



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-2109**

**Appeal MA-050327-1**

**City of Toronto**



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## NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act*, (the *Act*) for information relating to an application for a licence to operate a boulevard café. Specifically, the requester sought access to the following information:

1. Requesting the number of ballots returned per address during a poll taken [within a specified time period] for a [named food service company].
2. Requesting the number of ballots returned per address during a poll taken [within another specified time period] for a [named food service company].
3. If this request was not tabulated in the form of my request, please send us copies of the ballots in both polls.

With respect to parts 1 and 2 of the request, the City advised that the ballots for the two polls were not tabulated per address. With respect to part 3 of the request, the City issued a decision letter granting partial access to copies of the ballots. The City advised that access was denied to the personal information contained on each of the ballots pursuant to section 14(1) (unjustified invasion of privacy) of the *Act*.

Through his representative, the requester, now the appellant, appealed the City's decision.

During mediation, the City confirmed that it is relying on section 14(1), in conjunction with the factors listed in sections 14(2)(f) and 14(2)(h), to deny access to portions of the ballots.

As further mediation was not possible, the appeal was transferred to adjudication.

I began my inquiry by sending a Notice of Inquiry to the City, initially. The City submitted representations in response.

I then sent a copy of the Notice of Inquiry to the appellant, inviting representations. For the appellant's reference, I enclosed with the Notice of Inquiry a copy of the City's representations. The appellant provided representations in response.

In his representations, the appellant states that his primary interest is in accessing information relating to the first two portions of his request, which relate to the number of ballots returned per address. This stems from his interest in determining whether all those who cast ballots were entitled to do so, based on their addresses. The appellant also specifically states that he is not interested in the identity of the individuals who voted, nor how they voted, but whether only those permitted to vote under section 90-1 of the *Municipal Code* voted.

Accordingly, based on the appellant's representations, and on the fact that the addresses of those who voted are contained on the portions of the ballots which the City claims are exempt from disclosure, the only portion of the ballots that remains at issue is the addresses of those who voted.

## **RECORDS:**

The records at issue in this appeal are 165 ballots submitted in response to an application for boulevard café privileges at a named restaurant. The ballots are numbered sequentially from 3 to 50 and 52 to 168. Records 1, 2, and 51 have been disclosed in their entirety to the appellant as they do not contain personal information and are therefore not at issue.

As noted above, what remains at issue in this appeal is whether the exemption applies to the addresses of the individuals who voted, as recorded on the ballots. The way in which the individual voted, the city, postal code and date of the ballot have been disclosed.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to determine whether section 14(1) of the *Act* may apply, it is necessary to decide whether the records contain “personal information” and, if so, to whom it relates. That term is defined in section 2(1), as 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 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;

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 meaning of "about" the individual***

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].

### ***The meaning of "identifiable"***

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 City takes the position that the information at issue meets the requirements of the section 2(1) definition of "personal information". The City submits that the information contained in the records includes the addresses of individuals, which clearly falls within paragraph (d) of the statutory definition.

The appellant does not make specific representations on whether the information at issue qualifies as "personal information" within the definition of that term and, in fact, submits that he does not wish to have access to information that would qualify as "personal information". The appellant submits that the issues that he would like to have resolved are:

The number of ballots returned per address during a poll taken [within a specified time period]; and

The number of ballots returned per address during a poll taken [within another specified time period].

He submits that the City could provide him with the answers to the two above-noted points without disclosing any personal information within the meaning of the definition of section 2(1) of the *Act*.

### **Analysis and findings**

As noted above, in its decision letter, the City advised the appellant that because the ballots were not tabulated per address, no separate record detailing the number of ballots returned per address could be provided to him. The records at issue, which contain the addresses of those who submitted ballots, contain the information the appellant is seeking.

It is well established that an individual's address qualifies as "personal information" under paragraph (d) of the definition of "personal information", as long as the individual residing at the address is identifiable. However, if an address is not referable to an identifiable individual it does not constitute personal information for the purposes of the *Act* [Order PO-2347].

In my view, the addresses of the individuals who submitted ballots, which include specific house and/or unit numbers, are referable to the individuals who reside at those addresses. Accordingly, I find that it is reasonable to expect that the disclosure of the addresses, even without any other information such as the names of those who voted or how they voted, could result in the identification of the individuals who cast ballots.

As a result, I find that the information at issue contains the "personal information" of individuals other than the appellant, as that term is defined in section 2(1) of the *Act*.

