

Information and Privacy Commissioner,
Ontario, Canada



Commissaire à l'information et à la protection de la vie privée,
Ontario, Canada

ORDER MO-2712

Appeal MA10-434

Township of South Dundas

April 4, 2012

Summary: The appellant requested specific dog licensing information for dogs owned by two named individuals. The Township of South Dundas denied access to the requested information pursuant to section 14(1) of the *Act*. The records contain only the personal information of the two named individuals. Section 14(1) was not upheld on the basis that the factor in section 14(2)(d) applied to the withheld information, and none of the factors favouring non-disclosure applied. The township was ordered to disclose the records at issue.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, Section 2(1) (definition of personal information), 14(1).

OVERVIEW:

[1] The appellant submitted a request to the Township of South Dundas (the township) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for Dog Tag Records for dogs owned by two identified individuals (the affected parties) at an identified address for the years 2008, 2009 and 2010.

[2] Prior to making its decision, the township notified the affected parties of this request, seeking their views regarding the disclosure of the responsive information. The affected parties did not provide consent. The township then issued a decision to the appellant stating that "[The *Act*] indicates where personal information is involved in disclosure the third party must give consent. The third party involved in this case has not given consent therefore I deny access to the information."

[3] The appellant appealed this decision.

[4] During mediation the appellant clarified that she is seeking the registration information of all the dogs owned by the affected parties from the years 2008 to 2010 including the dates that they were registered. The township subsequently identified five pages of responsive records titled "Licence Inquiry," and confirmed that it is relying on the mandatory exemption at section 14(1) to deny access to these records.

[5] Also during mediation, the appellant confirmed that she is seeking the information in the Licence Inquiry records under the following headings: 'Pet,' 'Breed,' 'Colour,' 'DOB,' 'Sex,' 'Licence Date.' Accordingly, all other information in these records is not at issue in the appeal. The appellant explained to the mediator that she requires this information in order to pursue a court matter and consented to sharing certain information with the affected parties.

[6] The mediator contacted the affected parties in order to determine if they would consent to disclose the information at issue to the appellant; however, the affected parties did not provide consent.

[7] Further mediation could not be effected and the file was forwarded to the adjudication stage of the appeal process. I sought representations from the township and affected parties, initially. The township indicated that it would not be submitting representations in this appeal. Rather, the township relies on the information it has provided in its decision letter and during mediation. I note that the township's position on the records during mediation discussions does not differ from the position taken in its decision letter. The affected parties did not submit representations, but verbally confirmed that they do not consent to the disclosure of their personal information to the appellant, as they do not believe it is any of her business.

[8] I subsequently sought representations from the appellant. The appellant indicated that she would not be submitting representations as she had nothing further to add to the information provided during mediation.

[9] I found that although the records at issue contain only the personal information of the affected parties, it should be disclosed to the appellant as section 14(1) did not apply in the circumstances.

RECORDS:

[10] The records at issue comprise the information under the following headings: 'Pet,' 'Breed,' 'Color,' 'DOB,' 'Sex,' 'Licence Date' found in five pages of "Licence Inquiry" forms pertaining to dogs owned by the affected parties.

ISSUES:

Issue A: Does the record contain "personal information"?

Issue B: Does the mandatory exemption at section 14(1) apply to the information at issue?

DISCUSSION:

A: Does the record contain "personal information"?

[11] 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 if 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;

[12] 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].

[13] 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.)].

[14] The information contained in the records requested by the appellant consists of the full names of the affected parties, their address and information about the licensing of their dogs. The appellant has narrowed her request to certain information about the dogs identified in the records. However, it is clear, from the context of her request, that she is seeking information pertaining to the affected parties, who she specifically named in her request. I am satisfied that the records contain personal information within the meaning of that term as defined above, and in particular, sections 2(d) and (h), as they contain specific information about dogs owned by the affected parties. Moreover, I find that the records contain only the personal information of individuals other than the appellant.

B: Does the mandatory exemption at section 14(1) apply to the information at issue?

[15] 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.

[16] If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14.

[17] The section 14(1)(a) to (e) exceptions are relatively straightforward. I have reviewed these sections and find that none of them apply. The section 14(1)(f) exception is more complex, and requires a consideration of additional parts of section 14.

[18] During mediation, the appellant described an incident between a dog and her cat, which resulted in the cat's death. She indicates that the affected parties have

denied ownership of the dog at the time of the incident, claiming that it was a stray. The appellant explains that she is seeking information that would confirm that the affected parties owned the dog in question as she is taking the matter to small claims court. In my view, the appellant has implicitly raised the application of the factor favouring disclosure in section 14(2)(d) of the *Act*. Despite not receiving representations in this appeal, I have also considered the factors that favour non-disclosure found in section 14(2), namely, sections 14(2)(e), (f), (g), (h) and (i). These sections state:

(2) 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,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

[19] For section 14(2)(d) to apply, 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 hearing¹

[20] Since the appellant did not submit representations, the only information that has been provided regarding her reasons for seeking the information at issue is that provided to the mediator during mediation. It appears, from a comment made by the appellant, that she wishes to obtain as much information about the dog and owner as she can prior to taking the matter to small claims court. The appellant confirms that she already knows the affected parties' names and address.

[21] Based on this limited information, I accept that all four parts of the section 14(2)(d) test have been satisfied. The appellant has described an incident involving a dog that she believes is owned by the affected parties, and her cat, which resulted in the cat's death, and she wishes to seek legal redress as a result. I find that the information she is seeking in the records would likely have some bearing on her rights in this matter, and is indeed required in order to prepare for the proceeding, as they pertain to dog ownership. Accordingly, I find that the factor in section 14(2)(d) is relevant in the circumstances.

[22] I have considered the other factors and presumptions in sections 14(2) and (3). I find that none of the presumptions apply to the personal information in the records. Nor do any of the factors favouring non-disclosure.² The information contained in the records simply records the licensing information pertaining to dogs in the care of the affected parties (under the heading "owner"). The information would likely be provided by the affected parties at the time of registration and is unlikely to be inaccurate [section 14(2)(g)]. There is no evidence before me that this information was provided in confidence [section 14(2)(h)], nor is it highly sensitive [section 14(2)(f)]. I am not persuaded that disclosure of the records would expose the affected parties to any "harm" [section 14(2)(e)] or "damage to their reputation" [section 14(2)(i)]. In the event that the appellant takes legal action against them, any resultant "harm" or "damage" would not be unfair in the circumstances.

[23] In this case, the appellant is seeking legal redress for the loss of (and any expenses pertaining to injuries sustained by) the cat as the result of an altercation with a dog. The appellant believes that the affected parties own the dog in question and seeks confirmation of that fact in order to proceed with her claim. The facts and liability relating to this matter are for the court to determine; however, in the circumstances, I find that the information the appellant seeks is relevant to a fair

¹ 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.).

² in particular, sections 14(2)(e), (f), (g), (h) or (i).

determination of her rights, and that this factor is sufficient to outweigh any privacy interests the affected parties have in the information at issue.

[24] Accordingly, I find that the information at issue in the records is not exempt under section 14(1), and should be disclosed to the appellant.

ORDER:

1. I order the township to disclose the records at issue to the appellant, by providing her with a severed copy (containing only the information she seeks) **by May 11, 2012 but not before May 7, 2012.**
2. In order to verify compliance with order provision 1, I reserve the right to require that the township provide me with a copy of the record sent to the appellant.

Original Signed by: _____
Laurel Cropley
Adjudicator

_____ April 4, 2012