



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-2334**

**Appeal MA07-35**

**City of Toronto**



Tribunal Services Department  
2 Bloor Street East  
Suite 1400  
Toronto, Ontario  
Canada M4W 1A8

Services de tribunal administratif  
2, rue Bloor Est  
Bureau 1400  
Toronto (Ontario)  
Canada M4W 1A8

Tel: 416-326-3333  
1-800-387-0073  
Fax/Téloc: 416-325-9188  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## 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 access to records related to the construction of a new building adjacent to the requester's property. The request stated, in part:

The information requested includes the following documents:

- Site grading plans
- Drainage plans
- Building Permit
- Plumbing reports
- Building inspector notes
- Correspondence relating to any of the above

The City issued a decision granting partial access to the records identified as responsive to the request. The City explained that it was denying access to the building plans in their entirety under section 8(1)(i) (security of a building) of the *Act* since the requester had not obtained the property owner's consent to the release of the plans. The City further advised that it was relying on section 14(1) (personal privacy) to sever the personal information of other individuals.

The City's decision was appealed to this office.

A mediator was appointed to try to resolve the issues between the parties. As a result of discussion with the mediator, and in an effort to resolve the appeal, the City agreed to review the records to determine if any additional records could be released. In a revised decision letter, the City granted full access to one newly identified record and to the grading plan for the property, but advised that a "Final Grading Certificate" for the property did not yet exist as the property file remained open.

Upon receipt of the additional records, the appellant maintained that more records should exist in the form of the building inspector's file notes and correspondence. In response to the appellant's comments, the City contacted the Buildings Division once again. Additional building inspector's notes were located and full access was granted to these records in a third decision letter sent to the appellant.

During mediation, the appellant agreed to remove records that consisted of drawings of the interior of the building from the scope of the appeal since her primary interest was in site grading and the exterior of the new building. The removal of these particular records from the scope of the appeal made it unnecessary to proceed with consideration of the possible application of section 8 of the *Act*.

However, the appellant remained unsatisfied with the City's search for records and the City's denial of access to portions of records under section 14(1) of the *Act*.

When no further mediation of the issues proved possible, this appeal was transferred to the adjudication stage of the process where it was assigned to me to conduct an inquiry.

Initially, I sent a Notice of Inquiry outlining the facts and issue to the City and to the individual whose personal information the records were said to contain (the affected party). I invited the City and the affected party to submit representations, and I received submissions from both of them. Included with the City's representations was a one page record, the Final Grading Certificate for the subject property, which had recently become available and was identified as responsive to the request.

The City subsequently issued a new decision letter with respect to the grading certificate, granting partial access to it, but withholding information based on the personal privacy exemption in section 14(1) of the *Act*. The appellant advised this office that she wished to include this new record with the others already at issue.

Next, I sent a modified Notice of Inquiry to the appellant, seeking her representations on the issues, which I received.

## **RECORDS:**

Portions of approximately 30 pages of records from the City of Toronto's Building Division, North District, remain at issue.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

For the purpose of deciding whether or not the disclosure of the records would constitute an unjustified invasion of personal privacy under section 14(1) of the *Act*, it is necessary to decide first whether the record contains "personal information" and, if so, to whom it relates. The definition of personal information is found in section 2(1) of the *Act* and reads, in its entirety, 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 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. 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]. 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 bases its submissions on there being personal information in the records that satisfies the definition in paragraph (d) of section 2(1) of the *Act*. The City submits:

The information at issue is the home address and telephone/cell/fax numbers of the named owner of the property adjacent to the appellant's.

The appellant's representations do not specifically address the issue of whether the withheld information is "personal information" for the purposes of the definition in section 2(1) of the *Act*.

## **Analysis and Findings**

I have reviewed the records to determine whether they contain personal information and, if so, to whom the information relates. Having done so, I agree with the City's characterization of the information. I also note that one of the severances relates to the construction value of the home. I find that the records contain the personal information of the affected party within the meaning ascribed to that term by paragraphs (b) and (d) of the definition in section 2(1) of the *Act*.

## **PERSONAL PRIVACY**

The City takes the position that the undisclosed portions of the records are exempt under the mandatory exemption in section 14(1).

Where a requester seeks the 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, it appears that the only exception that could apply is paragraph (f).

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 (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].

