

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3088

Appeal MA13-274

Wellington-Dufferin-Guelph Public Health Department

August 27, 2014

Summary: The Wellington-Dufferin-Guelph Public Health Department received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for access to records relating to a specific dog bite incident. Although initially claiming that the discretionary personal privacy exemption in section 38(b) applied, at adjudication it took no position on this exemption. Instead, it submitted that the information withheld from the responsive record, the rabies investigation report, is not subject to the *MFIPPA* because it is contained in a record of personal health information that is governed by the *Personal Health Information Protection Act (PHIPA)*. This order finds that neither act applies and orders disclosure of the dog owner's name.

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), 38(b), 14(2)(b), 14(2)(d), 14(2)(e), 14(2)(f) and 14(2)(g); *Personal Health Information Protection Act*, section 4(1)(a); *Dog Owners Liability Act*; and *Health Protection and Promotion Act*, section 10.

Orders and Investigation Reports Considered: Orders MO-2980 and MO-2954.

OVERVIEW:

[1] The Wellington-Dufferin-Guelph Public Health Department (the PHD) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for access to records relating to a specific dog bite incident.

[2] The PHD located an investigation report and issued a decision granting access in part. The PHD denied access to the dog owner's (the affected person's) name, address, telephone numbers, as well as information that could identify their gender and home address, pursuant to section 38(b) of the *Act*.

[3] The requester (now the appellant) appealed the PHD's decision.

[4] During mediation, the PHD clarified that access to the information was withheld under 38(b), in conjunction with sections 14(3)(b) of the *Act*. The PHD further explained that the incident that is the subject of this appeal was investigated under a regulation of the *Health Protection and Promotion Act (HPPA)*.

[5] The mediator contacted the affected person to determine if they would consent to the disclosure of this information to the appellant. The affected person did not provide consent.

[6] As mediation did not resolve the issues in this appeal, this file was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry. I sought and received representations from the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[7] At adjudication, the appellant narrowed the scope of her request to the dog owner's name.

[8] In this order, I do not uphold the PHD's decision and order disclosure of the dog owner's name.

RECORD:

[9] Remaining at issue is the name of the dog owner withheld from a three-page *Rabies Investigation Report*.

Preliminary Issue:

[10] The PHD submits that the information withheld from the rabies investigation report is not subject to the *MFIPPA* because it is contained in a record of personal health information that is governed by the *PHIPA*.

[11] PHD states that the record was created by a medical officer of health, who has a duty under section 10 of the *HPPA* to inspect or cause the inspection of the health unit served by them for the purpose of preventing, eliminating and decreasing the effects of health hazards in the health unit.

[12] According to the PHD, rabies is a reportable and communicable disease, as well as a health hazard that is controlled by specific regulation under the *HPPA*, which requires dog owners to immunize and re-immunize their dogs. It states that:

The rabies investigation report at issue contains the requester's [the appellant's] personal health information - i.e., identifying information about the requester "that relates to [her] physical or mental health." The record identifies the requester by name and is about her potential exposure to rabies. The record contains data fields about the nature of the "exposure" and about whether vaccination is requested...

Given the rabies investigation report at issue contains the requester's personal health information, the plain wording of section 4(3) of *PHIPA* deems all identifying information in the record to be personal health information.

[13] The appellant does not agree that there is an additional issue of whether *MFIPPA* applies to the information at issue. She states that by responding to the request under the *MFIPPA* rather than the *PHIPA*, the PHD attorned to the jurisdiction of the *MFIPPA*.

[14] The PHD states in reply that it cannot "attorn" to the *MFIPPA* jurisdiction because there is no such jurisdiction. It states that the withheld information at issue is either subject to the *MFIPPA* or the *PHIPA*, but not both.

Analysis/Findings

[15] Section 4(1)(a) of the *PHIPA* cited by the PHD, reads:

In this Act,

"personal health information", subject to subsections (3) and (4), means identifying information about an individual in oral or recorded form, if the information,

relates to the physical or mental health of the individual, including information that consists of the health history of the individual's family.

[16] The appellant was attacked by two dogs, one of which bit her. Based on my review of the record, I find that it does not relate to the physical or mental health of the appellant, but is a record related to a rabies investigation into a specific dog. At the top of the report the title is "Animal Summary". The subtitles include "Animal Information". The report discusses the dogs at issue, the dogs' vaccination history and any quarantine of the dogs.

[17] The only reference to the appellant in this three-page detailed record, besides the details of her report of the dogs attacking her and her contact information, is a one word answer to the question: "Is Vaccination Requested?"

