

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-3091-F

Appeal MA12-241

Toronto Police Services Board

August 29, 2014

Summary: The appellant sought access to the winning submission and to various scoring and evaluation materials relating to a specified request for proposal. The police located records responsive to the request and issued a decision denying access to them on the basis of the mandatory third party information exemption in section 10(1) of the *Act*. The appellant appealed the decision. Interim Order MO-3080-I partially upheld the police's decision and deferred a decision on the resumes contained in the winning submission. This Final Order upholds the police's decision to withhold the resumes, but under the mandatory personal privacy exemption in section 14(1) and not the mandatory third party information exemption in section 10(1).

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

Orders and Investigation Reports Considered: Orders MO-3058-F, MO-2151, MO-2193 and MO-2856.

Cases Considered: *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

BACKGROUND:

[1] This is my Final Order for Appeal MA12-241. It relates to my Interim Order MO-3080-I issued July 31, 2014.

[2] Appeal MA12-241 resulted from a request to the Toronto Police Services Board (the police) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records related to a specified request for proposal (RFP) for a construction management services project. The records at issue in Appeal MA12-241 were the winning RFP submission and various RFP scoring and evaluation materials. I addressed most of the records at issue in Interim Order MO-3080-I. I deferred my determination of whether the mandatory personal privacy exemption in section 14(1) of the *Act* applied to the remaining information in the resumes at pages 48 to 58 of the records, as the possible application of the section 14(1) exemption had not been raised earlier and the parties had not had an opportunity to address it.

[3] When I issued my Interim Order, I invited the appellant to provide representations on section 14(1). The appellant did not submit any representations. In the circumstances, I found it unnecessary to invite representations from the remaining parties on whether the mandatory exemption applies to the resume information remaining at issue.

[4] In this Final Order, I find that the mandatory personal privacy exemption in section 14(1) applies to exempt the remaining records from disclosure.

DISCUSSION:

[5] The sole issue for me to determine in this Final Order is whether the mandatory personal privacy exemption at section 14(1) applies to exempt the resumes in pages 48 to 58 of the records from disclosure.

[6] In order to determine whether the personal privacy exemption in section 14(1) applies to the resume records, I must first decide whether the records contain "personal information" and, if so, to whom it relates. Section 2(1) of the *Act* contains the following definition:

"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 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;

[7] 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

[8] Sections 2(2.1) and (2.2) also relate to the definition of personal information and 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.

[9] 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

¹ Order 11.

identified if the information is disclosed.² 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.³ 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.⁴

[10] Based on my review, I find that pages 48 to 58 of the records contain information that falls within paragraph (b) of the definition of personal information in section 2(1). The resumes all contain details of the construction project team members’ educational and employment history; this type of information has been found by this office to qualify as personal information.⁵ Even though the names on the resumes are not at issue, I find that the remaining information in the resumes is specific enough to identify the team members, particularly given the context of the construction and engineering sector and the fact that the winning proponent is publicly known. Accordingly, I find that the resumes contain personal information about identifiable individuals within the meaning of paragraph (b) of the definition of that term in section 2(1) of the *Act*. The records do not contain the personal information of the appellant.

[11] Having found that pages 48 to 58 contain personal information, I will consider the application of the mandatory section 14(1) personal privacy exemption to these records.

Unjustified invasion of personal privacy

[12] Section 14(1) prohibits the disclosure of another individual’s personal information to a requester unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. In this appeal, the only exception that might apply is section 14(1)(f), which allows disclosure of the personal information if it would not constitute an unjustified invasion of personal privacy. 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(2) provides some criteria to be considered when making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy.

[13] Section 14(3)(d) states that disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information relates to employment or educational history. Many previous orders of this office have determined that information about employment or educational history contained in

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

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Orders MO-3058-F, MO-2151, MO-2193 and MO-2856.

resumes falls within the scope of section 14(3)(d). I agree with and adopt those findings. I find that the personal information in pages 48 to 58 of the winning submission is covered by this presumption.

[14] The Divisional Court has held that once a presumption against disclosure under section 14(3) has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2). If a section 14(3) presumption against disclosure is established, it can only be overcome if the personal information at issue fits within section 14(4) or if the "compelling public interest" override at section 16 applies.⁶

[15] Section 14(4) does not apply in the circumstances of this appeal. And the public interest override, although raised by the appellant, does not apply in this appeal as I found in Interim Order MO-3080-I. Accordingly, I find that disclosure of the personal information in pages 48 to 58 of the winning submission would constitute an unjustified invasion of personal privacy and, therefore, the information is exempt under section 14(1) of the *Act*.

FINAL ORDER:

I uphold the decision of the police to withhold pages 48 to 58 from disclosure.

Original signed by: _____
Stella Ball
Adjudicator

_____ August 29, 2014 _____

⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.