

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3068

Appeal MA10-360

City of Vaughan

July 4, 2014

Summary: The City of Vaughan received a three-part request under the *Municipal Freedom of Information and Protection of Privacy Act* for access to information related to calls to or from the home phone and the cell phone numbers of the city's former mayor and manager. The city denied access to the records in part, citing the mandatory personal privacy exemption in section 14(1). The appellant also raised the issue of reasonable search. This order upholds the city's search and also finds that the logs related to the home numbers and personal cell phone numbers are exempt under section 14(1).

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), 14(1), and 17.

Orders and Investigation Reports Considered: Order MO-2771.

OVERVIEW:

[1] The City of Vaughan (the city) received a three-part request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to information related to calls to or from the home phone and the personal cell phone numbers of the city's former mayor and former manager.

[2] The city provided an access decision related to each part of the request, as follows:

Part A

The city indicated that extension detail reports (or phone logs) for November and December 2006 and January 2007 could only be produced by its technology (IT) department for the 12 months preceding the date on which a request is received. The city stated that as records responsive to Part A fall outside that date range, responsive records do not exist.

Part B

Similar to the request in Part A, the city also advised that a portion of the records commencing November 1, 2006 for all calls incoming or out going from or to two telephone numbers belonging to the former mayor could be found or located through the city's IT Department. The city stated that extension detail reports can only be produced by its IT department for the 12 months preceding the date on which a request is received.

The city denied access to the remaining portions of the records responsive to Part B in their entirety, on the basis that the request is for records that relate to personal phone numbers and are exempt under the personal privacy exemption at section 14(1) (personal privacy) of the *Act*.

Part C

The city again advised that a portion of the records responsive to Part C of the request for incoming or outgoing calls from or to the city's former manager from or to two telephone numbers from December 2009 do not exist as extension detail reports could only be produced by its IT department for the 12 months preceding the date on which a request is received.

The city provided access to extension detail reports for one of the telephone numbers in full for the period May 2009 to May 2010.

The city denied access to the records related to the second telephone number under section 14(1) on the basis that the telephone number is a personal telephone number and it

would be an invasion of privacy to disclose the records.¹

[3] The requester, now the appellant, appealed the city's decision.

[4] During mediation, the appellant disagreed with the city's position that the records are only available for the 12 months preceding the date of the request. The appellant believed that the city has the ability to obtain the extension detail reports for the dates requested. As a result, he wished to add reasonable search to the issues on appeal.

[5] The appellant also took the position that all of the records withheld by the city should be disclosed in full, as he believed that section 14(1) did not apply.

[6] Further mediation could not be effected and the file was referred to the adjudication stage of the appeal process. During the inquiry into the appeal, the former adjudicator assigned to this file sought and received representations from the city and the appellant. Representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*. The appeal was transferred to me following the conclusion of the inquiry to complete the adjudication process.

[7] The appellant provided both confidential and non-confidential representations. Although I have considered both the confidential and non-confidential representations, I will only be referring to the non-confidential representations in this order.

[8] In this order, I uphold the city's decision and dismiss the appeal.

RECORDS:

[9] The records at issue consist of the extension detail reports for three of the four specified telephone numbers.

ISSUES:

- A. Did the city conduct a reasonable search for responsive records?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- C. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

¹ Note: the city initially claimed it was relying on the discretionary personal privacy exemption at section 38(b) of the *Act* to deny access to the records, but later confirmed that section 38(b) was referenced in error. The exemption at section 38(b) of the *Act* is not claimed to apply under appeal in this file.

DISCUSSION:

A. Did the city conduct a reasonable search for responsive records?

[10] The city states that it's Information and Technology Management (ITM) Department was requested to conduct a search for records and provided affidavits of its Manager of Client Services and a Technology Specialist from the ITM Department. It states that the ITM Department advised that the city can only produce telephone extension detail reports for the 12 months preceding the date a request is received by that department and that these reports are not included in the city's current Records Retention Bylaw.

[11] The appellant states that this statement is inaccurate as it is based on the date a "request is received" not the date a telephone call/log were received or made. Notwithstanding this, he states that the city did not provide any records for May or June 2009 nor did it provide any records to confirming whether any other telephone details on numbers requested were available, in particular, for the period May 2009 to May 2010.

[12] The appellant also takes issue with the affidavits of the city that were part of its representations. He states that the affidavits lack detail about the steps that were taken to locate responsive information, including who provides the software used, how long it takes to process, whether it be extracted from back-up tapes, and whether the process or timeframes were different in each of any of the previous years listed: 2006, 2007, 2008, 2009 or 2010.

[13] The appellant also states that the city should have control of Bell Canada phone system log records, as Bell Canada acts as a repository of records which are created for the city based on their contract. The appellant also points out that the city has not made specific reference to the records of certain individuals named in the request.

