



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

ORDER MO-2567

Appeal MA08-410

Toronto Parking Authority



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/Télé: 416-325-9188
TTY: 416-325-7538
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

BACKGROUND:

The Toronto Parking Authority (the Authority) is a public corporation owned by the City of Toronto (the City). The Authority is responsible for overseeing 50,000 paid parking spaces throughout the City. The publicly elected officials who govern the City of Toronto are councillors and each represents a geographical constituency in the City. These councillors, as well as former retired councillors, are provided with a complimentary parking pass which allows them to access any of the Authority's parking spaces in the City. These passes can be used for both City business and for personal use of the parking spaces. The councillors are not required to reimburse the Authority or the City for the use of these passes.

Under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) the Authority received the following request:

Dates, time & locations where each City Councillor utilized their parking pass for 2006 & 2007.

The Authority issued a decision in which it provided a fee estimate in the amount of \$31.00 representing photocopying of 155 pages at \$.20 per page. However it noted that access to the records would be denied under section 14 of the *Act*, and pointed out that:

...the records in question relate to the use of parking passes by the affected individuals. Parking passes under TPA policy may be used for both personal and business reasons. The Toronto Parking Authority records make no distinction between these uses nor is it possible to distinguish on the face of the record in order to delete personal use entries.

The requester, now the appellant, appealed this decision.

During the course of mediating this appeal, the Authority confirmed that the parking pass is provided with the understanding that it can be used for both corporate and personal business. In addition, and for the small group of retirees who are allowed to continue to use the parking pass, their use would be completely personal. The Authority also explained that the different formats in the 2006 and 2007 tables are the result of the use of a different software system. It has also provided a pay station location code summary with addresses, as the 2006 record contains only the pay station location codes with no reference to addresses.

The Authority also advised that section 13 is being applied to the records at issue and that this section was inadvertently omitted from the decision letter provided to the appellant, who did not object to the inclusion of this exemption in the appeal, though he disputes its application to the records.

Also during the mediation stage of the inquiry process, the appellant asked that the dollar values and information relating to retirees be included in the records identified by the Authority as responsive to the request. The appellant has also asked that the current Mayor's parking pass information be included, as well as that of his driver.

Shortly after this appeal was transferred to the adjudication stage of the appeal process, the representative for the Authority forwarded the current Mayor's parking pass information to this office. The representative then also sent an amended version of the 2006 overall print out to this office.

Initially, I sent a Notice of Inquiry, outlining the facts and issues in this appeal and inviting representations, to the Authority as well as to each of the Councillors whose name appears in either of the records, and the Mayor. I also forwarded Notices of Inquiry to the City for distribution to each of the retired Councillors. The City sent back the Notices for the retired Councillors with a letter attached saying that it was unable to redirect the Notices.

I received representations from the Authority, and a number of the Councillors. I sent a modified Notice of Inquiry to the appellant, inviting his representations. In the Notice, I enclosed the representations of the Authority and provided a summary of the key concerns of those Councillors who resisted disclosure. The appellant responded with representations.

I determined that the appellant's representations raised issues to which the Authority should be given the opportunity to reply. I therefore provided the appellant's representations to the Authority and invited it to provide representations in reply, which the Authority subsequently did.

RECORDS:

The records at issue consist of the 2006 and 2007 Toronto City Councillor parking pass master inventory database spreadsheets printouts. The printouts have several fields including: name of card holder, pay station location codes, date and amounts. The Mayor is included on the 2007 spreadsheet and in a separate spreadsheet, his driver for 2006.

DISCUSSION:

PERSONAL INFORMATION

In order to determine which sections 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 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 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].

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].

Section 2(2.1) modifies the definition of the term “personal information” by excluding an individual’s name, title, contact information or designation which identifies that individual in a “business, professional or official capacity.” Section 2(2.2) further clarifies that contact information about an individual who carries out business, professional or official responsibilities from their dwelling does not qualify as “personal information” for the purposes of the definition in section 2(1).

In its representations, the Authority states that the records at issue contain the parking pass holder’s personal information since the records include the names of each card holder, as well as the time, date and location where the card holders parked and the dollar value of the time spent. The Authority argues that this qualifies as the Councillors’ personal information under paragraph (b) of the definition of personal information in section 2(1).

