

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2763

Appeal MA11-152

The Corporation of the City of Cambridge

July 11, 2012

Summary: The appellant made a request to the city for the names of persons working at a specified polling station during the last municipal election. The city denied access to the information on the basis that the names were personal information and was exempt from disclosure pursuant to the mandatory personal privacy exemption in section 14(1). This order upholds the city's decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of "personal information"); 14(1), 14(2)(a), (d), (e), (f), (h) and (i).

OVERVIEW:

[1] The appellant made a request to the City of Cambridge (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to:

[the] names of persons working the Poll at [specified location] (in Cambridge, Ontario) during the last municipal election (October 25, 2010).
DRO plus any other person(s) working at poll.

[2] The city located the responsive record, but denied access to it pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] During mediation, the city advised the mediator that it was relying on the factors weighing against disclosure in sections 14(2)(e) and (i) to exempt the names of the poll workers. The mediator contacted the six poll workers (the affected persons) who are identified in the record, seeking their consent to the disclosure of their names to the appellant. The appellant provided her consent to the disclosure of her identity to the affected persons. All of the affected persons objected to the disclosure of their names to the appellant.

[4] During my inquiry into this appeal, I sought representations from the city, the appellant and the six affected persons. I received representations from the city and the appellant only. While the six affected persons did not send in representations, the city submitted correspondence from them with its representations denying consent to the disclosure of their personal information to the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[5] In this order, I uphold the city's decision.

RECORDS:

[6] The record at issue is titled, "2010 Municipal Election Placements" containing the names, addresses and phone numbers of six individuals at a specified location. The appellant reiterated that her request sought only the names of the persons identified as election officers and nothing more. Accordingly, I will only be considering the names of the individuals that are included in the record.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) apply to the information at issue?

DISCUSSION:

A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[7] In order to determine which section of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or whether

disclosure of the name would reveal other personal information about the individual [paragraph (h)].

[8] 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) of the section 2(1) definition of that term may still qualify as personal information [Order 11].

[9] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[10] 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 and PO-2225].

[11] 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 and MO-2344].

[12] The city submits that the names of the affected persons are their personal information for the purposes of the *Act*. The city further submits that the affected persons provided their personal information to the city under the authority of the *Municipal Elections Act* to be used only for the purposes of identifying and contacting Election personnel for Election positions. This is noted on the "Information and Application for Election Officials" in a box on the record. This same box also specifies that the information provided by the poll workers is protected by the privacy provisions of *MFIPPA*. Finally, the city submits that the information relates to these individuals in their personal, and not their professional capacities and disclosure would deter volunteers in future elections.

[13] The appellant submits that the names of the affected persons is not their personal information and argues that their names fit within section 2(2.1) of the *Act*, set out above. The appellant submits that the city considers the affected persons to be "paid volunteers" and not employees of the city. The appellant submits the following;

[The city's] definition of an employee is as follows: A person who is hired to provide services to a company on a regular basis in exchange for compensation and who does not provide these services as part of an independent business.

However, Policy C-80.050 of the city's Policy Manual states,

Volunteers are individuals who work without monetary compensation to contribute time and service to the City of Cambridge in the belief that their commitment is beneficial to others as well as satisfying to themselves. Volunteers must be officially accepted and enrolled by the City of Cambridge prior to the performance of the volunteer task.

So which is it? Are the persons in question, employees or volunteers?

An examination of the *Municipal Elections Act, 1996*, indicates that the clerk shall appoint election officers during an election and that the costs incurred from hiring staff for the purpose of an election are paid for by the municipality.

It reads:

15(1) When it is necessary to conduct an election, the clerk shall appoint a deputy returning officer for each voting place established under section 45 and may appoint any other election officials for the election and for any recount that the clerk considers are required.

Delegation

(2) The clerk may delegate to a deputy returning officer or other election official any of the clerk's powers and duties in relation to an election, as he or she considers necessary.

Cost of lection payable by local municipality

7(1) Unless an Act specifically provides otherwise, the costs incurred by the clerk of a local municipality in conducting an election shall be paid by the local municipality.

[14] Finally, the appellant submits that she has discovered that the names of the individuals serving as deputy returning officers in federal elections are made public and argues that the names of these individuals should also be disclosed in municipal elections.

[15] To qualify as personal information, this information must be about the individuals in a personal capacity. As stated above, generally information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.¹ However, information which relates to an individual in a professional, official or business capacity, may qualify as personal information if the information reveals something of a personal nature about the individual.² Following the analysis set forth in Order PO-2225, the first question I must ask is: "In what context do the names of the individuals appear?" The second question I must ask is: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individuals?"

[16] With respect to the first question, I find that the names of the affected persons appear on a document called the "2010 Municipal Election Placements". Clearly, their names appear on the document in their official capacity as the affected persons were hired to act in various capacities in the election on behalf of the city.