[18] For this record to be in relation to the physical health of the appellant as set out in section 4(1)(a) of *PHIPA*, it must be reasonable to conclude that there is "some connection" between the record and the physical health of the appellant.¹ I find that this is not the case, as the record relates to the health of a dog, not the health of the appellant within the meaning of *PHIPA*.

[19] Therefore, even though the record may have been prepared by a medical officer of health under section 10 of the *HPPA*, I find that the *MFIPPA*, not the *PHIPA*, applies to the record. Accordingly, I will consider whether the information at issue is exempt under the *MFIPPA*.

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 discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

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

[20] 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,

¹ Order MO-2589; see also *Ministry of the Attorney General and Toronto Star and Information and Privacy Commissioner*, 2010 ONSC 991 (Div. Ct.).

- (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;

[21] 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.²

[22] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

² Order 11.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[23] None of the parties provided direct representations on this issue. The PHD, however, referred to Order MO-2980, where Adjudicator Colin Bhattacharjee stated that:

The occurrence report and the officers' notes contain information relating to four individuals: the appellant, the dog owner, the other possible dog owner, and the witness. The information about the appellant, the dog owner and the witness includes their names, birth dates/ages, sexes, home addresses, home telephone numbers and other information. I find that all of this information qualifies as their personal information, because it falls within paragraphs (a), (d), and (h) of the definition of this term in section 2(1).

[24] Most of the record has been disclosed to the appellant. Withheld from the record are the name, sex, home and cell phone numbers and home address of the dog owner, the affected person. I find that this information is the personal information of the affected person, in accordance with paragraphs (a), (d), and (h) of the definition of this term in section 2(1).

[25] The record also contains the same personal information about the appellant, which has been disclosed to her.

[26] As the appellant is only seeking disclosure of the name of the affected person, I will only consider whether the discretionary personal privacy exemption in section 38(b) applies to this information.

B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

[27] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[28] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[29] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy.

[30] 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). If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this appeal, these paragraphs do not apply.

[31] In determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁴

[32] 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 the circumstances, it appears that the presumptions in section 14(3) do not apply.

[33] 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 The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).⁶

[34] The PHD did not provide representations on this issue, stating that in light of Order MO-2980, it takes no position on the application of the exemption in section 38(b) to the record. The other parties submitted that various factors under section 14(2) apply.

[35] The affected person states that releasing the information at issue, which they describe as accusations, would result in harm to themselves and their family and lead to negative acts against them. As such, they appear to be relying on section 14(2)(e), which 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 individual to whom the information relates will be exposed unfairly to pecuniary or other harm.

⁴ Order MO-2954.

⁵ Order P-239.

⁶ Order P-99.

[36] The appellant disputes the affected person's claim that section 14(2)(e) applies, and states that the *Dog Owners Liability Act (DOLA)* is an act of strict liability, as it states that the owner of a dog is liable for damages caused by a bite or attack by their dog.

[37] In order to not miss out on the limitation period, the appellant has brought an action against three different parties, including the party that she suspects is the affected person. She adds that any exposure by the affected person to damages and costs are to be determined by the trial judge at the proceeding brought under the *DOLA*. She states that:

...[if she is successful], the combined effect of that decision on the part of the dog owner and [the PHD] to not disclose the identity of the dog owner is to expose the Defendant, in a successful case against the dog owner, to not only [her] claim for legal costs, and the additional costs of the disclosure motion but also the legal costs of the two successful defendants, in effect exposing the dog owner to unnecessary costs rather than protecting the dog owner from same.

[38] The appellant advises that she wishes to assert her rights under the *DOLA* to maintain an action for damages. However, in order to achieve this purpose she advises that she must first access the withheld information in the record. The appellant argues that the factors favouring disclosure in sections 14(2)(b) and (d) of *MFIPPA* apply in the circumstances of this appeal. 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,

(b) access to the personal information may promote public health and safety;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request.

[39] Concerning section 14(2)(b), the appellant states that dealing with promoting public health and safety may in fact partially apply due to the nature of the *DOLA* and its purpose.

[40] Concerning section 14(2)(d), the appellant states that her rights to bring an action against a party who may be responsible for her injuries are predicated upon her being able to properly identify and commence proceedings against the appropriate

person. The appellant relies on the following findings in Order MO-2980 as to what is appropriate to disclose in light of a possible civil proceeding under *DOLA*:

The appellant submits that this four-part test established for section 14(2)(d) has been met:

[I]t is clear that the appellant is seeking the information in order to pursue a legal right drawn from the common and statute concepts, in a contemplated proceeding, and that the information has direct bearing and significance to the determination of that right and is in fact required in order to prepare for the proceeding.

