ORDER MO-2563

Appeal MA09-148

Regional Municipality of York Police Services Board

NATURE OF THE APPEAL:

This appeal concerns a request submitted to the Regional Municipality of York (the Municipality) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) by the York Regional Police Association (the requester) for access to the following information:

1. The current health benefits package in place for [named York Regional Police Chief and two named Deputy Chiefs] also of York Regional Police.

2. Current salaries for [named Chief and Deputy Chiefs] of York Regional Police including years 2006, 2007, 2008, 2009, 2010, 2011, 2012.

3. Percentage of annual increase in salaries for [above-named Chief and Deputy Chiefs] of York Regional Police for the years 2006, 2007, 2008, 2009, 2010, 2011 and 2012.

With respect to part 1 of the request, the Municipality granted access in full to a responsive record that was described in an attached index as the "Senior Police officers - Group Benefits Booklet." Access to the information pertaining to parts 2 and 3 of the request was denied pursuant to section 14(1) (personal privacy) of the *Act*.

The requester (now the appellant) appealed the Municipality's decision to this office and Appeal MA08-423 was opened. During the mediation stage of the appeal process it was determined that the requested information could be found in the employment agreements of the Chief of Police and the two Deputy Chiefs (the affected parties). The Municipality took the position that the Regional Municipality of York Police Services Board (the Police) had custody and control of these records and, subsequently, transferred the balance of the request to the Police. The Police subsequently issued an access decision and Appeal MA08-423 was closed.

In their access decision, the Police advised that they would provide partial access to the information requested in part 2 of the appellant's request. The Police provided the appellant with the salary information pertaining to the affected parties, for the years 2006, 2007 and 2008. However, the Police denied access to the salary information for 2009 and subsequent years pursuant to section 14(1) of the *Act*. The Police later confirmed that they rely on the presumptions in sections 14(3)(d) (employment or educational history) and (f) (finances) in support of its section 14(1) exemption claim. With respect to part 3 of the request, the Police advised that they "[do] not maintain separate records detailing the percentage of annual increases for executive salaries."

The appellant appealed the Police's decision and Appeal MA09-148 was opened.

During the mediation stage of the appeal process, the Police advised that the affected parties' employment agreements do not contain salary information for the years 2011 and 2012, as this information has not yet been determined. The Police further advised that the employment

agreements for the affected parties do not expressly contain the percentages of annual salary increase, except in one instance.

In response, the appellant indicated that he wishes to pursue access to the salaries and the percentage of annual increase which are contained in the employment agreements. The appellant indicated that the remaining parts of the employment agreements are not at issue in this appeal.

Also during mediation, the Police advised that they had previously notified the affected parties of the request and that they did not consent to the release of the information at issue. The Police, subsequently, informed the affected parties that an appeal of their access decision had been filed. The affected parties continue to maintain their objection to the disclosure of their information.

In his discussions with the mediator, the appellant took the position that there exists a public interest in the disclosure of the information at issue, and that he wishes to pursue the appeal to adjudication.

No further mediation was possible and the file was transferred to the adjudication stage of the appeal process for an inquiry.

I commenced my inquiry by issuing a Notice of Inquiry, seeking representations from the Police and the affected parties. The Police submitted representations in response and agreed to share the non-confidential portions with the appellant. I also received representations from the affected parties, in which they simply state that they concur with the representations submitted by the Police.

I then sought representations from the appellant and enclosed with a Notice of Inquiry a severed version of the Police's representations. Portions of the Police's representations were severed due to confidentiality concerns. I decided not to share the representations received from the affected parties since their submissions did not add substantively to those submitted by the Police.

The appellant submitted representations. I shared the appellant's representations in their entirety with the Police and I invited the Police to submit reply representations. The Police submitted reply representations.

RECORDS:

The information remaining at issue consists of salary information contained in four employment agreements of the affected parties. In particular, the following information is at issue:

- the 2009 salaries for the Deputy Chiefs of Police

- the projected salaries for the years 2010, 2011 and 2012 for the Deputy Chiefs of Police

- the salary for the Chief of Police for the period December 12, 2008 through December 11, 2009, including the percentage of annual salary increase from the previous period

- the salary for the Chief of Police for the period December 12, 2009 through December 11, 2010

DISCUSSION:

PERSONAL INFORMATION

Definition of "personal information"

The Police claim that the information in the affected parties' employment agreements is exempt from disclosure under the mandatory personal privacy exemption in section 14(1) of the *Act*. However, section 14(1) only applies to information that qualifies as "personal information." Consequently, the first issue that must be considered in this appeal is whether the information at issue in the employment agreements constitutes the affected parties' "personal information." That term is defined in section 2(1) as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (c) any identifying number, symbol or other particular assigned to the individual,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information [Order 11].

