.

¹⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

under section 14(3), one must next consider the factors set out in section 14(2) to determine whether or not disclosure would be an unjustified invasion of personal privacy. However, if any of the situations in section 14(4) is present, then section 14(2) need not be considered.

[51] Since it appears that some of the personal information at issue could be captured by the exception at section 14(4)(a), I have decided to first determine if section 14(4)(a) applies.

The exception in section 14(4)(a)

[52] For reasons stated below, I find that the exception at section 14(4)(a) applies to most of the information contained in the contract. Therefore, even if I were to find that either of the section 14(3) presumptions claimed by the city applied, it would not be determinative, given the clear wording of section 14(4)(a), which states:

Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it;

discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution;

[53] The appellant and affected party did not make specific representations on the applicability of section 14(4)(a).

[54] In its representations, the city conceded that the contract contains "some benefit and employment responsibility information previously determined, through IPC appeal orders, to not be an unjustifiable invasion of personal privacy [if disclosed]." However, the city takes the position that disclosure of the portions of the contract which address "separation and severance information" to the appellant would constitute an unjustified invasion of personal privacy.¹⁷

[55] The IPC has interpreted "benefits" to include entitlements, in addition to base salary, that an employee receives as a result of being employed by the institution. The following have been found to qualify as benefits:

- insurance-related benefits,
- sick leave,
- vacation,

¹⁷ The city also argues that the release of "separation and severance information ... may prejudice future City negotiations with job candidates if the agreement benefits and separation provisions are in the public realm." However, did not claim that the discretionary exemption at section 11 applies in the circumstances of this appeal, which is what this particular submission appears to be directed at.

- leaves of absence,
- termination allowance,
- death and pension benefits,
- right to reimbursement for moving expenses, and
- incentives and assistance given as inducements to enter into a contract of employment.¹⁸

[56] The term “benefits” does not include entitlements that have been negotiated as part of a retirement or termination package, unless the information reflects benefits to which the individual was entitled as part of their employment.¹⁹

[57] Based on my review of the contract, I find that the personal information relating to the affected party’s vacation entitlement, termination allowance, relocation allowance, along with the vehicle expenses are benefits for the purpose of section 14(4)(a), and thus disclosure of that information would not constitute an unjustified invasion of personal privacy.

[58] I am also satisfied that the boilerplate portions of the contract that address matters such as conflict of interest, the confidentiality of information acquired during employment, and standard acknowledgements all city employees are to make as a condition of their employment are also captured by section 14(4)(a) because they are employment responsibilities. Also included within the affected party’s employment responsibilities is the employment contract length set out in the contract. The IPC has previously found that the start and end dates found in employment contracts qualify as “employment responsibilities” for the purposes of section 14(4)(a).²⁰ Therefore, disclosure of this information would not be an unjustified invasion of personal privacy.

Summary of conclusions on section 14(4)(a)

[59] As I have found that section 14(4)(a) applies to information describing the affected party’s benefits and employment responsibilities, it is not necessary for me to consider the potential application of the section 14(3) presumptions claimed by the city, or any of the section 14(2) factors. As a result, the section 14(f) exception applies because disclosure would not be an unjustified invasion of personal privacy. This information, therefore, is not exempt under section 14(1). Accordingly, I will order the city to disclose this information as the city has not claimed that any other exemption applies and I am satisfied that no mandatory exemption could apply.

¹⁸ Orders M-23 and PO-1885.

¹⁹ Orders MO-1749, PO-2050, PO-2519 and PO-2641.

²⁰ See for example Orders MO-2470, MO-3684-I, MO-4026.

[60] I will now go on to determine whether the presumptions at section 14(3)(d) and (f), or in the alternative, the factor weighing in favour of privacy protection at section 14(2)(h) applies to the only personal information remaining at issue: the affected party's starting salary stated in the contract.

Representations and findings on sections 14(3) & 14(2)

[61] The representations of the appellant and affected party do not specifically address the presumptions and factors in sections 14(2) and 14(3) of the *Act*.