## **Representations**

The City relies on section 14(3)(b) of the *Act* and maintains that disclosure of the withheld information in the records would be an unjustified invasion of personal privacy because it was compiled and is identifiable as part of an investigation into a possible violation of law. The City refers to Orders M-382, MO-1496 and MO-1845 in support of the assertion that section 14(3)(b) applies to investigations into alleged violations of municipal laws, including Building Code standards and zoning by-laws. More specifically, the City states that this matter involves records created in relation to "an alleged contravention of section 8(13) of the Building Code (construction not in accordance with the permit issued)," which in turn triggers the presumption against disclosure at section 14(3)(b) of the *Act*.

At my suggestion, the City also provided representations on the possible relevance of the factor in section 14(2)(d) (fair determination of rights). The City argues that it does not apply in the circumstances of this appeal and that, in any event, a section 14(2) factor cannot be relied upon to rebut the presumption in section 14(3)(b). In view of my findings below, it is not necessary to canvas these representations further.

The affected party also provided representations for my consideration in this appeal, strongly objecting to the disclosure of his personal information to the appellant. The affected party submits that he provided this information to the City for specific purposes related to his property, and not for review and use by other members of the public. The affected party states:

Any concerns that my neighbour may have can be resolved with the City of Toronto Building and Inspections department.

The affected party also provided various attachments to his representations relating to the City's building and permits process; however, these records are not relevant for the purposes of my inquiry under the *Act*.

The appellant's representations do not directly address the application of the personal privacy exemption, except to pose the following question:

Of what possible ... privacy concern is information dealing with the exterior of the property?

### **Analysis and Findings**

Section 14(3)(b) of the *Act* states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

Based on my review of the records and the surrounding circumstances, I am satisfied that the City obtained or gathered the personal information of the affected party in the course of investigating a possible violation of law, namely the Building Code. I agree with the City's submission that previous orders of this office have established that personal information relating to investigations of alleged violations of municipal by-laws falls within the scope of the presumption against disclosure in section 14(3)(b) of the *Act* (see also Orders M-382, M-181, and MO-1598). Therefore, I find that the personal information of the affected party which has been withheld by the City falls within the scope of section 14(3)(b), and thus qualifies for exemption.

As previously stated, the presumption against disclosure in section 14(3)(b) cannot be overcome by any factors, listed or unlisted, under section 14(2). In addition, I find that neither the exceptions in section 14(4) nor the public interest override in section 16 apply in the circumstances of this appeal. As a result, I uphold the City's denial of access to the withheld information under section 14(1) of the *Act*.

## **REASONABLE SEARCH**

The appellant claims that the City has not conducted an adequate search for records responsive to her request.

### **General Principles**

In appeals, such as this one, that involve a claim that additional responsive records exist, the issue to be decided is whether the City has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the City's search will be upheld. If I am not satisfied, further searches may be ordered.

The *Act* does not require the City to prove with absolute certainty that further records do not exist. However, the City must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records. A reasonable search is one in which an experienced employee expends a reasonable effort to locate records which are reasonably related to the request [Orders M-282, P-458, M-909, PO-1744 and PO-1920]. Furthermore, 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.

### **Representations**

The City submits that it is not required to prove with absolute certainty that additional records do not exist, but only to provide sufficient evidence to support the reasonableness of its searches. The City notes that although it did not directly seek clarification from the appellant regarding the request, it did conduct two additional searches during the mediation stage of this appeal in response to the appellant's position that more records should exist.

The City provided the following description of the searches conducted to identify records responsive to the appellant's request:

- On December 13, 2006, the Corporate Access and Privacy [CAP] Office sent an email to the Manager, Customer Services, Toronto Building, North District Office, initiating a search for the responsive records;
- On or about December 18, 2006, the Document Management Clerk, Toronto Building, North District Office conducted a search using the Central Property Register, a mainframe application through which all building records are documented from 1970 to the present;

