

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-2969

Appeal MA13-276

Peterborough County-City Health Unit

October 31, 2013

**Summary:** The requester sought access to records relating to an approved septic plan location for a specific property. The health unit located responsive records and notified two affected parties of the request. The affected parties objected to the disclosure of their personal information to the requester. The health unit issued a decision granting partial access to the records, severing from them all of the affected parties' personal information. The affected parties appealed this decision claiming that the mandatory exemption in section 14(1) (invasion of privacy) applied to the remaining information. This order finds that the information at issue is not "personal information" within the meaning of the *Act* and upholds the decision of the health unit.

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

**Orders and Investigation Reports Considered:** MO-2081.

### BACKGROUND:

[1] The Peterborough County-City Health Unit (the health unit) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to the approved septic plan location for a specified property.

[2] The health unit located records responsive to the request. As required by section 21 of the *Act*, the health unit notified two individuals whose interests could be affected

by the disclosure of the records and sought their views on disclosure. The individuals objected to the release of their personal information in the records.

[3] The health unit then issued a decision granting partial access to the records. In its decision letter, the health unit advised that it would remove all personal information of the individuals, including their name, address and phone number, from the responsive records prior to disclosure of the remaining information therein.

[4] The individuals, now the appellants, appealed the decision of the health unit to this office.

[5] During mediation, the requester confirmed that he is only interested in the records that identify the location of the septic tank on the specified property, and that he is not interested in any personal information contained in the records. Accordingly, only pages 10 and 15 of the records contain information that is responsive to this narrowed request. The appellants were advised of the narrowed scope of the appeal, and confirmed their continued objection to disclosure of the records on the basis that disclosure would result in an unjustified invasion of their personal privacy under the mandatory exemption in section 14(1) (invasion of privacy).

[6] A mediated resolution of the appeal was not possible, and the appeal was transferred to the adjudication stage of the appeal process for an inquiry under the *Act*.

[7] I decided to begin my inquiry by inviting the representations of the appellants, as they are resisting disclosure in this appeal. They take this position despite the health unit's decision to disclose only information that is not their personal information; information that is not personal information does not qualify for exemption under the section 14(1) exemption, which can only apply to "personal information." As the only parties claiming the application of the mandatory exemption in section 14(1), the appellants bear the burden of proving that the information at issue falls within this exemption.

[8] In this order, I uphold the decision of the health unit and dismiss the appeal.

## **RECORDS:**

[9] The records at issue in this appeal are a site plan (page 10) and diagram of the property (page 15), excluding the appellants' names, address and phone number that appear in these records.

## **DISCUSSION:**

[10] The issue for me to determine in this appeal is whether the information at issue qualifies as the personal information of the appellants such that its disclosure would

constitute an unjustified invasion of the appellants' privacy under section 14(1) of the *Act*.

[11] The term "personal information" is defined in section 2(1) of the *Act* 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;

[12] 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>

[13] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>2</sup>

[14] I gave the appellants an opportunity to address the issue of whether the information at issue contains their personal information. In their representations, the appellants describe in detail the nature of their relationship and dealings with the requester, which include acrimonious disputes about land use and property construction plans. The appellants question the requester's motives and stress their concerns that disclosure of the information at issue would be used by the requester to further thwart their property construction plans. They argue that the requester has intimate knowledge of them, their address and their construction plans, and therefore, protecting their personal information that appears in the records "is a moot point" as he is very familiar with their personal information. The appellants ask that the information not be disclosed because they fear that the requester will use it to act unfairly and further postpone their construction endeavours, which in turn, would cause them pecuniary harm. The appellants assert that the factor favouring privacy protection in section 14(2)(e) applies in this appeal. They state that they can envision suffering foreseeable and unfair financial harm and emotional distress as contemplated by section 14(2)(e) if the information at issue is disclosed.

[15] I have considered the appellants' representations, which make clear their position that they have been harassed by the requester with respect to their construction endeavours and that they will be further victimized by the requester if the information is disclosed. However, the appellants have not addressed the key issue in this appeal: whether the information that remains at issue is "personal information" as defined in the *Act*.

[16] Based on my review of the records, I find that the information that remains at issue does not qualify as the personal information of the appellants as that term is defined in section 2(1) of the *Act*. Rather, all of the information at issue pertains solely to the appellants' property. The site plan shows the layout of the appellants' property including the location of the existing and proposed dwellings and decks, the proposed lot coverage and total lot area, the property line, vegetation and rock formations. The diagram is a hand-drawn image of the property showing the location of the dwelling and septic bed, as well as certain distances between various points on the property.

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<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.).

[17] Previous orders of this office have consistently found that information relating solely to a property owned by an individual is not considered to qualify as the personal information of the individual.<sup>3</sup> One of these orders, Order MO-2081, considered site plans that contained information similar to the information at issue in this appeal. In considering whether the site plans at issue in Order MO-2081 contained personal information, Adjudicator Catherine Corban noted that the drawings detailed “the particulars of the subject property including the existing and proposed structures” and found that these “drawings, plans and notations about proposed alterations or additions to a property in the context of a building permit application are not personal information.” The same reasoning applies in this appeal.

[18] Accordingly, I find that the information about the appellants’ property contained in the site plan and drawing at issue does not qualify as “personal information” within the meaning of section 2(1) of the *Act*.

[19] Although I understand the appellants’ submissions and concerns about the requester, and I appreciate they would prefer not to have their property information disclosed, the information cannot be withheld in the absence of an applicable exemption.

[20] As noted above, the mandatory exemption in section 14(1) and the factor favouring privacy protection in section 14(2)(e) can only apply to personal information. Having found that the information is not personal information, this exemption is not applicable. Therefore, I find that the information at issue should be disclosed to the requester.

**ORDER:**

1. I uphold the health unit’s decision and dismiss the appeal.
2. I order the health unit to disclose the property information at issue, as set out in the copy of the records attached to this order, to the requester by **December 6, 2013**, but not before **November 29, 2013**.

Original Signed By: \_\_\_\_\_  
Stella Ball  
Adjudicator

\_\_\_\_\_ October 31, 2013

<sup>3</sup> Orders M-23, M-175, MO-2081, PO-2322, MO-2053 and MO-2792.