To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225].

Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual [Orders P-1409, R-980015, PO-2225].

To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed [Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.)].

Representations

The Police submit that the salary information in the four employment agreements is "personal information" about the affected parties. The Police state that the information at issue reveals something of a personal nature about three identifiable individuals, specifically their employment salaries and employment history. The Police conclude that it is reasonable to expect that each individual would be identified if the information at issue is disclosed.

The appellant submits that the information in these records relates to the affected parties in a professional rather than a personal capacity and does not, therefore, qualify as their "personal information." In support of this view, the appellant references orders PO-2225, PO-2435, MO-2172 and MO-2407.

Analysis and findings

I acknowledge the appellant's perspective regarding the characterization of the information at issue. However, in my view, the salary information at issue constitutes the affected parties' personal information.

In Order PO-2225 Assistant Commissioner Tom Mitchinson posed two questions to illuminate the distinction between information about an individual acting in a business or professional capacity as opposed to a personal capacity:

> Based on the principles expressed in these [previously referenced] orders, the first question to ask in a case such as this is: "*in what context do the names of the individuals appear*"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
>
> ....
>
> The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual*"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

Assistant Commissioner Brian Beamish applied Assistant Commissioner Mitchinson's analysis in Order PO-2435, although he did not ultimately rely on it in finding that the section 14(1) personal privacy exemption did not apply in the circumstances of that case. Order PO-2435 concerned a request submitted to the Ministry of Health and Long-Term Care (the Ministry), under the *Freedom of Information and Protection of Privacy Act* (the provincial *Act*), for access to all records relating to the province's e-Physician Project, including the Smart Systems for Health Agency. In that case, the Ministry sought to exempt the names of individual consultants together with their per diem rates and contract ceiling amounts that relate to them, under the provision in the provincial *Act* that is equivalent to section 14(1) of the *Act*. In finding that section 21(1) of the provincial *Act* did not apply, Assistant Commissioner Beamish stated:

> In applying Assistant Commissioner Mitchinson's analysis to the current appeal, the context in which the names, per diems and ceiling amounts appear is not inherently personal, but is one that relates exclusively to the professional responsibilities and activities of these individuals. As evidenced by the contents of the records themselves, each of these individuals is participating as consultants in a professional business capacity. For example, on the face of Record 2, each individual is listed as a consultant. Further, as is clear from the wording of the [associated business cases] that form part of Record 3, the selected individuals are being chosen for their professional, rather than personal, qualifications and experience.
>
> Similar to the business context present in Order PO-2225, the professional context in which the individuals' names appear here removes them from the personal sphere. In addition, there is nothing about the names, per diem or ceiling amounts

that, if disclosed, would reveal something of a personal nature about the various consultants.…

I find however, in the current case, I do not need to rely on this analysis. Even if I accept the Ministry's position that the names of the individual consultants, together with their per diems and contract ceilings is personal information and that the disclosure of this information is presumed to constitute an unjustified invasion of the physician's personal privacy under section 21(3)(f) of the *Act*, this information is still not exempt under section 21(1).

Section 21(1) states that "A head shall refuse to disclose personal information to any person other than the individual to whom the information relates…" unless one of the exceptions at section 21(1)(a)-(f) applies. Section 21(1)(f) provides that the exemption will not apply "if the disclosure does not constitute an unjustified invasion of personal privacy".

Section 21(4)(b) of the *Act* identifies a particular type of information, the disclosure of which does not constitute an unjustified invasion of personal privacy. Section 21(4)(b) of the *Act* reads as follows:

> Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> (b) discloses financial or other details of a contract for personal services between an individual and an institution; or

I have carefully reviewed the submissions and Record 2 (items #39, #43, #46 and #49) and Record 3B. The records, including the Business Cases that form Record 3B make clear that individual physicians were retained on contracts for personal services. For example, the purpose set out in the Business Case for "CMS ASP RFP Evaluators" reads as follows:

> The approval of the Assistant Deputy Minister is sought to acquire up to 13 IT consultants to provide consulting services to the ePhysician Project. The IT consultants will act as Physician Evaluators for the Clinical Management System Application Service Provider Request for Proposals (CMS ASP RFP).

