

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3066

Appeal MA13-368

City of Greater Sudbury

June 30, 2014

Summary: The city received a request for access to the complete building permit file for a specified address. The city issued a decision granting partial access to the records, relying on the mandatory exemption in section 14(1) to withhold any personal information in the records. The appellant, whose personal information was contained in the requested records, objected to the disclosure of the records. The city's decision to disclose those portions of the records which do not contain personal information is upheld, with one exception.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) and 14(1).

Orders and Investigation Reports Considered: Orders MO-2994, MO-2969, MO-2695, MO-2081, MO-2053, PO-1847, PO-2267 and PO-2733.

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:

[A] copy of entire building department file for a specified address, including all plan, engineering, permits and inspections and correspondence to occupants.

[2] The city located records responsive to the request. In accordance with section 21 of the *Act*, the city notified individuals whose interests could be affected by disclosure of the records and invited their views on disclosure. Two individuals objected to disclosure of the records on the basis that they provided the information in the records to the city in confidence and thus, disclosure would constitute an invasion of their personal privacy under section 14(1) of the *Act*. They questioned the motives of the requester and provided information about the circumstances that likely prompted the request which resulted in this appeal.

[3] The city issued a decision granting the requester partial access to the records. It relied on the mandatory exemption in section 14(1) (invasion of privacy) of the *Act* to deny access to parts of the records. It also relied on the discretionary exemption in section 8(1)(i) (security of a building) to deny access to pages 1-65, 1-69 and 1-77 of the records, in their entirety. These records consist of copies of an agreement of purchase and sale and building plans relating to the property specified in the request.

[4] One of the individuals whose personal information was contained in the records objected to the disclosure of any of the information in the records and appealed the city's decision. The requester did not appeal the city's decision. Therefore, the information that the city has withheld as exempt under section 14(1) of the *Act* is not at issue in this appeal.

[5] During mediation, the appellant continued to object to disclosure of any of the records. The original requester advised the mediator that he seeks access to all of the information that the city decided to disclose but does not seek access to pages 1-65, 1-69 and 1-77, which the city decided to withhold in their entirety. Accordingly, these pages and the discretionary exemption in section 8(1)(i) that the city claimed to withhold these pages are not at issue in this appeal. Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeal process for an inquiry under the *Act*.

[6] Because the appellant opposes disclosure of the information that the city has decided to disclose, the burden of establishing that the information to be disclosed is exempt under the *Act* lies with him. The information that the city has decided to disclose does not, in its view, qualify under any of the exemptions in the *Act*. The appellant disputes the city's decision and claims that the information at issue does, in fact, contain personal information relating to him and its disclosure would be an unjustified invasion of his personal privacy. Accordingly, the appellant bears the burden of establishing that the information the city has decided to disclose falls within the section 14(1) exemption. In light of this, I began my inquiry by inviting the appellant's representations on why he believes that the information at issue is personal information that qualifies for exemption under the mandatory personal privacy exemption at section 14(1) of the *Act*. The appellant did not submit representations. As such, I do not have representations before me addressing why the appellant believes the information that

the city has decided to disclose is personal information that qualifies for exemption. Without representations from the party that bears the burden of proof in this appeal and given the mandatory nature of the section 14(1) exemption, I found it unnecessary to invite representations from the city or the requester. Instead, I relied on the materials before me, including the appellant's submissions to the city objecting to disclosure, to make my determination. In this order, I uphold the city's decision to disclose almost all of the information at issue.

RECORDS:

[7] The records at issue consist of all of the information in the records which the city has decided to disclose to the requester as set out in the table below:

