

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2803

Appeal MA12-286

City of Toronto

October 18, 2012

Summary: The appellant made a request to the city for a named individual's address. The city denied access to the information on the basis of the mandatory personal privacy exemption in section 14(1). The appellant argued that disclosure of this information was relevant to the fair determination of his rights under section 14(2)(d). The city's decision is upheld.

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) and 14(2)(d).

Orders and Investigation Reports Considered: M-1146.

OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the address of a named individual (the affected party). The city responded to the request by issuing a decision letter, stating that access to the requested information was denied on the basis of the mandatory exemption in section 14(1) of the *Act* (personal privacy).

[2] The appellant appealed the city's decision.

[3] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*. I decided to

send a Notice of Inquiry identifying the facts and issues in this appeal to the appellant, initially. I did so because the request is for information which appears to be the personal information of the named affected party, and because the exemption in section 14(1) is mandatory. The appellant provided representations in response to the Notice of Inquiry. After reviewing the appellant's representations, I decided it was not necessary to invite the city to provide representations on this matter.

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

RECORD:

[5] The information at issue is the address of a named individual, contained in a record held by the city.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) of the *Act*?
- B. Would disclosure of the "personal information" be an unjustified invasion of the affected person's personal privacy under section 14(1)?

DISCUSSION:

A. Does the record contain "personal information" within the meaning of section 2(1) of the *Act*?

[6] 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), which reads in part:

"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 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;

[7] The only information at issue in this appeal is the named affected party's address. Paragraph (d) of the definition of personal information in section 2(1) of the *Act* clearly states that "personal information" includes the address of an identifiable individual. Accordingly, the affected person's address is personal information within the meaning of that term as defined in section 2(1) of the *Act*. The record does not contain the personal information of the appellant.

B. Would disclosure of the "personal information" be an unjustified invasion of the affected person's personal privacy within the meaning of section 14(1)?

[8] 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.

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

[10] The appellant has not argued that any of section 14(1)(a) to (e) apply, and the only possible exception that could apply is section 14(1)(f), which 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.

[11] Section 14(1)(f) allows an institution to disclose personal information to a person other than the individual to whom the information relates if the disclosure does not constitute an unjustified invasion of personal privacy. In determining whether section 14(1)(f) applies, sections 14(2), (3) and (4) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the affected person's personal privacy. Section 14(2) provides some criteria to consider in making this determination; section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[12] The appellant has not claimed that any of the exclusions in section 14(4) apply, and I find that section 14(4) has no application to this appeal. In addition, because of my finding below, there is no need for me to review the possible application of the presumptions in section 14(3) to the information at issue.

Section 14(2) factors

[13] 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. The list of factors under section 14(2) is not exhaustive. If no factors favouring disclosure apply to the information, section 14(1) prohibits disclosure of the information.

[14] The appellant provided representations in support of his position that he ought to have access to the address of the affected party. It is clear from his representations that he believes he has been wronged by the affected party, and has been unable to contact the affected party, who he says remains "elusive." He also refers to himself as the victim and the affected party as the "perpetrator" of wrongful acts against him, and is concerned that the "system" is protecting the perpetrator such that he can continue to commit the same actions without consequences. He also expresses concern about the perpetrator being given time to "find his next victim." In addition, the appellant refers to possible legal action which he may take, and states "I have been told I may seek to recover legal cost[s] from the trespass of my constitutional rights."

[15] Although the appellant does not refer to it in his representations, I note that in his initial request he provided additional information to the city about the reasons why he is seeking the address of the affected party. He stated:

I am the ex-landlord of [the affected party] and creditor [and seek the address] so that I can file an action in [Toronto] small claims court against the debtor ...

[16] Based on the appellant's representations, he seems to be arguing that the factor favouring disclosure in section 14(2)(d) should apply. That section reads:

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,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

[17] 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 hearing.¹

[18] The Notice of Inquiry sent to the appellant advised the appellant of these requirements.

[19] Although the appellant refers to a possible legal action for either a landlord-tenant matter (as referenced in his request), or some other action for legal costs (as specified in his representations), the appellant has provided no other information or evidence in support of his statement that he needs the affected party's address for these purposes. I also note that there is no apparent connection between the record in the city's record-holdings which contains the affected party's address and the appellant's stated reasons for seeking the address. In that respect, the record itself does not provide any evidence which might strengthen the appellant's position that he requires the address for these purposes.²

[20] In the circumstances, I find that I have not been provided with sufficient evidence to establish that the factor in section 14(2)(d) applies. It is not clear what legal right is being asserted by the appellant, nor the type of proceeding which is either existing or contemplated. Although the appellant's request refers to a possible action in small claims court for a debt, the appellant has not provided any additional information about any such action. His representations refer generally to another possible legal action, but again, the appellant provides no additional information relating to any such claim. As a result, I find that the appellant has failed to establish that section 14(2)(d) is a relevant factor in favour of disclosure of the affected party's address to the appellant. Accordingly, I conclude that it is not a relevant factor favouring disclosure in the circumstances.

[21] I also note that, even if I had been provided with sufficient evidence to establish what legal right or proceeding is being asserted or contemplated, this would not necessarily mean that the factor in 14(2)(d) would apply to the address at issue in this appeal. Previous orders have confirmed that section 14(2)(d) does not automatically

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 This is unlike the situation in certain other appeals, where the records requested relate directly to the incident which gave rise to a possible legal action.

apply to situations where a requester seeks an address in order to locate defendants or potential defendants and serve them with documents.³

[22] Lastly, I find support for this decision in the statements made by Adjudicator Cropley in Order M-1146, where she made the following observations regarding the privacy interests at stake in disclosure of an individual's address in connection with their name:

I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).

In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. ...

This is not to say that this kind of information should never be disclosed under the *Act*. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.

[23] In the circumstances of this appeal, I am not satisfied that the personal information at issue is relevant to the fair determination of the appellant's rights, and find that the factor in section 14(2)(d) does not apply. I also find that there are no other factors favouring disclosure of the affected party's address to the appellant.

[24] Because section 14(1) is a mandatory exemption and there are no factors favouring disclosure, I find that disclosure of the affected person's personal information would constitute an unjustified invasion of his personal privacy. Accordingly, I find the exemption in section 14(1) applies to the information and I uphold the city's decision to withhold the information from disclosure.

³ See, for example, Order M-1146.

ORDER:

I uphold the city's decision and dismiss the appeal.

Original signed by: _____

Frank DeVries
Adjudicator

_____ October 18, 2012 _____