In my view, (items #39, #43, #46 and #49) and Record 3B disclose financial or other details which clearly derive from contracts for personal services between the physician consultants and the Ministry, which falls squarely within the parameters of section 21(4)(b). Therefore, the disclosure of these records would not constitute an unjustified invasion of the affected person's privacy, and the exception to the exemption at section 21(1)(f) applies. I therefore find that the records do not qualify for exemption under section 21 of the *Act*.

In Order MO-2172 the requester sought information relating to the standard contractual terms of employment between the Windsor-Essex Catholic District School Board (the School Board) and elementary school principals employed by the School Board. In that order I concluded that section 14(4)(a) applied to the information at issue and that disclosure of it would not constitute an unjustified invasion of personal privacy under section 14(1).
Section 14(4)(a) 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;

Although I agreed with Commissioner Beamish's approach and analysis in Order PO-2435 of the "personal information" issue, I too did not rely on it in finding that the section 14(1) exemption did not apply to the information at issue in Order MO-2172.

In reflecting on Orders MO-2172 and MO-2407, I conclude that finding, as I did in Order MO-2172, that section 14(1) did not apply to the salary and benefits information at issue in that case, based on section 14(4)(a), would have been the preferable approach in Order MO-2407 as well. This is the case because the individuals in both Orders MO-2172 and MO-2407 were employees rather than independent contractors who, through their businesses, provide services to the institutions, as was the case in Order PO-2435.

In my view, the correct approach when analyzing the salary and benefits information of identifiable employees is to regard this as their personal information and to then conduct the appropriate analysis under section 14. In Order MO-2407, I found that the information was not exempt under section 14(1) because it was not personal information, but even if I had made a different finding on that issue, the outcome would have been the same because of the application of section 14(4)(a).

To conclude, I am satisfied in this case that the salary information at issue constitutes the personal information of the affected parties because they are employees. They are not independent contractors who, through their businesses, provide services to the institution.

I will now turn to an examination of the personal privacy exemption in section 14 to that information.

PERSONAL PRIVACY

Where a requester seeks the personal information of another individual, as is the case in this appeal, section 14(1) of the *Act* prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

Section 14(1)(f)

In the circumstances of this appeal, one exception that could apply is section 14(1)(f). This section states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > if the disclosure does not constitute an unjustified invasion of personal privacy.

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f).

If any of paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. Therefore, if section 14(4) applies it is not necessary to refer to the provisions in sections 14(2) or (3) [See PO-1763 and *John Doe v. Ontario (Information and Privacy Commissioner* (1993), 13 O.R. (3d) 767 (Div. Ct.)].
The Police submit that the disclosure of the personal information in the records would be an unjustified invasion of privacy. In support of its position it relies on the presumptions in sections 14(3)(d) and (f).

In determining whether disclosure of the severed information would constitute an unjustified invasion of personal privacy, I will first consider the application of section 14(4) of the *Act* to that information.

Section 14(4)

As noted, section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. Sections 14(4)(a) and (b) are relevant to this appeal. They state:

> Despite subsection (3), a disclosure does not constitute an unjustified invasion of personal privacy if it,
>
> (a) discloses the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution or a member of the staff of a minister;
>
> (b) discloses financial or other details of a contract for personal services between an individual and an institution;

Representations

The Police submit that the information at issue discloses the "specific projected and/or actual salary and income of identifiable individuals, as well as the employment history of those individuals" since disclosure would reveal information pertaining to their job performance. Accordingly, the Police states that the information at issue does not fit within the scope of section 14(4)(a).

With regard to section 14(4)(b), the Police note that the requested information is contained in the employment agreements of the affected parties, not contracts for personal services as contemplated in that section.

The appellant submits that section 14(4)(a) may apply to the information at issue. The appellant acknowledges that the affected parties have entered into employment agreements with the Police. The appellant suggests that if the salaries contained in the employment agreements are, in some way, tied to performance then to the extent the salaries may vary from year to year the information at issue may represent a salary range within the meaning of section 14(4)(a) and the upper and lower ends of the range should be disclosed.

Analysis and findings

Having carefully reviewed the parties' representations and the information at issue, I find that sections 14(4)(a) and (b) do not apply in this case.