Description	Pages	Access
Permit No. 01-0898 Documents	1-1 to 1-10	Partial
Permit Approval Forms	1-11 to 1-15	Partial
Inspection Notices	1-16 to 1-22	Partial
Pictures	1-23 to 1-37	Partial
Partial Survey and Sketch from a third party, Map – Lot 8	1-38	Complete
Map – 2003 and 2007 Orhotphotography	1-39 to 1-40	Complete
Roll Information	1-41 to 1-43	Partial
Plumbing & Sewage Permit Documentation	1-44 to 1-49	Partial
Correspondence	1-50, 1-52, 1-66	Partial
Committee of Adjustment Minutes	1-53 to 1-54	Complete
Sketches	1-55 to 1-58	Complete
Partial Survey	1-59	Partial
Township Map 9	1-60	Complete
Fax re By-Law 2001-36L	1-61 to 1-64	Partial
Partial Survey & Sketch from a third party	1-78	Complete
Sketch and design controls from a third party	1-79 to 1-80	Partial
Truss information from a third party	1-81 to 1-90	Partial
Truss information from a third party	1-91 to 1-94	Complete
Evaluation Report	1-95 to 1-101	Complete

DISCUSSION:

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

[8] The main issue for me to determine in this appeal is whether the information that the city has decided to disclose qualifies as "personal information" as that term is

defined in section 2(1) such that its disclosure might constitute an unjustified invasion of personal privacy under section 14(1) of the *Act*. The term "personal information" 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;

[9] 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 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.²

[10] Based on my review of the records at issue, I note that the name and address of an individual is included in the information to be disclosed in the Committee of Adjustment Minutes at pages 1-53 and 1-54. The address is not that of the property that is the subject of this request. I find that this name and address in these two pages reveal information about this individual in his or her personal capacity and thus qualify as personal information under paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the *Act*. Accordingly, I will determine below whether the mandatory personal privacy exemption applies to this personal information.

[11] In respect of the remaining information that the city has decided to disclose, it all relates to the property specified in the request. This includes building permit information such as the lot size of the property, the project/permit number, the municipal address of the property, a standard inspection checklist used by the city, zoning information for the property, and various pictures and maps of the property and surrounding area. Previous orders of this office have consistently found that information about a property does not qualify as personal information.³ This includes information about building and other permits related to a property as well as building and construction plans and diagrams. I adopt the same approach here and find that the property information in the records at issue does not reveal anything of a personal nature about any individual and does not contain personal information. Having found that there is no personal information contained in these remaining records, it is unnecessary for me to consider the possible application of the section 14(1) exemption to this information in the records, as this exemption can only apply to records that contain personal information.

B. Does the mandatory exemption at section 14(1) apply to the personal information in pages 1-53 and 1-54 of the records?

[12] Section 14(1) prohibits an institution from releasing the personal information of an individual who is not the requester to the requester, unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. I find that the personal information does not fit within any of the exceptions in sections 14(1)(a) through (e). The section 14(1)(f) exception, which allows disclosure if it would not constitute an unjustified invasion of personal privacy, requires a consideration of the presumptions in section 14(3), the factors in section 14(2) and the exceptions in section 14(4). I find that none of the presumptions in paragraphs (a) through (h) of section 14(3) applies to the

¹ Order 11.

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

³ See for example, MO-2994, MO-2969, MO-2695, MO-2081, MO-2053 and PO-1847.

personal information. As well, I find that none of the factors in section 14(2) favouring disclosure applies to the personal information. Although I understand the city's decision to disclose the personal information appears to have been based on its position that the Committee of Adjustment minutes are minutes from a public meeting, I note that the meeting took place thirteen years ago, and I am mindful of the circumstances of this appeal, including: what the personal information reveals about the individual; the fact that the personal information has been withheld as exempt under section 14(1) in the remaining records; and the nature of the relationship between the parties. In the absence of any factors favouring disclosure in this appeal, I find that the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.⁴ As such, I will order the city to withhold the personal information in pages 1-53 and 1-54 when it discloses the remaining information which it has decided to disclose.

ORDER:

1. I order the city not to disclose to the requester the personal information in pages 1-53 and 1-54 that I have found exempt under section 14(1) of the *Act*. I have attached a copy of pages 1-53 and 1-54 to the order provided to the city with the personal information that should not be disclosed to the requester highlighted in yellow.
2. I order that the remaining information in the records which the city decided to disclose be disclosed to the requester by **August 6, 2014**, but not before **July 30, 2014**.

Original signed by: _____
Stella Ball
Adjudicator

_____ June 30, 2014

⁴ Orders PO-2267 and PO-2733.