I have examined the records carefully and I agree that the names of the parking pass holders are clearly listed. However, in my view, it is critical to consider that it is the circumstances of the position they hold that entitles the members of council to parking passes. These parking passes are given to these individuals based solely on their standing as current or past members of council for the City of Toronto. Once elected, each councillor is listed on the City website, given a budget to keep their constituents informed on issues and often identified in the media. Similarly, they become entitled to parking passes. Without being members of council, they would not be entitled to the benefit of the passes. I am therefore of the view that the record at issue identifies publicly elected figures whose identities are well known in the community and sets out the details of a benefit conferred on them as a result of their position.

This office has held in previous orders that information associated with an individual in a professional, official or business capacity will not be considered to be “about” the individual. As mentioned above, the parking passes are eligible to be used for both business and personal use by the pass holder. The Authority comments on the dual usage of the parking pass as follows:

The TPA must assume given the dual purpose of the cards (for personal and business use) that there are a number of transactions on each record which represent personal use by the affected individual. The TPA submits that disclosing the records in issue provides information which goes beyond that related to the councillors’ official capacities and which falls within the purview of the affected individuals’ Personal Information. Namely, information regarding how and when the parking passes are used is personal information.

Although I recognize the possible dual usage of the parking pass, I am satisfied that the records at issue are not “about” the affected parties as individuals, but rather relate to their elected position. I note that there is no distinction on the face of the records between uses of the parking passes while members are on council business and uses on their own personal time. In other words, uses of the pass for professional or official purposes and uses that might be considered personal are indistinguishable. Further, neither the Authority nor any of the affected parties have analyzed the records and provided me with such a breakdown.

It is also noteworthy that the Authority's position is not consistent with the current manner in which members of council report their expenses. The appellant's representations provide an explanation on how all expenses are reported:

The Councillors and the mayor are already required to submit records and/or receipts for all other financial transactions they charge to the City through their office budgets, whether for business or non-business use, which are available for public scrutiny on the City website.

The Councillor Expense Policy of the Toronto City Council is listed on the City of Toronto website. It provides for routine disclosure of Councillor expense records. The City Clerk's office publishes the office budgets and expenses of the Mayor and Councillors, including year-to-date expenditure details, on the city's website within 30 days of the end of the quarter or year-end closing date. Looking closely at the councillor's expense reporting on the City's website, one of the specifically listed categories of expenses is "Transportation, Kilometrage & Parking". An overall total is listed and then a link allows for the viewing of each invoice or receipt.

The Councillor Expense Policy is the document which governs council expenses and determines what an eligible expense is for councillors and how the process to reimburse those expenses functions. Under the section titled "Transportation, Kilometrage & Parking", an expense eligible for reimbursement is "on street/public parking lot fees". In fact, viewing some of the receipts online, a number of parking receipts Authority lots appear on individual councillors' expense webpages. I cannot agree that the use of the complimentary parking pass was meant to be an exception to this policy or entitles the pass-holders to some higher level of privacy protection. Although a formal 'out of pocket' expense form is not completed nor is a receipt furnished, the Policy appears to cover these kinds of expenses when they are made by members of Council, without the use of the parking pass.

I have examined the expenses of councillors online on the City's website and observed expenses that are similar to the parking pass. The Toronto Transit Commission sells Metropasses each month which are multi-use and transferable with unlimited use throughout the month they are issued. Several councillors have a Metropass for themselves or their staff listed as an expense in their monthly claim. I can only conclude that these passes are used for both business and personal use and in many instances, the two uses are indistinguishable as is clearly the case with the parking passes.

In her representations, one of the affected parties states that the use of the parking pass has no cost to the City and therefore should not count as an expense. I do not agree with this position. The use of a parking spot prevents another paying customer from using it and the lost revenue represents a cost to the Authority, and, in turn, the City. In addition, in the absence of a parking pass, councillors would be required to pay for the parking themselves and then submit an expense claim. As such, the parking pass represents a clear benefit to members of council.

The intended use of the parking passes is clearly for professional, official or business purposes regardless of the fact that it may also be used for personal parking. Any personal use appears to be incidental, and in any event, is not distinguishable on the face of the record. The spirit of the

Councillor Expense Policy is to create openness and transparency with regard to expenses and disclosure of this information is consistent with that principle.