It is clear that the affected parties are engaged in an employment relationship with the Board and that the information at issue in the records represents specific salary figures for the affected parties over particular periods of time. In the case of the two Deputy Chiefs the figures that appear in the two records that relate to them are specific salary amounts to be paid to them for the years 2009 through 2012. For the Chief, one record sets out his specific salary for the period December 12, 2008 through December 11, 2009, along with the percentage increase over the previous period, and the second record documents his specific salary for the period December 12, 2009 through December 11, 2010. These figures do not, in my view, reveal salary ranges for the affected parties.

It is no secret that the salary figures for all three of the affected parties exceed $100,000. Ontario's *Public Sector Salary Disclosure Act* (the *PSSDA*) requires organizations that receive public funding from the Ontario government to disclose annually the names, positions, salaries and total taxable benefits of employees paid $100,000 or more in a calendar year not later than March 31st of the following year. In setting out the purpose of the *PSSDA*, section 1 states:

> The purpose of this Act is to assure the public disclosure of the salary and benefits paid in respect of employment in the public sector to employees who are paid a salary of $100,000 or more in a year.

The *PSSDA* covers a range of public bodies, including provincial government ministries, hospitals, universities and colleges, municipalities (including police services) and other public sector employers who receive a significant level of funding from the Ontario government.

In this case, I have checked the salary disclosure list published in March 2010, which provides the salary disclosure figures for 2009, for the purpose of comparing those figures with the 2009 salary amounts that appear in the employment agreements that are before me in this appeal. Clearly, I am not able to conduct a similar comparative analysis for the 2010-2112 salary figures because the salary figures for those years have not yet been reported. What I discovered is that the 2009 salary figures published pursuant to the *PSSDA* for all three affected parties are greater than the salary figures that appear in the records at issue. Based on representations received from the Police, which they have asked I not disclose due to confidentiality concerns, I am satisfied that the salary figures that appear in the records represent base salary amounts and that the larger salary figures that have been published pursuant to the *PSSDA* comprise base salary plus pay for performance.

To conclude, I am satisfied that the salary amounts documented in the records at issue represent *base salaries* paid or to be paid to the affected parties. To the extent that the affected parties' total salary income in a given year, as published pursuant to the *PSSDA*, may exceed the base salary amount this discrepancy is attributable to an additional payment in lieu of performance. However, the information in the records neither reveals the amounts paid for performance or a salary range; it only reveals the fixed base salary amounts of the affected parties for the years in question. Accordingly, I find that the exception in section 14(4)(a) does not apply.

Turning briefly to section 14(4)(b), it is clear that the affected parties are employees of the Police, not contractors that are subject to contracts for personal services with the Police. Accordingly, I find that the exception in section 14(4)(b) does not apply in this case.

Presumptions in sections 14(3)(d) and (f)

As stated above, the Police have raised the application of the presumptions in sections 14(3)(d) and (f) to deny access to the withheld salary information in the records.

If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.)].

Sections 14(3)(d) and (f) state:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> (d) relates to employment or educational history;

…

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

With regard to the presumption in section 14(3)(f), both the Police and the appellant acknowledge that the information at issue falls within this presumption since the affected parties' salary information describes their income.

On my review of the information at issue, I am satisfied that the salary information contained in the records describes the affected parties' income within the meaning of the presumption in section 14(3)(f). As stated above, a presumed invasion of personal property can only be overcome if section 14(4) or the "public interest override" at section 16 applies. I have already determined that section 14(4) does not apply. Accordingly, I find the salary information at issue in this appeal exempt under section 14(1), subject to the application of the section 16 public interest override, which the appellant has raised in this case.

PUBLIC INTEREST OVERRIDE

General principles

Section 16 states:

> An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and **14** does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

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

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. [Order P-244]

Compelling public interest

In considering whether there is a "public interest" in disclosure of a record, the first question to ask is whether there is a relationship between the record and the *Act*'s central purpose of shedding light on the operations of government [Orders P-984, PO-2607]. 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 [Orders P-984 and PO-2556].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347 and P-1439]. However, where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564].

The word "compelling" has been defined in previous orders as "rousing strong interest or attention" [Order P-984].

Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)]. If there is a significant public interest in the non-disclosure of the record then disclosure cannot be considered "compelling" and the override will not apply [Orders PO-2072-F and PO-2098-R].