[14] In reply, the city states that confusion may be the result of the use of the word request to both describe 1) the access request and 2) the date that ITM was requested by the Access & Privacy office to produce the reports. It states that ITM has confirmed that the data is backed up to tape monthly for 12 months and overwritten accordingly with the next cycle. The city reiterated that ITM advised that they are only able to produce extension detail reports for the 12 months preceding the date they receive a request to produce them.

[15] The city also states that archived electronic files were searched in order to produce these reports.

Analysis/Findings

[16] As indicated above, the city states that it can only produce extension detail reports for the 12 months prior to the date it requests this information from its IT department. The appellant disputes the city's explanation for not being able to produce the requested records.

[17] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.² If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[18] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.³ To be responsive, a record must be "reasonably related" to the request.⁴

[19] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.⁵

[20] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁶

[21] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.⁷

[22] After a careful review of both parties' representations, I find that the city has conducted a reasonable search for responsive records. Other than the information it withheld as personal information, the city has produced the responsive extension detail reports relating to the former mayor and former city manager for the 12 month period preceding the date ITM received a request to produce them. I find that the appellant has not provided a reasonable basis for me to conclude that additional responsive records exist.

² Orders P-85, P-221 and PO-1954-I.

³ Orders P-624 and PO-2559.

⁴ Order PO-2554.

⁵ Orders M-909, PO-2469 and PO-2592.

⁶ Order MO-2185.

⁷ Order MO-2246.

[23] I also find that the city has provided a reasonable explanation as to why it does not have control of responsive extension detail reports held by Bell Canada. The city explained that information contained in extension detail reports is proprietary to the city and resides exclusively on the city's corporate network. The city states that:

Bell Canada has no data from which to produce these reports, they simply provide telephone lines from their Central Office to the city's PBX (Private Branch Exchange).

The city manages, directs and provides reports on these lines to the appropriate extensions throughout all the buildings.

Once these lines hit the city's PBX, Bell Canada has no knowledge of the call distribution.

[24] I find that extension detail reports relating to telephone accounts not held by the city (home or personal cell numbers), that are not reimbursed by the city, are not within its custody or control. I find that the city has located the responsive extension detail reports in its custody or control and I am upholding the adequacy of its search for responsive records.

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

[25] 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,

- (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;

[26] 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.⁸

[27] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections 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 (3) 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.

[28] 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.⁹

⁸ Order 11.

⁹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[29] 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.¹⁰

[30] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.¹¹

[31] The city states that the appellant requested the telephone call histories relating to the telephone extension detail report of calls to or from the city's former mayor and the city's former manager home telephone numbers and cell phone numbers.

[32] The city believes that if an individual's telephone number is defined as personal information under paragraph (d) of the definition of personal information in section 2(1), then the telephone calling activity relating to that telephone number would also be considered personal information.

[33] Concerning the former mayor's records, the city states that as the city is only able to produce telephone extension detail reports for the 12 months preceding the receipt of the request, the city would only be able to produce records for a period of time well after this individual left elected office and became a private citizen. As such, any information relating to him after that date would be in the context of his relationship with the city as a private citizen.

[34] The city states that it is, therefore, possible that all the information contained in the extension report is not responsive. If, however the information contained in the telephone extension report detail report is linked to the former mayor, it is in a personal capacity.

[35] With respect to the former city manager, the city states that during his employment he used a city issued cell phone and that records relating to the calls made between various city extensions and the cell phone's telephone number were released in full to the appellant. The city states that the other telephone number referred to in the request is for a number not related to a city issued phone and that records relating to calls made between various city extensions and that telephone number were denied under section 14(1).

[36] The city states that:

Given that the calls were made to, or originated from a private telephone number, the city is unable to determine the nature of the calls or who may have made/received them. No concrete link can be drawn between

¹⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

¹¹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

the call activity and the city's former manager or former mayor. It is therefore possible that all the information contained in the extension report is not responsive.

[37] The appellant submits that, as the former mayor and city manager carried out official duties from their residence, and their home phone numbers are available on Canada 411, that city phone logs containing their personal cell or home phone numbers do not contain personal information but rather information associated with them in their official capacity.

Analysis/Findings

[38] Parts B and C of the appellant's request sought:

The other records requested would be commencing from November, 1st 2006, to date [of the request, May 27, 2010], a print-out for all calls incoming or out going from City of Vaughan from or to [personal cell phone #] or [home phone #], belonging to [the former mayor]...

Same request for records in Part B, with the exception that the print-out should be for incoming or outgoing calls from or to [name] (ex-City Manager) [home phone #] or [city issued cell phone #] to the City of Vaughan from Dec 2009 to date.

[39] The city could only produce telephone extension reports for the 12 month period of May 27, 2009 to May 27, 2010 for the former mayor. The city's former mayor was not in office in 2009 or 2010. Accordingly, I find that all phone calls listed in the records from the former mayor's personal cell phone or home number were made in his personal capacity and are, therefore, his personal information within the meaning of paragraph (d) of the definition of personal information in section 2(1).

