

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2859

Appeal MA12-114

Municipality of North Grenville

March 26, 2013

Summary: The requester sought the names of the individuals who signed a letter of complaint about his property. The municipality denied access to the letter, citing the discretionary personal privacy exemption in section 38(b). This order finds that the mandatory personal privacy exemption in section 14(1) applies and upholds the decision of the municipality to deny access to the record.

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

OVERVIEW:

[1] The Corporation of the Municipality of North Grenville (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to a letter of complaint filed with the municipality regarding the state of the requester's property.

[2] The municipality issued a decision granting partial access to the record. The municipality denied access to the names, addresses and signatures of 14 individuals (affected persons) who signed the letter of complaint pursuant to the discretionary personal privacy exemption in section 38(b) of the *Act*.

[3] The requester (now the appellant) appealed the municipality's decision to deny access to the withheld portions of the record.

[4] During mediation, the appellant indicated that he wished to pursue access only to the withheld names found in the record. Also during mediation, four of the affected persons consented to disclosure of their names to the appellant and this information was provided to him. The remaining affected persons did not provide consent to disclose their names.

[5] The parties were unable to resolve this matter through mediation and the file was transferred to adjudication, where an adjudicator conducts an inquiry under the *Act*. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the municipality and the affected persons who did not consent to disclosure of their names, initially. In response, I did not receive representations from the municipality. As well, I only received representations from some of the affected persons. The affected persons who responded to the Notice of Inquiry opposed disclosure of their names to the appellant. I then sent a Notice of Inquiry to the appellant, seeking his representations. The appellant did not provide representations.

[6] In this order, I find that the information at issue in the record is exempt by reason of the mandatory personal privacy exemption in section 14(1).

RECORD:

[7] At issue are the names of affected persons in a letter of complaint.

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 personal privacy 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?

[8] 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 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;

[9] 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.¹

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

¹ Order 11.

(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.

[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.²

[12] 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.³

[13] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[14] The record is a letter of complaint to the municipality. The municipality has disclosed all of the information in the record, except for the names, addresses and signatures of the affected persons who did not consent to disclosure of their names. According to the record, the affected persons are homeowners who own residences close to the requester's property. In the record, they have asked the municipality to investigate a list of alleged violations of the "Property Standards Bylaw" concerning a specific address. They have also asked the municipality to take action to have the property brought up to the required property standards.

[15] Based on my review of the information at issue in the record, I find that it contains the personal information of the affected persons in their personal capacity, including their names which appear with other personal information relating to these individuals, in accordance with paragraph (h) of the definition of personal information in section 2(1).

[16] In the absence of representations from the appellant, I cannot find that the record contains the personal information of the appellant. In particular, I have no evidence that the appellant resides at the property which is referred to in the complaint letter.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[17] As the record contains the personal information of the affected persons only, the discretionary personal privacy exemption in section 38(b) cannot apply. I will consider whether the mandatory personal privacy exemption at section 14(1) applies to the information at issue in the record.

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

[18] 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.

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

[20] The section 14(1)(a) to (e) exceptions are relatively straightforward. The exceptions in section 14(1)(a) to (e) do not apply in this appeal.

[21] The section 14(1)(f) exception is more complex, and requires a consideration of additional parts of section 14. This section 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.

[22] 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). Section 14(4) does not apply in this appeal.

[23] The municipality raised the application of section 14(3)(b) to the record in its decision letter. This section reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[24] In the absence of representations from the municipality, I cannot find that the information at issue in the record was compiled and is identifiable as part of an

investigation into a possible violation of law. Therefore, I find that the presumption in section 14(3)(b) does not apply. Nor do I have evidence that any of the other presumptions in section 14(3) apply.

[25] If no section 14(3) presumption applies and the exceptions in section 14(4) do 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.⁵

[26] I received representations from some of the affected persons listed in the record. Based on my review of these representations, I find that the factors which weigh against disclosure of the personal information in the record in sections 14(2)(e) and (h) may apply. These sections read:

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,

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

(h) the personal information has been supplied by the individual to whom the information relates in confidence;

[27] In order for section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved. Based on my review of the confidential representations of the affected persons, I find that I do not have sufficient evidence to find that the damage or harm envisioned by the affected persons is either present or foreseeable.

[28] In order for section 14(2)(h) to apply, both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.⁶ In this appeal, the municipality relied on section 14(2)(h) in its decision letter, as well the affected persons that provided representations indicated that they signed the record with an expectation of confidentiality.

[29] I find that the personal information in the record has been supplied by the affected persons in confidence and that the factor in section 14(2)(h), which weighs against disclosure, applies.

⁵ Order P-239.

⁶ Order PO-1670.

[30] Accordingly, based on my review of the record and the affected persons' representations, and in the absence of representations from the appellant, I find that the factor that weighs against disclosure in section 14(2)(h) applies and that none of the factors that weigh in favour of disclosure apply.

[31] 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, as in the case in this appeal, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.⁷ Accordingly, I find that the information at issue in the record is exempt under the mandatory personal privacy exemption in section 14(1).

ORDER:

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

Original signed by: _____
Diane Smith
Adjudicator

_____ March 26, 2013

⁷ Orders PO-2267 and PO-2733.