



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

ORDER MO-2644

Appeal MA10-337

City of Toronto



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OVERVIEW:

The appellant made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the City of Toronto (the city) for access to:

[p]etitions submitted by applicants for drumming in [a specified city park] for alternate Tuesday evenings, and for [a specified] Music Festival. City officials claim that immediate neighbours were polled.

The city located one responsive record, a nine-page petition. The city issued a decision denying access to portions of the record responsive to the first part of the request relating to the drumming in the park, citing the mandatory personal privacy exemption in section 14(1) of the *Act*. The city subsequently issued a second decision relating to the music festival, advising that no responsive records could be located.

During mediation, the appellant advised that she was not appealing the City's decision that no responsive records exist relating to the music festival.

During the inquiry to this appeal I sought representations from the city, the appellant and seventy individuals whose rights could be affected by the disclosure of the record (the affected persons). I received representations from the city, the appellant and 3 affected persons. One of the affected persons consented to the disclosure of her personal information. Representations were shared in accordance with section 7 of the Information and Privacy Commissioner/Ontario's (the IPC) *Code of Procedure and Practice Direction* number 7.

The order requires the city to disclose a portion of the record to the appellant.

RECORD:

The record at issue consists of a nine page petition, with each page containing the names, addresses and other contact information of the signatories.

ISSUES:

- A. Does the record contain personal information?
- B. If the record contains personal information, would disclosure constitute an unjustified invasion of personal privacy pursuant to section 14(1) of the *Act*?

DISCUSSION:

A. DOES THE RECORD CONTAIN PERSONAL INFORMATION?

The section 14 personal privacy exemption applies only to "personal information" as defined in section 2(1) of the *Act*. That section defines "personal information" as "recorded information about an identifiable individual." Paragraphs (a) to (h) of the definition in section 2(1) describe the various types of information that qualify as personal information. The city submits that paragraphs (a), (d), (e) and (h) are particularly relevant. These sections state:

"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,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (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 city submits that the information contained in the record includes the names, home and/or email addresses, and telephone numbers of individuals who live in the neighbourhood of the park and who signed the petition. The City notes that one page of the record also contains the expressed opinion of an individual about the drumming. The city states that this information is the personal information of the individuals who signed the petition within the meaning of that term in section 2(1) of the *Act*.

The appellant does not dispute that the information in the record is the personal information of identifiable individuals.

Based on my review of the record, I find that the names, addresses (both home and email), phone numbers and expressed opinion is the personal information of identifiable individuals, namely those individuals who signed the petition that is the record responsive to the request. I note that the record does not contain the personal information of the appellant.

B. WOULD DISCLOSURE RESULT IN AN UNJUSTIFIED INVASION OF PERSONAL PRIVACY UNDER SECTION 14(1) OF THE ACT?

The city submits that where the record contains the personal information of individuals other than the appellant, disclosure would constitute an unjustified invasion of the personal privacy of these individuals. Where an appellant seeks the personal information of another individual, section 14(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions in paragraphs (a) through (f) of section 14(1) applies. In this appeal, the only possible exceptions are sections 14(1)(a) and (f), which state:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

- (a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;
- (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(2) provides some criteria for the institution to consider in making this determination; section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)*].¹

Section 14(1)(a)

For section 14(1)(a) to apply, the consenting party must provide a written consent for the disclosure of his or her personal information in the context of an access request [see Order PO-1723].

As stated above, I provided notice to seventy affected persons, and received the consent of one individual. Two individuals withheld their consent to the disclosure of their personal information. I will order the personal information of the consenting

¹ (1993), 13 O.R. (3d) 767.

affected person disclosed to the appellant, pursuant to the exception in section 14(1)(a).

The appellant submits that an individual who signs a petition consents to disclosure of at least some of the information contained therein "... particularly since it is being submitted to a public institution in support of a public permit."

Past orders of this office have found that an individual who signs a petition implicitly consents to the disclosure of their personal information under section 14(1)(a)². More recently, this office has determined that consent under section 21(1)(a) (the provincial equivalent to section 14(1)(a)) requires that consent be provided under the *Act*, that is, the consenting party must provide a written consent to the disclosure of his or her personal information in the context of an access request. This was the case in Order PO-1723, where Adjudicator Laurel Cropley found that the affected persons' consent to the disclosure of their personal information to the appellant and done in the context of their dispute (in that case a dispute regarding ownership of the property) did not extend to consent to disclosure under the *Act*. I agree with this rationale and will apply it here.

I find that even if an individual consented to the inclusion of their personal information on the face of the petition, for disclosure to occur under the *Act*, the signatory must provide written consent to the disclosure of his or her personal information within the context of an access request. While I accept that a petition has a public quality because it is to be presented publicly to its intended recipient, I do not accept that by signing the petition, the signatories consented to the disclosure of their personal information within the context of this access request. Accordingly, I find that the exception in section 14(1)(a) does not apply to the personal information relating to the 69 individuals who did not specifically consent to disclosure under section 14(1)(a).

I will now consider the exception in section 14(1)(f) and the factors set out in section 14(2).

