Information and Privacy
Commissioner/Ontario
Commissaire à l'information
et à la protection de la vie privée/Ontario

ORDER MO-1845

Appeal MA-040022-1

City of Peterborough

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NATURE OF THE APPEAL:

The City of Peterborough (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the name of the person who made a complaint about unsafe railings on apartment balconies at a specified address.

The City located two e-mails that were responsive to the request and provided partial access to them, severing only the personal information of the complainant pursuant to the mandatory invasion of privacy exemption at section 14(1) of the *Act*. The requester, now the appellant appealed the City's decision.

During mediation of the appeal, the appellant indicated her belief that additional records responsive to the request should exist. The City responded that it had no other records beyond the two e-mails. As further mediation was not possible, the appeal was referred to the adjudication stage of the process.

Initially, the Adjudicator assigned to this appeal sought and received the representations of the City, which were shared, in their entirety with the appellant. The appellant did not respond to the Notice of Inquiry provided to her.

RECORDS:

The records at issue consist of two e-mails.

DISCUSSION:

PERSONAL INFORMATION

The City submits that the undisclosed portions of the records are exempt under the invasion of privacy exemption in section 14(1). In order for this information to qualify under section 14(1), it must meet the definition of "personal information" contained in section 2(1) of the *Act*. 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 where they relate to another individual,
>
> (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
>
> (g) the views or opinions of another individual about the individual, and
>
> (h) the individual's name 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].

The City argues that the undisclosed information in the records qualifies as "personal information" under sections 2(1)(a), (d), (e) and (h) of the definition. In my view, the information relates to the personal opinions or views of the individual whose name appears therein (section 2(1)(e)) and identifies his or her sex (section 2(1)(a)). I further find that the records include this individual's name, along with other personal information about him or her (section 2(1)(h)). One of the records also includes the telephone number of the complainant and this information meets the definition of "personal information" in section 2(1)(d).

I conclude by finding that the records contain the personal information of an identifiable individual under section 2(1) and that the records do not contain the personal information of the requester.

INVASION OF PRIVACY

General principles

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. If the information fits within any of paragraphs (a) to (f) of section 14(1),

it is not exempt from disclosure under section 14. In the circumstances of the present appeal, it appears that the only exception that could apply is paragraph (f).

The factors and presumptions in sections 14(2) and (3) help in determining whether disclosure would or would not be "an unjustified invasion of privacy under section 14(1)(f). If any of paragraphs (a)-(h) of section 14(3) apply, the information is exempt under section 14. [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption [Order PO-1764].

If no section 14(3) presumption applies, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. The list of factors under section 14(2) is not exhaustive. The institution must also consider any other factors that are relevant in the circumstances of the case, even if they are not listed under section 14(2) [Order P-99].

The City submits that the undisclosed information contained in the records was compiled and is identifiable as part of an investigation into a property standards bylaw complaint and a possible contravention of the *Ontario Building Code*, thereby qualifying under the presumption in section 14(3)(b). The City also submits that the information in the records was supplied by the complainant in confidence as contemplated by the consideration in section 14(2)(h) and that the disclosure of the remaining portions of the records will unfairly expose the complainant to pecuniary or other harm under section 14(2)(e).

The appellant did not respond to the Notice of Inquiry.

I find that the information was compiled as part of an investigation into a possible violation of the City's property standards bylaw, thereby falling within the ambit of the presumption in section 14(3)(b). The appellant has not raised the application of any of the exceptions in section 14(4) or the "public interest override" provision in section 16. Because I have found that the undisclosed information meets the requirements of the presumption in section 14(3)(b), I conclude that its disclosure would result in an unjustified invasion of another individual's personal privacy. As a result, the information is exempt from disclosure under section 14(1).

REASONABLENESS OF SEARCH

During the mediation stage of this appeal, the appellant took the position that additional records ought to exist beyond those identified by the City. Specifically, the appellant argued that a written complaint ought to exist, along with whatever documentation was created by the City in following-up on the complaint.

Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17 [Orders P-85, P-221, PO-1954-I]. If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records [Order P-624].

Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.

The City submits that the information in the records was originally received by the Mayor's office, which passed it along to the City's Chief Building Inspector who conducted a search for responsive records and located the two records identified by the City. The Chief Building Inspector, who has now retired, confirmed during the mediation stage of the appeal that the two e-mail messages represent the only records maintained by the City's Building Department that are responsive to the request. Another staff person with that Department also confirmed that no additional records responsive to the request exist.

Based on the representations of the City, I am satisfied that it conducted a reasonable search for records responsive to the request in the circumstances.

ORDER:

I uphold the City's decision.

Original Signed By: October 6, 2004
Donald Hale
Adjudicator