### **PERSONAL PRIVACY**

Once it has been determined that a record contains personal information, section 14(1) of the *Act* prohibits the disclosure of this information except in certain circumstances. Specifically, section 14 provides that 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, section 14(1)(f) is relevant. Section 14(1)(f) reads:

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.

In order to establish that section 14(1)(f) applies, it must be shown that disclosure of the personal information would *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 privacy under section 14(1)(f). Section 14(2) sets out various factors for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

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 City has not claimed the application of any of the presumptions contained in section 14(3) of the *Act*, and, based on my review of the records, I agree that they are not applicable in the circumstances of this appeal. I also do not find that any of the considerations listed in section 14(4) are relevant.

### **Factors in section 14(2)**

The City submits that in the circumstances of this appeal, sections 14(2)(f) and 14(2)(h) of the *Act* apply to this information. The appellant's representations suggest the possible application of the factors favouring disclosure in sections 14(2)(a) and (d). These sections 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;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence.

### **Analysis and finding**

In my consideration of the possible relevance of the identified factors in section 14(2), I will begin by addressing the factors favouring disclosure, specifically, sections 14(2)(a) and (d). I will then address the factors favouring the protection of privacy, specifically sections 14(2)(f) and (h).

***Section 14(2)(a): public scrutiny***

The appellant submits that he is only trying to ensure that those who voted were entitled to vote. His representations suggest the possible application of the factor at section 14(2)(a), as he states that obtaining this information would allow him to determine whether the polling procedures were conducted in accordance with the *Municipal Code*. He references Chapter 90 of the *Municipal Code* which deals with polling and notification procedures.

In order for section 14(2)(a) to be a relevant consideration, I must be satisfied that the activities of the City have been called into question, and that disclosure of the personal information found in the severed portions is desirable for the purpose of subjecting the activities of the City to public scrutiny [see for example Orders P-828, M-1074 and PO-1978].

I accept that if the addresses were disclosed to the appellant they would enable him to confirm the number of ballots returned per address for each of the polls. I also accept that although disclosure of this information on its own would not serve to confirm whether the individuals who voted were entitled to vote, it would enable the appellant to cross-reference the addresses listed on the ballots against the number of individuals listed for each address on the assessment rolls which were current on the dates of the polls. Disclosure of the information at issue would, therefore, enable the appellant to subject the activities of the City, namely, its polling procedures, to public scrutiny and ascertain whether the polls were conducted in accordance with the established requirements.

Although the appellant himself has questioned the propriety of the City's polling procedures with respect to these polls, he has not provided any evidence to show that these polls have been *publicly* called into question. Additionally, the City has not had an opportunity to respond to this specific issue. In these circumstances, I am not willing to give the factor listed at section 14(2)(a) significant weight. However, given that I accept that there is a general public concern in ensuring the fairness of polling procedures, I accept that the factor listed at section 14(2)(a) is a relevant consideration in the circumstances of this appeal.

***Section 14(2)(d): fair determination of rights***

The appellant's representations seem to suggest that the factor at section 14(2)(d) might apply.

Former Assistant Commissioner Tom Mitchinson stated the test for the application of section 21(2)(d) (the equivalent provision of section 14(2)(d) in the provincial *Act*) in Order P-312 [upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.)]:

In my view, in order for section 21(2)(d) to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

The appellant states that the purpose of the request for information is to ascertain that the polling was conducted fairly and properly and that only those entitled to vote under the *Municipal Code* did so. However, the appellant has failed to establish that the requested personal information is required in order to prepare for a proceeding, nor that any such proceeding exists or is contemplated. Merely identifying that he requires access to the personal information for his own purposes is not sufficient to engage the factor in section 14(2)(d). As a result, I find that section 14(2)(d) does not apply in the circumstances of this appeal.

***Section 14(2)(f): highly sensitive***

With respect to whether the personal information is highly sensitive for the purpose of section 14(2)(f), the City submits:

Where individuals involved are “neighbours”, an individual may well not wish that the information as to how he/she “voted” on the particular issue of the application be disclosed to “the world”. This information could thus be considered to be highly sensitive and its disclosure could reasonably be expected to cause excessive personal distress to the individuals involved, particularly as they believed this information to have been provided to the City in confidence.

While the City is not suggesting that the appellant might use the personal information to contact those who were not in favour of the application, this is nevertheless a possibility. The appellant may well want to in the future reapply for boulevard café privileges and could use the personal information to persuade those who were against his previous application.

