



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-2384

Appeal MA07-403

The Corporation of the County of Prince Edward



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NATURE OF THE APPEAL:

The Corporation of the County of Prince Edward (the County) received a two-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for information relating to the identity of the unnamed complainant contained in the disclosure provided to the requester during the prosecution of a zoning by-law infraction matter. The requester also sought access to the witness list related to the prosecution matter.

The County located the responsive records and granted the requester access to the witness list but withheld information relating to the complainant (the affected person). The County's decision letter states that disclosure of the withheld information would constitute an unjustified invasion of personal privacy under the mandatory exemption at section 14(1) of the *Act*.

The requester (now the appellant) appealed the County's decision to this office. During the mediation process of this appeal, the appellant advised that the withheld information is relevant to a fair determination of his rights. As a result, the possible application of the factor favouring disclosure at section 14(2)(d) of the *Act* was added as an issue to this appeal.

The County and the appellant did not resolve the issues in dispute during mediation and this appeal was transferred to the adjudication stage of the appeals process. I commenced my inquiry by sending a Notice of Inquiry to the County and the affected person. The Notice of Inquiry set out the issues and facts of the appeal. The County and the affected person provided representations in response to the Notice of Inquiry.

The County's representations also indicated that it also relied on the law enforcement exemption at section 8(1)(d) of the *Act* to deny the appellant access to the withheld information. The confirmation of appeal this office sent to the County indicated that they have a specified time to raise any new discretionary exemptions. The County failed to raise the possible application of section 8(1)(d) within the specified time period. Therefore the late raising of this discretionary exemption is also at issue.

A Notice of Inquiry was sent to the appellant along with a copy of the County's representations. Due to confidentiality concerns, the representations of the affected person were not provided to the appellant. The Notice of Inquiry sent to the appellant sought his representations on whether the information at issue was exempt under section 14(1) and 8(1)(d). The appellant was also invited to provide representations as to whether the County should be allowed to raise a new discretionary exemption. In response, the appellant provided representations to this office. However, the appellant's representations did not specifically address all of the issues set out in the Notice of Inquiry.

RECORDS:

The information at issue in this appeal is the affected person's name and telephone number along with the geographic location attended by the affected person during a specified period of time. This information is contained in the severed portions of a two-page chronology of a complaint provided to the appellant.

DISCUSSION:

PERSONAL INFORMATION

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

“personal information” means recorded information about an identifiable individual, including,

- (d) the address, telephone number, fingerprints or blood type of the individual,
- (h) the individual’s name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

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].

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.)].

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 County submits that the withheld information contains the name and telephone number of the affected person. The County also submits that the record also refers to the geographic location attended by the affected person during a specified period of time. The County argues that though the location referred to in the record is not a specific address, this information qualifies as “personal information” for the purposes of section 2(1).

The appellant’s representations do not dispute that the withheld information relates to the affected person.

I have carefully reviewed the withheld portions of the record and find that it constitutes the “personal information” of the affected person. In particular, I am satisfied that the record contains this individual’s telephone number (paragraph (d) of the definition) along with their name and other information, such as the location referred to in the record, that could identify him or her (paragraph (h) of the definition).

As I have found that the withheld information at issue qualifies as “personal information”, I will now go on to determine whether the affected person’s information is exempt under section 14(1) of the *Act*.

INVASION OF PRIVACY

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, it appears that the only exception that could apply is paragraph (f). 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.

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]. The County and the affected person claim that the presumption at section 14(3)(b) applies to the circumstances of this appeal. Section 14(3)(b) reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if 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

Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law [Order P-242].

The County submits that the withheld personal information was compiled and is identifiable as part of an investigation into a by-law enforcement matter. As previously noted, the appellant's representations did not specifically address all of the issues set out in the Notice of Inquiry. In particular, the appellant did not provide representations as to whether the presumption at section 14(3)(b) applies to the circumstances of this appeal. Rather, the appellant's representations question the fairness of the County's position. The appellant takes the position that the County should not protect the identity of individuals who file complaints.

I find that the record at issue was compiled as a result of the County's investigation into a by-law matter. Previous orders from this office have established that personal information relating to an investigation of an alleged violation of a municipal by-law falls within the scope of the presumption under section 14(3)(b) [Orders M-181, M-382, MO-2371-I].

Based on the representations of the County and my review of the record, I am satisfied that the record was compiled and is identifiable as part of the County's investigation into a possible violation of law. Accordingly, I find that the presumption at section 14(3)(b) applies to the withheld personal information at issue.

Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2) [*John Doe*, cited above]. Accordingly, it is not necessary for me to consider the appellant's argument that the factor favouring disclosure at section 14(2)(d) applies to the circumstances of this appeal.

As previously noted, 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* cited above]. The appellant did not claim that any of the exclusions at section 14(4) apply and I am satisfied that none apply. The appellant also did not claim that the public interest override at section 16 applies in the circumstances of this appeal. In fact, the majority of the appellant's representations focus on his private legal rights.

Having regard to the above, I am satisfied that section 14(4) or the "public interest override" at section 16 do not apply to the circumstances of this appeal. Accordingly, the presumption at section 14(3)(b) applies to the personal information at issue. Therefore, disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy under section 14(1).

As a result of my finding, it is not necessary for me to determine whether the County should be allowed to raise the discretionary exemption at section 8(1)(d) and if so, whether the withheld information is exempt under section 8(1)(d).

ORDER:

I uphold the County's decision.

Original Signed By: _____

Jennifer James
Adjudicator

January 22, 2009 _____