Representations

The appellant submits that the information at issue is "closely related to the *Act*'s purpose of shedding light on the operation[s] of government and in subjecting the activities of the [Police] to public scrutiny." The appellant adds that in "these economic times, public scrutiny of the salaries paid by public institution[s] is clearly in the public interest." The appellant points to section 14(4)(a) as a "clear indication" by the Legislature that the "disclosure of salary and benefit information about public employees is in the public interest despite the privacy interests of the individuals involved." The appellant further submits that the manner in which the Police distribute their "resources between [their] most highly paid executives and [their] 'average' employees is also of compelling interest to those members of the public wishing to scrutinize the spending habits of public institutions."

The appellant states that the projected incomes of all of the Police's employees (other than the affected parties) will be available through their respective collective agreements. The appellant argues that this "lack of transparency with respect to the highest paid individuals reduces the public's ability to determine if scarce resources are being allocated in a fair manner."

Finally, the appellant notes that at the time of submitting their representations the Police would soon be entering collective bargaining negotiations with another association. The appellant submits that it is in the "public interest that the collective bargaining process be conducted with full and open disclosure by the parties involved." It is the appellant's view that the Police's decision regarding the future salaries of their most highly paid employees in the current economic climate is a "component of the fair exchange of information required to assist the parties in reaching a negotiated agreement."

The Police submit that to the extent any public interest exists in the information sought, it is fully addressed by the disclosure mandated by the *PSSDA*. In the Police's view, this disclosure

"meets the 'public scrutiny' purposes of the *Act* without an unjustified invasion of personal privacy […]"

The Police further submit that the appellant is "not a representative of public interests." The Police state that "[u]nions and associations represent private interests" and therefore their interests do not fall within section 16. The Police point out that the appellant acknowledges in its representations that it is seeking the information at issue in preparation for collective bargaining. In the Police's view there is "no public interest component within collective bargaining as the [appellant] represents its members not the public."

Analysis and findings

In this case, the appellant has acknowledged an interest in acquiring the information at issue to assist in collective bargaining negotiations with the Police. The appellant argues that it is in the public interest that the collective bargaining process be conducted openly and that the disclosure of the information at issue is required in order to ensure that such a process occurs. The Police counter that there is no public interest component in the collective bargaining process, as the appellant represents the interests of its members not those of the public in such negotiations.
In my view, representing the interests of its members in collective bargaining negotiations is, to a large extent, a private interest. That said, where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.

In Order MO-1564 Commissioner Tom Mitchinson concluded that there was a compelling public interest in information relating to the manner in which property assessments, prepared by the Municipal Property Assessment Corporation (MPAC), are calculated in connection with municipal property taxation, despite the fact that the requester had sought information specific to his own property. In making this finding Assistant Commissioner Mitchinson stated:

> … Although the appellant has requested access to records specific to his own property, he has raised issues that have general application to property owners throughout the province. His stated purpose in making his request is to understand how his property was valued, in order to satisfy himself that the assessment for his property was calculated on the basis of variables he can both understand and accept. In this sense, the appellant has raised concerns that are shared by other property owners, and as the appellant points out, they are connected to one of the main points of intersection between the government and members of the public, namely taxation. MPAC performs an important public function, and does so from a monopoly position established by statute. The fact that 1/3 of MPAC's board is comprised of individual property taxpayers is evidence of a public interest in its operation. In my view, there is an inherent public interest in some level of transparency provided by MPAC through the disclosure of information sufficient to satisfy property owners throughout the province that their assessments have been made on the basis of sound and defensible criteria. The question is whether the amount of disclosure provided by MPAC under its current policies is adequate to address this public interest.

…

> I support the appellant's position that there is a compelling public interest in obtaining basic information about the way in which a property is assessed and therefore the way in which the taxation is calculated. This public interest is both inherent to the whole concept of property taxation, and also evident from the number of requesters, including the appellant in this case, who have sought access to information about their properties from MPAC under the *Act*.

I agree with former Assistant Commissioner Mitchinson's analysis and I apply it to the circumstances of this case. While the appellant appears to be motivated by a private interest, the information at issue is also of broader interest to all taxpayers as a means of shedding light on the affairs of government and, in particular, ensuring accountability for the allocation of public funds.

I understand that the Police have argued that to the extent there is a public interest in the disclosure of the information at issue, that interest is satisfied by meeting the reporting requirements of the *PSSDA*. I do not share the Police's view.