Section 14(2)(f)

The city submits that the circumstance favouring non-disclosure in section 14(2)(f) is relevant to the consideration of whether disclosure of the personal information constitutes an unjustified invasion of the identified individuals. This section states:

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,

² Order MO-1506

the personal information is highly sensitive;

The city takes the position that there is a continuum of sensitivity with respect to petitions and that the petition, which is the subject of the current appeal, falls closer to the second example, set out as follows:

- Petitions which are clearly public documents because their contents are debated in public meetings or the method of soliciting signatures is such that the signatories are aware that their personal information may be disclosed to all who view it.
- Petitions where the signatures are solicited on an individual basis and there is a reasonable expectation by the signatories that their personal information will only be used for the limited purpose of the petition.

The city cites the findings of Inquiry Officers Mumtaz Jiwan and Holly Big Canoe in Orders P-1085³ and MO-1309 respectively, in support of their position that the circumstances surrounding the provision of the signatures is relevant to my consideration of whether disclosure of the personal information would be an unjustified invasion of the personal privacy of the identified individuals. The city submits that the following circumstances should be considered:

- The petition in the current appeal appears to be more of a "door to door poll" with residents of four streets in the area being canvassed.
- There is no evidence that the petition was posted in a public place.
- There is no specific indication on the petition as to how the signatories' personal information will be used.
- The appellant has indicated her intention to use the information in the record to verify the names and signatures against the addresses.
- The petition is over three years old and the signatories would not expect their personal information to be now disclosed or shared.

Finally, the city submits that due to the above considerations, there is a greater sensitivity in the personal information at issue such that disclosure of the personal information would likely cause the identified individuals significant personal distress.

To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed [Orders PO-2518, PO-2617, MO-2262 and MO-2344].

³ The city incorrectly cites Order M-580 in its representations. The quote in the city's representations is from Order P-1085. In Order M-580, Adjudicator Holly Big Canoe found that the signatures in the petition were exempt under section 14(1) as the presumption in section 14(3)(b) applied. In determining this, Adjudicator Big Canoe found that the petition was submitted by concerned taxpayers to initiate an action under the Township of Portland's Property Standard By-law.

I find that there does not exist a reasonable expectation of significant personal distress if the personal information on the petition is disclosed. I consider the following facts relevant to my determination with respect to the application of section 14(2)(f) to the record:

- The petition is now over three years old and the signatories would view their personal information as now being part of the supporting documents of the permit.
- It appears that the signatures were solicited door to door and the signatories provided their own personal information on the petition.
- The signatories would have been able to view the other signatories on the petition when they were providing their personal information.
- The signatories are all "neighbours" residing on the same street.
- The appellant seeks to confirm the signatures with the addresses and her interest relates to the purpose of the petition.

Accordingly, I give the circumstance in section 14(2)(f) little weight in my consideration of whether disclosure of the personal information would be an unjustified invasion of personal privacy.

Sections 14(2)(a) and (d)

The appellant disputes the city's contention that the disclosure of the name and address alone would cause the individuals significant personal distress within the meaning of section 14(2)(f). Further, the appellant submits that I should consider the factors in sections 14(2)(a) and (d), which state:

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;

The appellant states:

... the information in question is necessary per s. 14(2)(d) for the determination of my right as a citizen to determine the validity of the City's action in granting the permit (what if I wish to bring an action in

mandamus, or to seek an injunction to halt one of these events, and the City were to continue to assert validity of the petition?), and as necessary to ensure an impartial hearing in this forum....

I submit that disclosure is necessary to ensure public confidence in actions by Councillors' offices, in that if bogus petitions are submitted and relied upon, everyone loses; it is self-evident that such practices should not continue.

In order for section 14(2)(d) to apply, the appellant must establish the following:

- (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

[Order PO-1764; see also 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.)].

The appellant argues that if she is able to prove that the information on the petition was falsified, then she may bring an action against the city. I note, however, that her position is no more than just supposition as she has not provided any basis for the existence of a legal right, as is required for section 14(2)(d) to apply. I find that the factor in section 14(2)(d) is not relevant and should be given no weight in my consideration of whether disclosure of the personal information would give rise to an unjustified invasion of the identified individuals' privacy.

The appellant's other argument is that by disclosing the information to her, she will have the means by which to ensure public confidence in the Councillor's actions i.e. if the petition is borne out as a true and not fictitious document, then the Councillor's actions in granting the permit will be justified. Again, I find the appellant's arguments to be speculative and do not establish that disclosure of the personal information is desirable for subjecting the city's activities to public scrutiny. Accordingly, I find that

the factor in section 14(2)(a) is not relevant and should also be given no weight in my consideration.

As I have found that there are no factors in favour of disclosure, and the record does not contain the personal information of the appellant, I must conclude that disclosure of the personal information in the record would result in an unjustified invasion of the personal privacy of identifiable individuals. Accordingly, I find that the personal privacy exemption in section 14(1) of the *Act* applies to it.

ORDER:

- 1) I order the city to disclose the personal information of the one consenting affected person by providing the appellant a copy of the record with this information by **September 19, 2011** but not before **September 14, 2011**. I have provided the city with a copy of the page of the record that includes the affected person's personal information with the information to be disclosed highlighted.
- 2) I uphold the city's decision for the remaining information and dismiss the appeal.
- 3) In order to verify compliance with order provision 1, I reserve the right to require the city to provide me with a copy of the information sent to the appellant.

Original signed by: _____
Stephanie Haly
Adjudicator

_____ August 15, 2011