The appellant is seeking the dog owner's name for the purpose of ensuring that her right to sue and seek damages from him under the *DOLA* is fairly determined. In my view, she has established that the four-part for section 14(2)(d) is applicable to this information because:

- (1) her right to sue and seek damages from the dog owner is drawn from statutory law (the *DOLA*);
- (2) this right is related to a contemplated proceeding against the dog owner under the *DOLA*;
- (3) the personal information she is seeking (i.e., the dog owner's name) has some bearing to her right to sue, because she needs to identify the defendant to bring a successful action; and
- (4) she requires the dog owner's name to prepare for the proceeding under the *DOLA*.

I find, therefore, that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d). Consequently, this factor weighs in favour of disclosing the dog owner's name to her.

[41] In reply, the affected person states that if the PHD information is released the consequences for an innocent party could be severe. They state that there is absolutely no concrete evidence that their dogs were the attackers yet the PHD has pointed to these dogs as the attackers. They state that it would appear that the sole purpose of the release of this information would be to strengthen a weak civil action with an erroneous report from a public health agency. As such, it appears that the affected

person is raising in reply the factor favouring privacy protection in section 14(2)(g), which 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 unlikely to be accurate or reliable.

[42] The affected person also states that they suffer from serious health issues and has been advised by their physician to avoid stressful situations as they exacerbate their condition and can cause their health to worsen. The affected person is also concerned about the health and safety of their children.

[43] As such, it appears that the affected person is raising in reply the factor favouring privacy protection in section 14(2)(f), which 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 highly sensitive.

[44] The affected person states that they know of public records that disclose the identity of the owners of land in the Province of Ontario and are aware of other public records that could disclose the occupier of the property. Therefore, they state that the release of private information is unnecessary.

[45] In surreply, the appellant points out that the disclosed portions of the record indicate that the affected person, upon being approached by the authorities, did not dispute that the dogs belonged to them. Further, she states that the affected person admitted in the report that on the day in question the dogs were off their chain as the chains were buried in snow and they had not dug out the chains to tether the dogs.

[46] The appellant states that she has the right to bring action against the owner of the dogs that attacked her and the owner can mount a defense to this action. She states that:

If the *Dog Owner's Liability Act* sets a stricter liability standard, that was the intent of the legislature, in the public interest, equal to the intent of privacy legislation.

While the Information and Privacy Commissioner is present to protect the privacy of individuals, it should not be used as a tool or a device to protect those who have exposed themselves to civil liability through their own negligence...

The serious health issues alleged by the [affected person] are without detail and certainly are not evidence...

If the owner of the dogs is now concerned about angry neighbors, ... this is not the consequence of [the appellant] pursuing her rights, but rather the failure of the owner to come forward and end the necessity of involving parties who would not have been even aware of the litigation had the owner properly admitted ownership to begin with.

Analysis/Findings

[47] The factors in sections 14(2)(b) and (d) raised by the appellant generally weigh in favour of disclosure, while the factors in section 14(2)(e), (f) and (g) weigh in favour of privacy protection. Based on my review of the record and the parties' representations, and relying on the findings in Order MO-2980, I find that the factors that favour disclosure apply and outweigh the factors favouring privacy protection concerning the name of the dog owner.

[48] I find that disclosure of the name of the owner of the dogs would promote public safety. In this regard, I adopt the reasoning concerning the factor in section 14(2)(b) in Order MO-2980, where Adjudicator Bhattacharjee stated:

One of the underlying purposes of the civil liability provisions in the *DOLA* is to promote public safety by ensuring that dog owners are held accountable if their dog bites or attacks another person. Moreover, the *DOLA* gives the court the discretion to order "that the owner of the dog take the measures specified in the order for the more effective control of the dog or for purposes of public safety."⁷

I find, therefore, that disclosing the dog owner's name to the appellant in this particular case may promote public safety under section 14(2)(b), because it may lead to civil proceedings and a possible court order with public safety ramifications. Consequently, this factor weighs in favour of disclosing the dog owner's name to her and I would give moderate weight to it.

⁷ S. 4(3)(b).

