

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2916

Appeal MA12-443

City of Greater Sudbury

July 22, 2013

Summary: The city received a request for access to records relating to the construction of a garage, including building permits, plans and approvals. After notifying the affected parties, the city denied access to portions of the records, and granted access to certain records or portions of records. The affected parties appealed the city's decision to grant access to portions of the records, on the basis that these records constituted their personal information. This order confirms that the portions of the records which the city is prepared to disclose do not contain "personal information" within the meaning of section 2(1) of the *Act*, and 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, sections 2(1) (definition of "personal information").

Orders Considered: Order 23, MO-2081.

OVERVIEW:

[1] The City of Greater Sudbury (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the construction of a garage. The request stated as follows:

I am writing to request copies of all records regarding the construction of the 3-car garage at [a named address] in the City of Great Sudbury.

[2] The request then confirmed that it was for all records including the building permit, any surveys, setbacks, drawings, zoning changes, relevant by-laws and all matters relating to the Committee of Adjustment including notices, minutes of committee meetings, decisions and motions.

[3] The city identified a number of records responsive to the request. Before making an access decision, the city notified two affected parties (the third parties) whose interests may be affected by the outcome of the request, to obtain their views regarding disclosure of the records.

[4] The third parties objected to the disclosure of the records on the basis that disclosure of the information would constitute an unjustified invasion of their privacy.

[5] After considering the representations of the third parties, the city issued a decision and granted full access to some records, partial access to other records and denied access to other records in their entirety. The city relied on the exemptions in sections 8(1)(i) (endanger the security of a building) and 14(1) (personal privacy) to deny access to the withheld records or portions of records. The city also indicated that it intended to disclose to the requester the portions of records which did not qualify for exemption, and advised the third parties that it intended to do so.

[6] The third parties (now the appellants), appealed the city's decision to disclose portions of the records, and took the position that the information which the city intended to disclose constituted their personal information.

[7] During mediation, the mediator confirmed that the original requester was not appealing the city's decision that the exemptions in sections 8(1)(i) and 14(1) applied to the portions of the records which the city was not prepared to disclose. Accordingly, the records at issue in this appeal are only those portions of the records which the city has indicated it is prepared to disclose. As well, the only issue is whether those portions of the records contain the personal information of the appellants as defined by section 2(1) of the *Act* and, if so, whether they qualify for exemption under section 14(1) of the *Act*.

[8] Mediation did not resolve this appeal, and it was transferred to the inquiry stage of the process. I sent a Notice of Inquiry to the third party appellants, initially. The appellants did not provide representations in response to the Notice of Inquiry, but did indicate that their position remained the same as set out in earlier correspondence with this office.

[9] In this order, I find that the records or portions of records which the city decided to disclose do not contain the personal information of the appellants, and I confirm the city's decision to disclose those records or portions of records.

RECORDS:

[10] The records at issue in this appeal are only those portions of the records which the city has indicated it is prepared to disclose. They are described in a detailed index prepared by the city as follows:

- an inspection checklist,
- an identified township map,
- a business card,
- portions of a building permit application and a letter of authorization,
- portions of a document identifying the floor area cost per square foot,
- portions of a building permit,
- portions of six permit approval forms, and
- portions of a third party letter dated in 1993.

DISCUSSION:

Do the records contain "personal information"?

[11] The third party appellants appealed the decision of the city to disclose portions of the records on the basis that the disclosure of the portions of the records would result in an unjustified invasion of privacy under section 14(1).

[12] In order to determine whether 14(1) of the *Act* may apply, it is necessary to first 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 where 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;

[13] 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

[14] 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

[15] 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

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

[17] As noted above, the city decided to grant full and/or partial access to certain records, and denied access to other records or portions of records. The city denied access to certain information in the records including names, a mailing address, certain

¹ Order 11.

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.).

property descriptors, certain monetary amounts, and certain dimensions, measurements and drawings. As the original requester has not appealed the city's decision to deny access to those records or portions of records, they are not at issue in this appeal.

[18] I must determine whether the remaining portions of the records at issue contain the personal information of the appellants.

[19] As noted above, the third party appellants advised that they opposed the release of the records or portions of records on the basis that they contain the personal information of the appellants. Although the appellants did not provide representations, and did not specifically address how the information at issue qualifies under section 2(1) of the *Act* as personal information, their position, as stated in their appeal letter, is that the information is their personal information, and that disclosure may create safety risks for themselves and their families. They also provide additional information on why disclosure would constitute an unjustified invasion of privacy.

Analysis and Finding

[20] The issue before me is whether the information remaining at issue, which relates to the construction of a garage on the appellants' property, is "personal information" as defined by section 2(1) of the *Act*, or is information about the property. This issue was first addressed in Order 23, where former Commissioner Sidney B. Linden distinguished between "personal information" and information concerning residential properties. The former Commissioner considered the introductory wording of section 2(1) of the *Act* which defines "personal information" as "... any recorded information about an identifiable individual" and concluded that the information in that appeal, a plan, was information about a property and not an identifiable individual. Following that order, Order MO-2081 found that none of the information contained in building permit drawings qualified as "personal information." A number of subsequent orders have similarly found that certain building permit information did not constitute "personal information" under section 2(1) of the *Act*.⁵

[21] After considering the third party appellants' materials, and having closely reviewed the records remaining at issue in this appeal, I find that the information remaining at issue relating to the construction of the garage does not constitute the personal information of the third party appellants within the meaning of section 2(1) of the *Act*. The records relate to the construction of a garage on the appellants' property. As noted, the city has denied access to certain information in the records including names, a mailing address, certain property descriptors, certain monetary amounts, and certain dimensions, measurements and drawings. The remaining information includes an inspection checklist, a township map, a business card, and portions of building permit documentation, correspondence and various forms and documents. I find that

⁵ See, for example, orders MO-2695, MO-2792 and Privacy Complaint No. MC-050025-1.

this remaining information does not include information relating to the appellants, and relates solely to the property. Accordingly, I find that the portions of the records which the city has indicated it is prepared to disclose do not contain "personal information" within the meaning of section 2(1) of the *Act*.

[22] I have reviewed the material provided by the appellants earlier in this appeal, in which the appellants comment about their concerns about the disclosure of the information. I appreciate that the appellants would prefer not to have the information at issue disclosed to the requester; however, I am unable to withhold disclosure of the information to the requester where an exemption does not apply.

[23] As the mandatory exemption in section 14(1) can only apply to personal information and no other mandatory exemptions apply to the information at issue, I find that the portions of the records which the city has indicated it is prepared to disclose should be disclosed.

ORDER:

I uphold the city's decision, and order the city to disclose to the original requester those portions of the records which it indicated it was prepared to disclose by **August 27, 2013** but not before **August 22, 2013**.

Original signed by: _____
Frank DeVries
Adjudicator

_____ July 22, 2013