[17] I must then go on to consider the next question, whether there is something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individuals. The appellant submits that the election officers at the polling station which was the subject of her request refused the ballot of choice to certain voters and thus denied them the right to vote. Accordingly, based on this circumstance, I find that disclosure of the affected persons' names would, if disclosed, reveal the possibility that one of the affected persons may have denied someone the right to vote. I find that this represents information of a personal nature about the individuals involved. Accordingly, I find the disclosure of the affected persons' names would reveal something of a personal nature about them.

[18] Accordingly, I find that the affected persons' names on the record at issue are their personal information. I must now go on to consider whether disclosure of the personal information would be an unjustified invasion of the personal privacy of the affected persons.

¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

² Orders P-1409, R-980015, PO-2225 and MO-2344.

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

[19] 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.

[20] 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), which states:

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.

[21] 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 privacy under section 14(1)(f). In the present appeal, none of the presumptions in section 14(3) apply.

[22] If no section 14(3) presumption applies and the exception in section 14(4) does not apply, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy [Order P-239]. In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring *disclosure* in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies [Orders PO-2267 and PO-2733].

[23] The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2) [Order P-99].

[24] In the present appeal, the city argues that I should consider the factors weighing against disclosure in section 14(2)(e), (f), (h) and (i). The appellant submits that I should consider the factors for disclosure in sections 14(2)(a) and (d). These sections 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;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (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.

[25] I will first address the factors asserted by the city. The city submits that the affected persons, who are not city employees, would be exposed to pecuniary or other harm should disclosure occur. Further, the city submits that the affected persons provided their personal information with the understanding that the information would be protected under the *Act*. Finally, the city argues that disclosure of the affected persons' names would permit the appellant, and other individuals, to locate the affected persons using reverse directories and other means to find their addresses and phone numbers.

[26] The appellant was a candidate in the 2010 municipal election. She submits that the affected persons were acting on behalf of the city in carrying out their duties and she is considering taking action against these individuals. The appellant states:

The election officers were agents of the city, hired to ensure that every citizen was able to vote. In this case, an election officer refused the school ballot of choice to certain citizens, thereby denying them the right to vote for the candidates of their choice. Therefore, the disclosure of the names of the affected persons does not constitute an unjustified invasion of personal privacy as the rights of several citizen's to vote for candidates of their choice were interfered with.

Moreover, as a result of the election officer's interference, I am considering taking action against the city and would need to know the names of the election officers.

[27] Based on my review of the city's representations, I accept that the names of the affected persons are highly sensitive, given the circumstances surrounding the request and the allegations made by the appellant. To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.³ I find that there is a reasonable expectation of significant personal distress if the names of the affected persons are disclosed to the appellant. Therefore, I find the factor in section 14(2)(f) weighs against disclosure of the personal information.

[28] Further, I accept that, given the allegations made by the appellant, disclosure of the affected persons' names could unfairly damage the reputations of these individuals. It is unclear to me whether one person or a number of people were responsible for the event which is the substance of the appellant's request. However, given the fact that the event was reported by the media, I find that disclosure of the names may unfairly damage the reputation of these individuals and, as such the factor in section 14(2)(i) which weighs against disclosure of the personal information applies.

[29] I find that the city's representations regarding the other factors are not as compelling. Specifically, I conclude that the city has not provided sufficient evidence to establish that the affected persons would be subject unfairly to pecuniary or other harm (section 14(2)(e)). Further, while I find that the affected persons may have provided their addresses and telephone numbers with the expectation of confidentiality, I am unable to find that their names would have been submitted with a similar expectation of confidentiality. These individuals were volunteering to work at the polling station and dealing with voters. I find that the factor in section 14(2)(h) is not a relevant factor that I should consider in my determination.

[30] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring *disclosure* in section 14(2) or a relevant unlisted consideration must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies [Orders PO-2267 and PO-2733].

[31] The appellant submits that she requires the information for a fair determination of her rights, as she alleges that as paid volunteers the affected persons represented the city and through their actions, she lost the election. 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

³ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

- (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.⁴

[32] The appellant merely stated that she may consider bringing an action against the affected persons, but does not further substantiate her claim of possible wrongdoing. Accordingly, I find that section 14(2)(d), which favours disclosure of the personal information, is not a factor in my determination.

[33] Finally, the appellant argues that disclosure is necessary to subject the activities of the city to public scrutiny. This section contemplates disclosure in order to subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny [Order P-1134]. While I appreciate the appellant's frustration surrounding the election and the purported actions of one or more of the affected persons, I am unable to find that disclosure of the affected persons' names is desirable for the purpose of subjecting the activities of the institution to public scrutiny.

[34] As stated above, one or more of the factors favouring disclosure must be present in order for me to find that disclosure of the personal information would not constitute an unjustified invasion of personal privacy. In the present appeal, the appellant has not established the application of any relevant factors, listed or otherwise and, accordingly, I find that the exemption in section 14(1) applies to exempt the names of the affected persons from disclosure.

ORDER:

I uphold the city's decision to deny access to the names of the affected persons.

Original signed by: _____ July 11, 2012 _____
Stephanie Haly
Adjudicator

⁴ [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.)].