

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-2860

Appeal MA12-351

City of Ottawa

March 27, 2013

**Summary:** The appellant is seeking the name, address and telephone number of an individual who complained to the City of Ottawa about his cat. This information is found in a two-page bylaw services occurrence report that the city partly disclosed to the appellant. The city denied access to this information under various exemptions in the *Municipal Freedom of Information and Protection of Privacy Act*. In this order, the adjudicator finds that the appellant has failed to establish that the *Canadian Charter of Rights and Freedoms* applies to his access request. In addition, he finds that the complainant's name, address and telephone number qualify for exemption under the discretionary personal privacy exemption in section 38(b), because disclosing this information to the appellant would be an unjustified invasion of the complainant's personal privacy.

**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(2)(f), 14(3)(b) and 38(b).

### OVERVIEW:

[1] The appellant filed a request with the City of Ottawa (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for "full disclosure" of a complaint made about his cat and indicated that he was seeking this information under the *Canadian Charter of Rights and Freedoms* (the *Charter*).

[2] By way of background, the city's By-law and Regulatory Services department sent a notice to the appellant that informed him that it had received "a complaint alleging a cat, being harboured at your residence may have been observed causing damage/creating a disturbance on 5 July 2012." The notice also cited a provision of the city's by-laws that prohibits a cat owner from permitting his or her cat from causing damage or creating a nuisance to others.

[3] The city located six pages of responsive records and sent a decision letter to the appellant that provided him with access to most of these records but denied access to the complainant's name, address and telephone number under the mandatory exemption in section 14(1) (personal privacy) and the discretionary exemption in section 8(1)(d) (law enforcement) of the *Act*.

[4] The appellant appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC), which assigned a mediator to the appeal. The following transpired during mediation:

- the parties agreed that the information remaining at issue is the complainant's name, address and telephone number, which appears on page 1 of the bylaw services occurrence report;
- the mediator contacted the complainant, who objected to the disclosure of their name, address and telephone number to the appellant;
- the mediator advised the parties that because the record may contain the personal information of both the appellant and the complainant, the discretionary exemptions at sections 38(a) and (b) may be at issue; and
- the appellant reiterated that the *Charter* applies to his access request.

[5] This appeal was not resolved during mediation and was moved to the adjudication stage of the appeal process for an inquiry. I sought and received representations on the issues to be resolved from both the city and the appellant. These representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction Number 7*.

## **RECORDS:**

[6] The information at issue in this appeal is the complainant's name, address and telephone number, which appear on page 1 of a two-page bylaw services occurrence report.

## **ISSUES:**

- A. Does the *Charter* apply to the appellant's request?
- B. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the discretionary exemption at section 38(b) apply to the information at issue?
- D. Does the discretionary exemption at section 38(a) in conjunction with the section 8(1)(d) exemption apply to the information at issue?
- E. Did the city exercise its discretion under sections 38(a) and (b)? If so, should the IPC uphold its exercise of discretion?

## **DISCUSSION:**

### **A. Does the *Charter* apply to the appellant's request?**

[7] The appellant submits that the *Charter* applies to his access request. Consequently, he is raising a constitutional question.

[8] The rules governing the raising of constitutional questions in appeals are set out in section 12 of the IPC's *Code of Procedure* and *Practice Direction Number 9*. Section 12 of the *Code* states, in part:

12.01 An appellant may raise a constitutional question in an appeal only within 35 days after giving the IPC notice of the appeal. Any other party may raise a constitutional question only within 35 days after the party is notified of the appeal.

12.02 A party raising a constitutional question shall notify the IPC and the Attorneys General of Canada and Ontario of the question within the applicable 35-day time period.

[9] The notice of inquiry that was sent to the appellant included the full text of section 12 of the *Code* and a copy of *Practice Direction Number 9*. I asked the appellant to provide representations on the following two questions:

- Have you complied with the requirements of section 12 of the *Code* and *Practice Direction Number 9*?
- Does the *Charter* apply to your request? Please explain.

[10] In his brief representations, the appellant simply asserts that the *Charter* takes precedence over the city's regulations and states that he requires "full disclosure for full defence." He further submits that he has a lawful right to know the name of the person who complained about his cat.

[11] Although the appellant has raised a constitutional issue, he has not provided any evidence to show that he has complied with the requirements in section 12 of the *Code* and *Practice Direction Number 9*. For example, it appears that he has not notified the Attorneys General of Canada and Ontario of the constitutional question he is raising, as required by section 12.02 of the *Code*.