- On December 19, 2006, the Document Management Clerk emailed the Access and Privacy Officer indicating that all the “file documents, drain plan and the only site grading plan (proposed site grading plan)” were being sent to the CAP office by inter office mail;
- On March 27, 2007, following the appeal to the IPC, the Access and Privacy Officer followed up with staff in Toronto Building, North District Office, asking if a final grading certificate existed;
- On or about March 27, 2007, the Manager of Customer Service reviewed the files and advised the Access and Privacy Officer that there was no grading certificate as the file was not yet closed. However, he noted that on the back of the grading plan that had been provided to CAP were some notes that had not been previously forwarded. He scanned these notes and sent them electronically to CAP;
- On April 23, 2007, the Access and Privacy Officer emailed the Manager of Customer Service with a cc: to the Building Inspector asking if there were any additional inspector’s notes;
- On or about April 23, 2007, the Inspector located his notes and these were forwarded to the Access and Privacy Officer on April 26, 2007;
- On October 26, 2007, the Manager of Public Access, CAP, contacted Toronto Building, North District, to ask that if they could confirm the searches they had conducted for all responsive records. The Document Management Clerk confirmed the searches to locate responsive records and indicated that to the best of staff’s knowledge, all records had been forwarded to CAP;
- On November 2, 2007, the Manager of Public Access, CAP Office, contacted the Document Management Clerk to ascertain if the work on the property had been completed and if so, whether a final grading certificate was available;
- On November 7, 2007, the Document Management Clerk confirmed that the final grading certificate had been filed. The work was now completed; the ... date of completion was November 5, 2007. The Manager of Public Access, CAP, requested and received a duplicate of the final grading certificate [Record 178] ...

To address the issue of retention and possible destruction of responsive records, the City submits that “under the retention schedule by-law for building permit records ... documents will be retained for 7 years after [the] file is closed.” The City states that since the appellant’s request



specifically references the two-year period preceding the request, no records relating to this matter would have been destroyed.

The appellant refers to records already disclosed to her and submits that more extensive building inspector's notes must exist. The appellant states:

Please release the photographs and notes of the Building Inspectors and others in the City of Toronto Building Department in October [2006] when I was phoning the Building Inspector about the pooling of water. The notes that were released were only a few lines in each date and frequently did not mention my phone calls or make reference to water. ...

I have not yet received a Lot Site Grading Plan that shows the elevation of the driveway and the grading plans and reports of supervision of grading and protection of neighbouring property from water run-off during construction. Do such documents exist? I have been sent multiple copies of a document with a similar name that does not have plans for the driveway or grading.

### **Analysis and Findings**

As previously stated, in appeals involving a claim that additional records exist, the issue to be decided is whether an institution has conducted a reasonable search for responsive records as required by section 17 of the *Act*. Furthermore, although requesters are rarely in a position to indicate precisely which records an institution has not identified, a reasonable basis for concluding that additional records might exist must still be provided.

Having considered the representations of the City and the appellant, as well as the general circumstances of this appeal, I am satisfied that the City has provided sufficient evidence to show that it made a reasonable effort to identify and locate records responsive to the request.

The request submitted by the appellant was fairly detailed. It appears to have been composed so as to identify information that would assist her in better understanding certain actions taken by the City in relation to issues of concern to her about the construction on the neighbouring property.

The appellant expressed concern in her representations that she has not received the site grading plan that shows elevations and gradients for the driveway and asks if such documents exist. Based on my own review of Record 130 and the engineer's certification on the back (Record 130A), I am satisfied that these records are in fact the site grading plan she had been seeking through this request.

In addition, the appellant's representations on the adequacy of the City's search for responsive records, particularly documentation of her calls to the City about water-pooling, appear to be based on an assumption that more information must have been recorded and kept by the City.

In the context of the very specific direction the appellant provided in her request and in her subsequent contacts with this office, I am satisfied that the City has conducted searches with clear knowledge of the nature of the records said to exist. And ultimately, the issue comes down to whether or not I am satisfied that the City made a *reasonable* effort to identify and locate any existing records that might be responsive to the various points outlined in the appellant's request. To reach my decision, I have considered whether the City engaged an experienced employee to expend a reasonable effort to locate the specific records. Based on the information provided by the City, I am satisfied that the City did so.

I understand that the appellant may be frustrated to discover that information which a member of the public might assume is routinely recorded and filed by the City simply may not exist, or at least not in the more detailed format expected. In a review of the adequacy of the City's search, however, my authority does not extend to a review of its record-keeping practices.

Accordingly, based on the information provided by the City and the appellant, and having considered the circumstances of this appeal, I am satisfied that the City's search for records responsive to the request was reasonable in the circumstances.

**ORDER:**

1. I uphold the City's decision to deny access to the withheld portions of the records on the basis that section 14(1) of the *Act* applies to that information.
2. I uphold the City's search for responsive records and dismiss that aspect of the appeal.

Original Signed by: \_\_\_\_\_  
Daphne Loukidelis  
Adjudicator

\_\_\_\_\_ August 11, 2008