[40] The appellant only sought records for the city's former manager made during the period December 2009 until May 27, 2010. The city disclosed all responsive records related to calls made to or from the former manager's city issued cell phone number and various city extensions. The city denied access to records related to telephone calls to city extensions from the former manager's home phone number. I agree with the city that the telephone log records of telephone calls to or from the former manager's home phone number constitutes his personal information.

[41] The appellant states that if a phone number is already known, therefore, disclosure of the telephone number logs at issue would not reveal any personal information. Although I agree that the home phone numbers of the former manager and former mayor could possibly be ascertained from publicly available information, it is

not the telephone numbers that are at issue in this appeal, but the fact that someone using these telephone numbers was in contact with the city.

[42] Accordingly, I find that the telephone logs of calls to and from the former mayor and former manager's home phone numbers, and the former mayor's personal cell phone number after he left office, would reveal information of a personal nature about those individuals. These telephone calls made to a city employee may pertain to matters that that would not necessarily go to council or its committees and would accordingly constitute personal information for the purposes of the *Act*.¹²

C. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

[43] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

[44] The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14.

[45] If the information fits within any of paragraphs (a) to (e) of section 14(1) or within section 14(4), it is not exempt from disclosure. In this appeal, the information does not fit within these sections.

[46] Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[47] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[48] The city believes that none of the exceptions to the section 14(1) exemption apply to the release of the personal information.

[49] The appellant states that there is nothing private about the telephone records and submits that because the cell phone was paid for by the city, calls made from it ought to be made public.

¹² Order MO-2771.

Analysis/Findings

[50] At issue is a log of telephone calls made from the former mayor's personal cell phone and home phone well after he left office. Also at issue are phone call logs from the former manager's home to the city while the manager still worked for the city.

[51] 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 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.¹³ In this appeal, it appears that none of the presumptions in section 14(3) apply.

[52] If no section 14(3) presumption applies and the exception in section 14(4) does not apply, 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.¹⁴ In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.¹⁵

[53] 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).¹⁶

[54] The appellant refers to the fact that the home phone numbers are publicly available. As stated above, at issue is not the home phone numbers, but the fact that calls were made from these home phones. The appellant also makes reference to the cell phone number being paid for by the city. However, the city disclosed the cell phone records of the city issued cell phone of the former manager used by him while he was employed by the city. At issue are the personal cell phone logs for the former mayor several years after he left office.

[55] In a similar order, a requester sought certain records from the City of Vaughan relating to the cellular/blackberry invoices from two telephone companies for two individuals (the former mayor and a former employee of the mayor's office). In Order MO-2771, Adjudicator Frank DeVries stated that:

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

¹⁴ Order P-239.

¹⁵ Orders PO-2267 and PO-2733.

¹⁶ Order P-99.

With respect to the appellant's suggestion that sharing the telephone numbers of individuals who call the city within the city is evidence that the personal privacy interests do not apply, I disagree. The institution as a whole has an obligation to collect, use and dispose of personal information in accordance with the *Act*. The exchange of telephone numbers between employees would be a necessary part of fulfilling the city's role in serving the public, and this activity is consistent with section 32 of the *Act*..

Since the nature of the calls cannot be determined from the information contained on the records, it cannot be concluded that they do or do not pertain to city council or its committees. However, as I indicated above, telephone calls to the mayor's office can be made for a wide variety of reasons, including general city business and very personal concerns or complaints. It is reasonable to expect that telephone calls made to a city employee may well relate to matters that would not necessarily go the council or its committees.

I accept the city's submission that individuals communicating with city employees or elected representatives would have a reasonable expectation that their personal information would remain confidential (at least unless and until such time as a matter they raise goes before council or its committees). Accordingly, I find the factor [favouring privacy protection] in section 14(2)(h)¹⁷ to be relevant in the circumstances. Moreover, the appellant's submissions do not raise any factors that support a finding that the personal information should be disclosed. In the absence of evidence to the contrary, I find that disclosure of the personal information would constitute an unjustified invasion of privacy and is, therefore, exempt under section 14(1).

[56] I adopt the findings of Adjudicator DeVries in Order MO-2771 that individuals communicating in their personal capacity with city employees or elected representatives would have a reasonable expectation that their personal information would remain confidential.

[57] I find in this appeal that there are no factors favouring disclosure in section 14(2) present with respect to the information at issue, which are the city phone logs of calls to and from the former manager's and the former mayor's homes and the former mayor's personal cell phone.

¹⁷ This section 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 has been supplied by the individual to whom the information relates in confidence.

[58] Accordingly, I find that the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.¹⁸ Therefore, the records are exempt under the mandatory personal privacy exemption in section 14(1).

ORDER:

I uphold the city's decision and dismiss the appeal.

Original Signed By:
Diane Smith
Adjudicator

July 4, 2014

¹⁸ Orders PO-2267 and PO-2733.