[12] In addition, I find that the appellant's constitutional claim is insufficiently particularized. He appears to be arguing, in part, that the *Charter* is paramount over the city's by-laws or possibly the *Act*, but does not provide any detailed submissions to support this argument. Nor does he cite any particular sections of the *Charter* to support his argument that he requires "full disclosure for full defence."

[13] In these circumstances, I find that the appellant has failed to establish that the *Charter* applies to his access request.

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

[14] The discretionary exemptions in section 38(a) and (b) of the *Act* apply to "personal information." Consequently, it must be determined whether the by-law occurrence report contains "personal information." 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;

[15] 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.<sup>1</sup> To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>2</sup>

[16] However, sections 2(2.1) and 2(2.2) of the *Act* exclude specific information from the definition of "personal information." They state:

(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 (2.1) 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.

[17] The city submits that the name of the individual who complained about the appellant's cat constitutes that individual's personal information under section 2(1). It further submits that sections 2(2.1) and 2(2.2) do not apply because the complainant's

---

<sup>1</sup> Order 11.

<sup>2</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

name appears in that individual's personal capacity, not in his or her professional, business or official capacity.

[18] I have reviewed the by-law services occurrence and find that it contains the personal information of both the appellant and the complainant. With respect to the complainant, this record includes that individual's name, address and telephone number, which falls within paragraphs (d) and (h) of the definition of personal information in section 2(1). I agree with the city that this information identifies the complainant in a personal capacity rather than a professional, business or official capacity. Consequently, this information is not excluded from the definition of personal information under sections 2(2.1) and 2(2.2).

[19] I will now determine whether the personal information in the by-law services occurrence report qualifies for exemption under section 38(b) of the *Act*.

**C. Does the discretionary exemption at section 38(b) apply to the information at issue?**

[20] The city submits that the complainant's name, address and telephone number qualify for exemption under section 38(b). This provision states:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

[21] Where a record contains personal information of both the requester and another individual, and disclosure of the information would constitute an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester under section 38(b).

[22] Because of the wording of section 38(b), the correct interpretation of "personal information" in the preamble is that it includes the personal information of other individuals found in records which also contain the requester's personal information.<sup>3</sup>

[23] In the circumstances of this appeal, it must be determined whether disclosing the complaint's name, address and telephone number to the appellant would constitute an unjustified invasion of the complainant's personal privacy under section 38(b).

[24] Sections 14(1) to (4) provide guidance in determining whether the unjustified invasion of personal privacy threshold under section 38(b) is met:

---

<sup>3</sup> Order M-352.

- if the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b);
- section 14(2) lists “relevant circumstances” or factors that must be considered;
- section 14(3) lists circumstances in which the disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy; and
- section 14(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

### **Section 14(1)**

[25] In my view, none of the circumstances in paragraphs (a) to (e) of section 14(1) apply to the complainant’s name, address and telephone number.

### **Section 14(2)**

[26] The factors in paragraphs (a), (b), (c) and (d) of section 14(2) generally weigh in favour of disclosure, while those in paragraphs (e), (f), (g), (h) and (i) weigh in favour of privacy protection.<sup>4</sup>

[27] The city submits that several section 14(2) factors, but particularly section 14(2)(f), are relevant in determining whether disclosing the complainant’s name, address and telephone number to the appellant would constitute an unjustified invasion of the complainant’s personal privacy under section 38(b). Section 14(2)(f) 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,

the personal information is highly sensitive;

[28] To be considered “highly sensitive” for the purposes of section 14(2)(f), there must be a reasonable expectation of significant personal distress if an individual’s personal information is disclosed.<sup>5</sup>

---

<sup>4</sup> Order PO-2265.

<sup>5</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

[29] The city submits that the section 14(2)(f) factor weighs in favour of privacy protection because identifying the complainant in this type of context is likely to result in antagonism between that individual and the appellant and disclosure of the complainant's personal information is therefore likely to cause "personal distress" to that individual.

[30] In my view, whether it is reasonable to expect that disclosing an individual's personal information will cause him or her significant personal distress is contingent on the particular facts, and such a determination must be made on a case-by-case basis.

[31] In the particular circumstances of this appeal, I find that disclosing the complainant's name, address and telephone number to the appellant could reasonably be expected to cause the complainant significant personal distress. Therefore, I find that this information is highly sensitive in this particular context, and the section 14(2)(f) factor weighs in favour of privacy protection.