Responding to the City’s arguments on the application of the factors listed in sections 14(2)(f) the appellant submits:

The City’s submissions relative to section 14(2)(f), again, are fundamentally flawed because the answer to the questions posed in no way would disclose “how he/she ‘voted’ on the particular issue ...” and therefore could not possibly be



*sensitive*. What would be disclosed ... is whether there were any ... violations of the polling procedures and whether only those permitted to vote under the *Municipal Code* in fact voted.

In Order P-434, former Assistant Commissioner Tom Mitchinson found that for personal information to be regarded as highly sensitive within the meaning of the factor listed at section 14(2)(f), it must be established that its release would cause excessive personal distress to the individuals affected [Orders M-1952 and PO-1736]. It is not sufficient that release might cause some level of embarrassment to those affected [Order P-1117].

I have reviewed the personal information at issue and have considered its context. I am unable to find that the personal information in the context of this appeal can be considered “highly sensitive”. The information remaining at issue relates to whether the individuals at an address voted. While I acknowledge that the individuals to whom the information relates may not wish their neighbours and the appellant to know whether they voted on the particular issue, I am not satisfied that disclosure of the addresses could reasonably be expected to cause *excessive* personal distress to the individuals to whom they relate. I therefore find that section 14(2)(f) does not apply in the circumstances of this appeal.

***Section 14(2)(h): supplied in confidence***

With respect to the application of the factor listed at section 14(2)(h) concerning whether the personal information has been supplied in confidence, the City submits:

Section 90-4 “Confidentiality” of the City’s Municipal Code, Polling and Notification Procedures states:

The secrecy of the ballot shall be maintained and all polling lists and returned ballots shall be treated in confidence and are subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

All ballots contain the following notice to property owners and tenants:

The returned ballots will be treated in confidence and are subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

The City references Order M-340, issued by Adjudicator Donald Hale, in which he addressed a very similar request for ballots submitted in a vote on an application for a licence for boulevard café privileges. In that order Adjudicator Hale found that the disclosure of the information contained in ballots would constitute an unjustified invasion of personal privacy. In addition, Adjudicator Hale suggested that a notice provision could be added to the ballots to alert voters that the information contained in the ballots is subject to both the privacy protection and access to information provisions of the *Act*.

Accordingly, the City submits that the factor at 14(2)(h) weighing against disclosure is relevant because the personal information contained in the records was provided in confidence by the individuals who voted on the application. The City points to the ballots themselves which contain a statement that the completed ballots would be treated in confidence and are subject to both the access and privacy provisions of the *Act*, as well as a provision in the *Municipal Code* which also states that “returned ballots shall be treated in confidence”.

Having considered the City’s representations, the records themselves and the context in which the information was submitted to the City, I am persuaded that the individuals who provided their personal information for the purpose of the vote, including information as to whether or not they voted, did so with an expectation that it would be kept confidential. Accordingly, I find that section 14(2)(h) is a relevant consideration favouring the privacy protection of the addresses supplied by individuals on the returned ballots.

***Conclusion***

Based on my review of the records at issue, the representations of the parties, and having considered all of the circumstances in this appeal, I have found that the factors at sections 14(2)(d) and (f) do not apply, while the factor at sections 14(2)(a) (weighing in favour of disclosure) carries some weight and the factor at 14(2)(h) (weighing in favour of privacy protection) carries significant weight in the determination of whether disclosure of the information at issue would give rise to an unjustified invasion of privacy. Although I accept that disclosure of the information at issue would permit the appellant to subject the City to public scrutiny, in light of the context in which addresses were submitted, a confidential balloting process, on balance I find that disclosure would constitute an unjustified invasion of the personal privacy of the individuals to whom the addresses relate. It is clear from the *Municipal Code* that the ballots submitted are intended to remain confidential. Confidential ballots allow for full and frank participation in democratic voting processes such as the one in this case. In my view, to disclose personal information submitted in this context would undermine the confidentiality upon which such votes are based and, thereby, constitute an unjustified invasion of the personal privacy of the individuals who submitted the ballots. Accordingly, I find that the mandatory exemption at section 14(1) of the *Act* applies to this personal information and it should not be disclosed.

**ORDER:**

I uphold the City’s decision.

Original Signed by: \_\_\_\_\_  
Catherine Corban  
Adjudicator

\_\_\_\_\_ October 25, 2006