[62] The city takes the position that the affected party's salary constitutes information describing his income or finances, giving rise to the application of the presumption against disclosure at section 14(3)(f).

[63] This presumption covers information related to an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. For this presumption to apply, information about an asset must be specific and must reveal, for example, its dollar value or size.²¹

[64] Having regard to the city's submissions and the record, I find that the presumption at section 14(3)(f) applies to the affected party's starting salary stated in the contract and that disclosure of it is therefore presumed to be an unjustified invasion of privacy. In making my decision, I note that this information is specified in a dollar amount in the contract and is information specific to the affected party's employment. Accordingly, I find that disclosure of the affected party's salary to the appellant would constitute an unjustified invasion of privacy. Accordingly, the section 14(1)(f) exception does not apply and this salary information is exempt under section 14(1). Given my finding, I need not also consider whether the presumption at section 14(3)(d) or factor at section 14(2)(h) applies to this information.

[65] I will now consider the appellant's argument that there is a compelling public interest in the disclosure of this information that outweighs the purpose of the personal privacy exemption.

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

[66] I found that the affected party's starting salary contained in the record qualifies for exemption under section 14(1). The appellant argues that the public interest override in section 16 applies to require disclosure of any exempt personal information.

[67] Section 16 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

²¹ Order PO-2011.

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.

[68] For section 16 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the section 14(1) exemption.

[69] The *Act* does not state who bears the onus to show that section 16 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.²²

Representations of the parties

[70] The appellant describes the city's hiring of the affected party as "controversial" and, in support of this position, provided website links to media coverage that raised questions about the city's CAO selection process. The media coverage also addressed general concerns about the legitimacy of the city's hiring process and growing salaries of senior city employees. The appellant also referred to Order MO-2563, in which Adjudicator Bernard Morrow stated:

The public has a right to know to the fullest extent possible how taxpayer dollars have been allocated to public servants' salaries, and this has particular force with respect to public servants at senior levels who earn significant amounts of money paid out of the public purse. Certainly, the [*Public Sector Salary Disclosure Act, 1996*] is one important tool for ensuring such openness and transparency. However, in my view, to limit disclosure to only those amounts that are disclosed under the PSSDA seems incongruent with the government's commitment to openness and transparency and, in turn, accountability for the allocation of public resources.

[71] The city argues that there is no compelling public interest in the disclosure of salary information, generally. In support of its position, the city states:

Employment agreements are not normally made public as there is an expectation of privacy and confidentiality in the agreement between the employer and individual. The terms and conditions of an institution's positional job description is generally available, and the position accountabilities of the specific position of Chief Administrative Officer position are set out in general terms within the *Municipal Act, 2001*. The

²² Order P-244.

employment agreement, as a record, does not serve a specific purpose of informing or enlightening the citizenry about the activities of their government. It does not add in any meaningful way to the information already available to the public in order to access the functioning and administration of the municipal government.

Additionally, there is no compelling public interest in disclosure of personal information, specifically salary information, as another public process exists for access to salary information for public sector positions – namely the *Public Sector Salary Disclosure Act, 1996*, which already proactively makes salary-related information public on an annual basis.

[72] The city also argues that there is a public interest in the non-disclosure of the affected party's starting salary. In support of this position, the city states:

The fact there is an updated salary and benefits information which is easily searchable should be weighed in favour of non-disclosure of a 2019 record. Any public interest that may exist will most likely be in the most current information of which the record in dispute will not satisfy.

[73] In his representations, the affected party questions how the public interest override could apply in the circumstances of this appeal given that his 2020 salary has already been published under the *Public Sector Salary Disclosure Act (PSSDA)*.²³

Findings and Analysis

[74] 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.

[75] However, the salary information at issue in this appeal represents the affected party's starting salary of which he would have only earned a portion in 2019.²⁴ Accordingly, the affected party's annual starting salary was not published under the *PSSDA*.

[76] In considering whether there is a "public interest" in disclosure of this information, the first question to ask is whether there is a relationship between the information and the *Act's* central purpose of shedding light on the operations of government.²⁵ In previous orders, the IPC has 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

²³ 1996, S.O. 1996, Chapter 1, Schedule A.

