

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3125

Appeal MA13-619

City of Toronto

November 24, 2014

Summary: The appellant objects to the city's decision to disclose a residential survey and building plans relating to his home to a requester. The appellant claims that the records are exempt from disclosure under section 10(1) (third party commercial information) and 14(1) (personal privacy). In this order, the adjudicator finds that the records do not contain "personal information" as that term is defined in section 2(1) and, therefore, cannot be exempt under section 14(1). Finally, the adjudicator finds that the exemption in section 10(1) does not apply to the records. The city is ordered to disclose the records, with the exception of the appellant's name and address.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) and 10(1)

Orders and Investigation Reports Considered: Order 23, MO-2735, MO-2969

OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the building plans and survey for a specific property.

[2] After locating responsive records, the city notified an individual who may have an interest in the records (the affected party) of the request under section 21 of the *Act*.

The affected party submitted representations to the city objecting to the disclosure of the plans and survey.

[3] Upon receipt of the affected party's representations, the city issued a decision, advising the requester and the affected party that it would grant the requester full access to the responsive records. The city advised the affected party that it considered his representations, but ultimately decided to grant the requester access to the survey and drawings, in light of the IPC's recent orders regarding similar records.

[4] The affected party, now the appellant, appealed the city's decision, claiming that the records should be exempt under sections 10(1) (third party commercial information) and 14(1) (personal privacy).

[5] During mediation, the requester confirmed that they seek access to the following records: the survey, the exterior plans and the floor plans. The appellant confirmed that he continues to oppose the disclosure of any of the responsive records.

[6] As mediation did not resolve all of the issues in this appeal, it was transferred to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[7] Initially, I invited the city and the appellant to make representations. Only the city submitted representations. The appellant advised that he would not be making written submissions in this inquiry.

[8] During the inquiry, the original requester confirmed that they do not seek access to the appellant's name and contact information as they appear on the records. Accordingly, this information is no longer at issue and I will not consider it further.

[9] In the discussion that follows, I find that the records do not contain "personal information" as that term is defined in section 2(1) of the *Act* and, therefore, the records may not be withheld under the personal privacy exemption in section 14(1). Additionally, I find that the exemption in section 10(1) of the *Act* does not apply to the records. I order the city to disclose the records at issue to the requester, with the exception of the appellant's name and address information.

RECORDS:

[10] The records at issue consist of the following:

- Survey: Site and Grading Plan (first page)
- Interior Floor Plans: pages A2, A3 and A4 of the drawings
- Exterior Floor Plan: page A6 of the drawings

[11] I note that the original requester has confirmed that they do not seek access to the appellant's name and contact information as they appear on pages A2, A3, A4 and A6 of the records. As a result, this information is no longer at issue in this appeal.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 10 apply to the records?

DISCUSSION:

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

[12] Under the *Act*, different exemptions may apply depending on whether a record at issue does or does not contain the personal information of the requester.¹ Where a record contains the requester's own information, or where the record contains information that the requester may exercise a right of access to under section 54(c), access is addressed under Part II of the *Act* and the exemptions at section 38 may apply. Where a record contains the personal information of other individuals but not the appellant, access is addressed under Part I of the *Act* and the exemptions found at sections 6 to 15 may apply.

[13] Therefore, 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,

¹ Order M-352.

- (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;

[14] 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

[15] 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 (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.

[16] 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

² Order 11.

professional, official or business capacity will not be considered to be “about” the individual.³

[17] 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

[18] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[19] In its representations, the city states that it considered whether the responsive records contained any personal information relating to the appellant. In particular, the city states that it considered Order 23, in which former Commissioner Sidney Linden distinguished information relating to an identifiable individual and information relating to residential properties. The city submits that in Order 23, former Commissioner Linden concluded that the building plan at issue in that appeal contained information about a property and not about an identifiable individual. The city also noted that in Order MO-2081, the IPC found that the permit drawings at issue in that appeal did not contain “personal information” as that term is defined in section 2(1) of the *Act*.

[20] The city submits that it was provided with no basis to believe that the disclosure of these records would reveal anything of a personal nature about the appellant. The city submits that the records at issue reveal only information about the property and do not contain any information “about” the individual owners of the property.