I am satisfied that the disclosure of the record would not reveal anything of a personal nature – on its face, it is not possible to distinguish between professional and personal use. Also, as noted previously, neither city nor any of the affected parties have analyzed the information to provide this breakdown.

Accordingly, I find that the records do not contain personal information. Because only personal information can be exempt under section 14(1), I find that it does not apply.

THREAT TO SAFETY OR HEALTH

Section 13 states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

For this exemption to apply, the institution must demonstrate that disclosure of the record “could reasonably be expected to” lead to the specified result. To meet this test, the institution must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the institution must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated [*Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.)].

An individual’s subjective fear, while relevant, may not be sufficient to establish the application of the exemption [Order PO-2003].

The term “individual” is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization [Order PO-1817-R].

In reviewing this exemption claim, the question to be asked is whether the Authority or the councillors who responded have demonstrated that disclosure of the information at issue “could reasonably be expected to” give rise to the specified result, i.e. endangerment of the affected person.

Past orders of this office relating to this exemption have emphasized the need to consider both the type of information at issue and the behaviour of the individual who is requesting the information. The leading authority on this exemption is a judgment of the Ontario Court of Appeal: *Big Canoe v. Ontario* (1999), 46 O.R. (3d) 395, 1999 CanLII 3816 (C.A.) (*Big Canoe*). In *Big Canoe*, the Court refers to the consideration of the quality of the information contained in the record and, more specifically, any “potentially inflammatory” characteristics. In considering the perceived risk of threat from the appellant under this exemption, the Court expressed the importance of establishing an evidentiary foundation for assertions of threatening behaviour by

an appellant. For section 13 to apply, the expectation of harm must be reasonable, but it need not be probable (see also Orders MO-2209 and PO-2606).

The representations of the Councillors resisting disclosure are summarized as follows:

- Concerns about safety and harassment by members of the public;
- Concerns about being confronted by members of the public in unsecured locations;
- The ability of individuals to discern patterns of behavior and track travel of a Councillor and family;
- Risk of safety and security of family;
- Personal calendars of Councillors are not available through freedom of information requests; this request would provide a way around that restriction;
- Business and personal use of the pass are merged and cannot be separated in the record. Councillors are entitled to keep personal matters private.

A careful examination of the records suggests that this level of concern is not warranted. The actual information in the records does not reveal any patterns nor does it amount to a “personal calendar”. Finding or harassing a Councillor at City Hall or at a public event is a more likely possibility than could reasonably be expected to flow from the use of the information in the records at issue in this appeal. Councillors are always free to pay for their parking spots when on a family outing in order to keep its location confidential, if they have such concerns.

It has been acknowledged by this office that individuals working in public positions will occasionally have to deal with “difficult” individuals. In a postscript to Order PO-1939, Adjudicator Laurel Cropley stated the following with regard to section 20 of the provincial *Act* (the equivalent of section 13 of the *Act*):

In these cases, individuals are often angry and frustrated, are perhaps inclined to using injudicious language, to raise their voices and even to use apparently aggressive body language and gestures. In my view, simply exhibiting inappropriate behaviour in his or her dealings with staff in these offices is not sufficient to engage section 20.... Rather... there must be clear and direct evidence that the behaviour in question is tied to the records at issue in a particular case such that a reasonable expectation of harm is established should the records be disclosed.

I agree with Adjudicator Cropley’s comments. In the circumstances of the present appeal, I do not accept that the evidence tendered by the Authority and the affected councillors that the perceived threat to health or safety meets the required threshold for exemption under section 13 or that any patterns of behaviour can be deduced from the records at issue. In particular, the Authority and the councillors have not provided the type of clear and direct evidence to demonstrate that a reasonable expectation of harm is established should the information at issue in the records be disclosed.

I find that section 13 does not apply as I have not been provided with evidence to establish a reasonable basis for believing that endangerment will result from disclosure, which is the standard of proof identified by the Court for this exemption in the *Big Canoe* decision, cited above.

ORDER:

I order the Authority to release the records at issue to the appellant on or before **December 21, 2010** but not before **December 15, 2010**.

Original Signed By: _____ November 16, 2010
Brian Beamish
Assistant Commissioner