[49] 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 hearing⁸

[50] Concerning section 14(2)(d), I also adopt the findings, set out above, of Adjudicator Bhattacharjee in Order MO-2980, where he stated:

The appellant is seeking the dog owner's name for the purpose of ensuring that her right to sue and seek damages from him under the *DOLA* is fairly determined. In my view, she has established that the four-part for section 14(2)(d) is applicable to this information because:

- (1) her right to sue and seek damages from the dog owner is drawn from statutory law (the *DOLA*);
- (2) this right is related to a contemplated proceeding against the dog owner under the *DOLA*;
- (3) the personal information she is seeking (i.e., the dog owner's name) has some bearing to her right to sue, because she needs to identify the defendant to bring a successful action; and
- (4) she requires the dog owner's name to prepare for the proceeding under the *DOLA*.

I find, therefore, that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under

⁸ 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.).

section 14(2)(d). Consequently, this factor weighs in favour of disclosing the dog owner's name to her.

In my view, the existence of other possible methods of access does not preclude the appellant from exercising her access rights under the *Act* to seek the dog owner's name before she files a civil claim. As the victim of a dog attack, she has a right to seek the information in the most efficient, cost-effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would enable her to exercise her legal right to seek redress.

However, I agree with previous orders that have found that the existence of other possible methods of access reduces the weight that should be accorded to the section 14(2)(d) factor. I have found that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d), and this factor weighs in favour of disclosing the dog owner's name to her. Given the existence of other possible methods of access to this information, I would slightly reduce the weight given to this factor but find that it should still be given considerable weight in this appeal.

[51] I also find that the unlisted factor favouring disclosure referred to in Order MO-2980 applies. In that order, Adjudicator Bhattacharjee stated:

In Order MO-2954, Adjudicator Crolley stated that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. She found that this is an unlisted factor favouring disclosure and gave significant weight to this unlisted factor.

The facts in the appeal before me are different than those before Adjudicator Crolley in Order MO-2954, but the same general principle applies. The appellant was knocked down and bitten by a pit bull dog on a public street. In my view, the police's refusal to provide the appellant with the dog owner's name is fettering her right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries.

In the particular circumstances of this appeal, I give significant weight to this unlisted factor but only with respect to the dog owner's name. In my view, there is insufficient evidence before me to find that this unlisted factor would apply to the dog owner's other personal information or the personal information of the other possible dog owner and the witness.

[52] I have considered the factor in section 14(2)(e) relied upon by the affected person, namely that the affected person will be exposed unfairly to pecuniary or other harm.

[53] 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. Although the affected person may perhaps be exposed to pecuniary harm as a result of the *DOLA* proceedings, or exposed to other harm in the form of harassment by their neighbours who were wrongly sued under the *DOLA*, I find that this harm is not unfair, but is merely a consequence that any defendant would be exposed to in a civil action. Accordingly, I find that this factor does not apply.

[54] The affected person has also raised the factor favouring privacy protection in section 14(2)(f), that disclosure of their name is highly sensitive.

[55] To be considered highly sensitive, there must be a reasonable expectation of significant personal distress if the information is disclosed.⁹ I find that in the circumstances of this appeal, I do not have sufficient evidence that this factor applies. I agree with the appellant that the vague assertion of health problems, with nothing more, does not lead me to conclude that being a defendant in a *DOLA* action comes within this factor. I also rely on the finding on this factor in Order MO-2980, where Adjudicator Bhattacharjee stated:

In their representations, the police [the institution] do not specifically cite section 14(2)(f) but make submissions that amount to an argument that an individual's name and address are highly sensitive. In particular, they cite Order MO-2954, in which Adjudicator Cropley quoted the following passages from one of her earlier orders that addressed the privacy concerns relating to address information:

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

⁹ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

serious consequences for an individual's control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the *Act*.

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.¹⁰

In my view, whether an individual's name and address is highly sensitive depends on the context and should be assessed on a case-by-case basis. An individual's name and address is not always sensitive information. For example, the names and addresses of most individuals appear in publically accessible telephone or online 411 directories and are clearly not highly sensitive in that context.

However, the names and addresses of individuals have greater sensitivity when this information is collected by the state or agencies of the state such as the police. For example, if the police interview a witness who saw a murder and can identify the suspect, the witness's name and address would clearly be highly sensitive. In other cases, however, a witness' name and address may be sensitive, but not necessarily highly sensitive.

In the particular circumstances of this appeal, the police concluded that the dog attack was a matter that should be addressed in a civil law context, not a criminal context. In my view, this reduces the sensitivity of the personal information in these particular police records.