As referenced above, the *PSSDA* was enacted to assure public disclosure of the salary and benefits paid to public sector employees who earn a salary of $100,000 or more in a year. The amounts that are reported under the *PSSDA* represent *total* salary and *taxable* benefits earned in a calendar year. However, the *PSSDA* does not address the component parts of a public sector employee's total salary, including any pay for performance or other bonus amounts earned. In addition, the *PSSDA* only reports salary and benefit information for past years; it does not publish information regarding present or future years.

As addressed earlier, the information at issue in the records represents the base salary amounts paid or to be paid to the Deputy Chiefs for the years 2009 through 2012 and for the Chief for the periods December 12, 2008 through December 11, 2009 and December 12, 2009 through December 11, 2010. In all cases the base salary amounts in the records exceed $100,000 and will, at the appropriate time, be eligible for reporting under the *PSSDA*. At this point only the 2009 total salaries have been published pursuant to the *PSSDA*. The salaries for 2010 through 2012 will be published in March of the year following the year in which the salary is paid. Since the affected parties' 2009 salaries have been published pursuant to the *PSSDA*, disclosure of the information at issue in the records for 2009 will, by implication, reveal the component parts of the total salary amount for that year, namely the base salary and pay for performance amounts. Accordingly, the question to be determined is whether there is public interest in the disclosure of the component parts (base salary and, by implication, pay for performance) of the salaries paid in 2009 to the affected parties as well as the base salaries paid in 2010 and to be paid in 2011 and 2012 to the affected parties.

Although the appellant may have a private interest in using the salary information to assist in collective bargaining, I am satisfied that this information (which is not available under the *PSSDA*) is of broader public interest in ensuring openness and transparency regarding the inner

workings of government. In short, I find that there is a public interest in disclosure of the withheld information in the records at issue.

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

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

Purpose of the exemption

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.

Parties' representations

The appellant submits that the public interest in disclosure outweighs the purpose of the personal privacy exemption given the facts of this case. The appellant submits that section 14(1) is aimed at protecting information that is "inherently personal." The appellant submits that if the salary information of top paid employees of a public institution can be characterized as "personal information" then it "lies at the low end of the type of information that the Act was designed to protect." The appellant notes that "similar information is available for virtually all other employees of the [Police] through their collective agreements."

As stated above, it is the Police's view, that the disclosure of salary information under the *PSSDA* meets the public scrutiny purposes of the *Act* without an unjustified invasion of personal privacy. The Police submit that disclosure of the salary information at issue would "clearly be an unjustified invasion of personal privacy."

Analysis and findings

In my view, the compelling public interest in disclosure of the withheld portions of the records at issue clearly outweighs the purpose of the section 14 exemption in this case. 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 *PSSDA* is one important tool for ensuring such openness and transparency. However, in my view, to limit disclosure to only those amounts that are disclosed under the *PSSDA* seems incongruent with the

government's commitment to openness and transparency and, in turn, accountability for the allocation of public resources. In my view, when an individual enters the public service he/she accepts that his/her salary may be exposed to public scrutiny. In this case, the amounts at issue exceed the *PSSDA* $100,000 threshold and the impact on the affected parties' privacy is limited to the amounts provided for pay for performance in 2009, which can be extrapolated from a comparison of the base salary amounts in the records with the salaries published under the *PSSDA* for that year. In my view, the need for complete transparency in this case outweighs the limited privacy interests of the affected parties.

In short, I find that the public interest override in section 16 of the *Act* applies to the withheld portions of the records at issue. Consequently, with the exception of those portions that have been removed from the scope of the appeal, the remaining information that has been withheld by the Police (the specific salary amounts for the Deputy Chiefs for 2009 through 2012 and the specific salary amounts for the Chief for the period December 12, 2008 through December 11, 2009, along with the percentage increase over the previous period, and for the period December 12, 2009 through December 11, 2010) must be disclosed to the appellant.

ORDER:

1. I order the Police to disclose the withheld portions of the records at issue to the appellant by **December 3, 2010** but not before **November 26, 2010**.

2. I have provided the Police with a copy of the records at issue and have highlighted in yellow those portions that must not be disclosed to the appellant. To be clear, the non-highlighted portions of the records must be disclosed to the appellant.

3. In order to verify compliance with this order, I request the Police to provide me with copies of the records that they disclose to the appellant.

October 29, 2010

Bernard Morrow
Adjudicator