[32] The appellant has not raised any of the section 14(2) factors that weigh in favour of disclosure and I find that none apply.

### **Section 14(3)**

[33] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). In *Grant v. Copley* [2001] O.J. 749, the Divisional Court said the IPC could:

. . . consider the criteria mentioned in s.21(3)(b) [the equivalent provision in the provincial *Act* to section 14(3)(b)] in determining, under s. 49(b) [which is equivalent to section 38(b)], whether disclosure . . . would constitute an unjustified invasion of [a third party's] personal privacy.

[34] The city claims that the section 14(3)(b) presumption applies to the complainant's name, address and telephone number. This provision states:

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;



[35] The section 14(3)(b) presumption can apply to a variety of investigations, including those relating to by-law enforcement.<sup>6</sup>

[36] The complainant's name, address and telephone number was collected by the city as part of an investigation into that individual's complaint that the appellant's cat "may have been observed causing damage/creating a disturbance on 5 July 2012," in contravention of the city's by-laws that prohibit individuals from permitting their cats to cause damage or create a nuisance to others.

[37] The appellant's representations do not address whether any of the section 14(3)(b) presumptions apply to the complainant's personal information.

[38] In my view, the complainant's name, address and telephone number was compiled and is identifiable as part of an investigation into a possible violation of a law, as stipulated in section 14(3)(b). Consequently, I find that disclosing the complainant's personal information to the appellant is presumed to constitute an unjustified invasion of the complainant's personal privacy.

#### **Section 14(4)**

[39] If any of paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy, despite section 14(3), and the personal information is not exempt under section 38(b). In my view, none of the circumstances listed in paragraphs (a) to (d) of section 14(4) apply to the complainant's personal information.

#### **Conclusion**

[40] In assessing whether the complainant's name, address and telephone number qualify for exemption under section 38(b), I have found that:

- none of the circumstances in paragraphs (a) to (e) of section 14(1) apply to this personal information;
- the section 14(2)(f) factor weighs in favour of withholding this personal information;
- disclosing this personal information to the appellant is presumed to constitute an unjustified invasion of the complainant's personal privacy under section 14(3)(b); and

---

<sup>6</sup> Order MO-2147.

- none of the circumstances listed in paragraphs (a) to (d) of section 14(4) apply to this personal information.

[41] Consequently, subject to my assessment below as to whether the city exercised its discretion appropriately, I find that the complainant's name, address and telephone number qualify for exemption under section 38(b), because disclosing this information to the appellant would constitute an unjustified invasion of the complainant's personal privacy.

[42] Given that I have found that section 38(b) applies to the complainant's personal information, it is not necessary to assess whether it also qualifies for exemption under section 38(a), in conjunction with section 8(1)(d) (Issue D). I will, therefore move directly to Issue E (exercise of discretion).

**E. Did the city exercise its discretion under sections 38(b)? If so, should the IPC uphold its exercise of discretion?**

[43] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. This involves a weighing of the requester's right of access to his own personal information against the other individual's right to protection of their privacy.

[44] An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[45] In addition, the IPC may find that the institution erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[46] In either case the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>7</sup> The IPC may not, however, substitute its own discretion for that of the institution.<sup>8</sup>

[47] The city submits that it applied section 38(b) to the complainant's personal information in accordance with the purposes of the *Act* and for no improper or irrelevant purposes. It further submits that the application of this exemption is

---

<sup>7</sup> Order MO-1573.

<sup>8</sup> Section 43(2).

consistent with the privacy purpose of the *Act* and ensuring that by-law officers are able to effectively investigate and enforce potential contraventions of city bylaws.

[48] The appellant's representations do not address whether the city exercised its discretion properly in withholding the complainant's name, address and telephone number from him under section 38(b).

[49] I am satisfied that the city weighed the competing interests of the appellant and the complainant in disclosure and non-disclosure and exercised its discretion to withhold the complainant's name, address and telephone number from the appellant. It clearly decided that the complainant's right to privacy is more compelling than the appellant's interest in disclosure.

[50] I am not persuaded that the city failed to take relevant factors into account or that it considered irrelevant factors in withholding the complainant's personal information. I find, therefore, that it exercised their discretion under section 38(b) and did so in a proper manner.

**ORDER:**

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

Original Signed By: \_\_\_\_\_  
Colin Bhattacharjee  
Adjudicator

March 27, 2013 \_\_\_\_\_