²⁴ The city's website confirms that the affected party commenced his duties with the city on October 23, 2019.

²⁵ Orders P-984 and PO-2607.

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.²⁶

[77] A “public interest” does not exist where the interests being advanced are essentially private in nature.²⁷ However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure.²⁸ The IPC has defined the word “compelling” as “rousing strong interest or attention”.²⁹

[78] The city and affected party argue that disclosing the affected party’s starting salary would not shed light on the city’s operations because updated salary information is already in the public domain. They appear to take the position that any public interest in the CAO’s salary is satisfied by the publication of his 2020 salary under the *PSSDA*.

[79] However, I find the circumstances of this appeal are unique. Though it is true the CAO’s 2020 salary has been published and I anticipated that his 2021 salary will be published in the short future, I accept the appellant’s evidence that the salaries the city pays to its senior employees have been the subject of recent wide media interest. I also accept the appellant’s evidence that questions have surfaced about the city’s CAO selection process and that these questions continue to linger. Finally, I am satisfied that the appellant’s interest in the information at issue is a public one as opposed to an interest that is private in nature.

[80] I find there is a connection between the disclosure of the CAO’s starting salary and the *Act’s* central purpose of shedding light on the city’s operations. In my view, disclosure of the starting salary at issue would add to the information the public has to express public opinion or make political choices. Accordingly, I find that there is a compelling public interest in the disclosure of the CAO’s starting salary evidenced by the wide media interest in issues relating to the salaries the city pays its senior employees and questions about the city’s CAO selection process.

[81] However, the existence of a compelling public interest is not enough to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the exemption in the specific circumstances. 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.³⁰

[82] In balancing the public and privacy interests in this appeal, I find that the compelling public interest in disclosure of the affected party’s starting salary clearly outweighs the purpose of the section 14(1) exemption.

²⁶ Orders P-984 and PO-2556.

²⁷ Orders P-12, P-347 and P-1439.

²⁸ Order MO-1564.

²⁹ Order P-984.

³⁰ Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.

[83] The purpose of the mandatory section 14(1) exemption is to protect the privacy of individuals with respect to personal information about themselves held by institutions. I found that the presumption at section 14(3)(f) applied to the affected party's starting salary stated in the contract. The purpose of section 14(3)(f) is to protect the privacy of information relating to an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[84] It appears that the only reason the starting salary identified in the contract was not published is because the affected party commenced his duties with the city in the last quarter of 2019, thus earning only a fraction of his anticipated salary.

[85] There is a long list of IPC cases that have found that limiting the disclosure of salary information to only salaries disclosed under the *PSSDA* conflicts with the principle of open government, which includes the commitment to be accountable for the expense of public funds.³¹ I agree with the reasoning in these orders and apply it to the circumstances in this appeal.

[86] I acknowledge that a member of the public, such as the appellant, may be able to estimate the affected party's starting salary by taking his 2020 published salary and prorating it for the amount number of days he worked in 2019 while also taking into account any salary increases he may have been entitled to as a city employee. However, I found that there is compelling public interest in the disclosure of the affected party's salary given lingering questions the public have about the city's CAO selection process and other matters related to the salaries paid to senior employees. In my view, the need for complete transparency in the circumstances of this appeal outweighs the affected party's limited privacy interest in the disclosure of his starting salary. I find that in the circumstances of this appeal, the public should not be left to cobble together various sources of information to identify the starting salary the city agreed to pay its CAO.

[87] Having regard to the above, I find that the public interest override in section 16 applies to the starting salary set out in the contract. Accordingly, this information is to be disclosed to the appellant along with the balance of the record I found not exempt under section 14(1).

ORDER:

I order the city to disclose the entire record, but for the affected party's home address, to the appellant by **March 7, 2022**, but not before **March 2, 2022**.

Original Signed by: _____

January 31, 2022

Jennifer James
Adjudicator

³¹ Order MO-2563; for more recent examples, see Orders MO-3844 and MO-4026.