I find that the personal information of the dog owner, the other possible dog owner and the witness is sensitive but not highly sensitive. I note that both the dog owner and the witness were given an opportunity to submit representations but neither chose to do so and express whether disclosure would cause them significant personal distress. In my view, although disclosing these individuals' personal information might cause them personal distress, I am not persuaded that doing so would cause them significant personal distress.

¹⁰ Order M-1146.

In short, I find that section 14(2)(f) does not apply to the personal information of the dog owner, the other possible dog owner and the witness, and this factor is therefore not relevant in determining whether disclosing their personal information would constitute an unjustified invasion of their personal privacy.

[56] In this appeal, the institution is not the police and the information was not compiled as part of a law enforcement investigation. The affected person's name is being sought for use in a civil proceeding about a dog bite. Taking into account the affected person's representations, I find that I have not been provided with sufficient evidence to determine that disclosure of this information would result in a reasonable expectation of significant personal distress if disclosed. Accordingly, I find that this factor does not apply.

[57] The affected person has also raised in reply that disclosure of their name would result in inaccurate or unreliable information being disclosed and that, therefore, the factor in section 14(2)(g) applies. Taking into account the entire record, I find that I do not have sufficient evidence to find that disclosure of the name of the affected person is likely to result in disclosure of inaccurate or unreliable information. Accordingly, I find that this factor does not apply.

Conclusion

[58] As stated above, in determining whether disclosing the name of the dog owner would constitute an unjustified invasion of their personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties. In this appeal, only the factors in section 14(2) apply.

[59] Consistent with the findings in Order MO-2980, I have found that:

- Disclosing the dog owner's name in this particular case is relevant to a fair determination of the appellant's rights under section 14(2)(d). This factor weighs in favour of disclosure and should be given considerable weight.
- Disclosing the dog owner's name in this particular case may promote public safety under section 14(2)(b). This factor weighs in favour of disclosure and should be given moderate weight.
- The evidence does not demonstrate that the damage or harm envisioned by section 14(2)(e) by disclosing the dog owner's name in this particular case would be "unfair" to the affected person. Consequently, this factor should not be given weight.

- The evidence does not demonstrate that the name of the dog owner is highly sensitive information, as required by the factor weighing against disclosure in section 14(2)(f). Consequently, this factor should not be given weight.
- The evidence does not demonstrate that the name of the dog owner is inaccurate or unreliable information, as required by the factor weighing against disclosure in section 14(2)(g). Consequently, this factor should not be given weight.
- An unlisted factor in section 14(2) is that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. The PHD's refusal to provide the appellant with the dog owner's name is fettering her right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries. This unlisted factor, which weighs in favour of disclosure, should be given considerable weight with respect to the dog owner's name.

[60] I have considered and weighed the factors and presumptions in section 14(2). I find that the factors apply that favour disclosure found in sections 14(2)(b) and (d), as well as the unlisted factor established in Order MO-2954 that the *Act* should not be used in a way that prevents individuals from exercising their legal rights.

[61] I agree with Adjudicator Bhattacharjee in Order MO-2980, that:

In this case, in balancing the access rights of the appellant and the privacy rights of the dog owner, I find that considerably more weight should be given to the appellant's access rights in aid of pursuing accountability and responsibility for the dog attack, over the dog owner's privacy rights, as least with respect to his name. Consequently, after considering and weighing the factors and presumptions in sections 14(2) and (3), and balancing the interests of the parties, I have concluded that disclosing the dog owner's name to the appellant would not constitute an unjustified invasion of his personal privacy under section 38(b). Although I accept that the dog owner has privacy rights, and that disclosing his name will in some measure be an invasion of his personal privacy, I am satisfied that it is not an unjustified invasion of his personal privacy. I will, therefore, order the police to disclose the dog owner's name to the appellant.

[62] Accordingly, adopting the reasoning in Order MO-2980, after weighing the factors in section 14(2), and balancing the interests of the parties, I find that disclosing the dog owner's name to the appellant would not constitute an unjustified invasion of personal privacy under section 38(b). As was the case in Order MO-2980, I accept that the dog owner has privacy rights, and that disclosing their name will in some measure be an invasion of their personal privacy, I am satisfied that it is not an unjustified

invasion of their personal privacy. I will, therefore, order the PHD to disclose the dog owner's name to the appellant.

ORDER:

I order the PHD to disclose the dog owner's name to the appellant by **October 2, 2014** but not before **September 26, 2014**.

Original Signed By: _____
Diane Smith
Adjudicator

August 27, 2014