[21] Additionally, the city states that the IPC previously reviewed the issue of building plans and determined that while building plans could contain personal information about an identifiable individual, building plans for a building are normally considered to contain information about the building or property and not “personal information” as that term is defined in section 2(1). While it is possible for building plans to contain personal information about the owners of a residential property, such as a telephone number, the city states that it would have severed this personal information if it was in the records. In this case, the city submits that the records do not contain any personal information.

[22] The appellant did not make submissions on whether the records contain “personal information” as that term is defined in section 2(1).

[23] As indicated above, the original requester confirmed that they do not seek access to the appellant’s name and contact information as they appear on the records. Based

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

on my review of the information that remains at issue, I find that it does not contain recorded information about an identifiable individual and, therefore, fall outside the definition of "personal information". The information that remains at issue consists of the survey and floor plans for the appellant's property. The records, with the exception of the appellant's name and address, do not include information relating to the appellant and relates solely to the property. In Order MO-2969, Adjudicator Stella Ball considered whether a site plan and diagram of the property, excluding the appellants' names, address and phone number, contained "personal information" and found as follows:

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.

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.⁶ 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.

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*.

[24] I adopt Adjudicator Ball's analysis and find that the information that remains at issue in the records does not contain the personal information of identifiable individuals but, rather, is information related to a property.

⁶ Orders M-23, M-175, MO-2081, PO-2322, MO-2053 and MO-2792.

[25] As I have found that the information at issue does not contain “personal information”, I will not consider whether it is exempt under the personal privacy exemption.

B. Does the mandatory exemption at section 10 apply to the records?

[26] The appellant takes the position that the records are exempt from disclosure on the basis of the exception in section 10(1) of the *Act*. Section 10(1) of the *Act* reads, in part:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, where the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency.

[27] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.⁷

[28] Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.⁸

[29] For section 10(1) to apply, the appellant must satisfy each part of the following three part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and,
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

⁷ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.).

⁸ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b) and/or (c) of section 10 will occur.

[30] For section 10(1) to apply, each part of the three-part test set out above must be satisfied.

Part 1: type of information

[31] In order for a record to fit within this part of the three-part test, its disclosure must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information.

[32] In its representations, the city submits that the records qualify as “technical information”. I agree. Technical information has been defined in prior orders as information belonging to an organized field of knowledge that would fall under the general categories of applied sciences or mechanical arts, such as architecture or engineering. This office has found that technical information will usually involve information prepared by a professional in the field and describe the construction, operation or maintenance of a structure, process, equipment or thing.⁹ Based on my review of the records, I find that the survey and floor plans constitute technical information for the purpose of section 10(1).

Part 2: supplied in confidence

Supplied

[33] The requirement that it be shown that the information was “supplied” to the institution reflects the purpose in section 10(1) of protecting the informational assets of third parties.¹⁰

[34] In the circumstances of this appeal, I am satisfied that the survey and floor plans were supplied to the city by the appellant.

In confidence

[35] In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.¹¹

⁹ Order PO-2010.

¹⁰ Order MO-1706.

¹¹ Orders PO-2020 and PO-2043.

[36] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, it is necessary to consider all the circumstances of the case, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential;
- treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the government organization;
- not otherwise disclosed or available from sources to which the public has access; and
- prepared for a purpose that would not entail disclosure.¹²

[37] As indicated above, the appellant did not make submissions.

[38] In its representations, the city submits that its Routine Disclosure Policy affirms that building plans for residential homes are not considered to have been supplied in confidence. The city submits that such a practice would be contrary to a reasonable and objective expectation of confidentiality on the part of any individual. The city notes that the appellant filed an objection letter to the disclosure, but submits that his letter does not lead to the conclusion that the records were supplied in confidence. The city submits that the letter merely alerts its staff that the home owner objects to the plans being disclosed. The city submits that, given its Routine Disclosure Policy, the appellant should not have had the same expectation of non-disclosure with respect to a formal access request under the *Act*. Further, the city states that the building plans were not marked "Confidential" or otherwise noted as having been provided in confidence.

[39] Upon review of the records and the city's representations, I find that there was no explicit expectation that the records were supplied to the city in confidence. The appellant was clearly aware of the city's Routine Disclosure Policy, as evidenced by his objection letter. Further, none of the records are marked as confidential and the city did not confirm that the appellant could expect that the records would be considered to have been supplied in confidence.

[40] With regard to whether there is an implicit expectation of confidentiality, I refer to Order MO-2735, in which acting Commissioner Brian Beamish addressed the issue of whether building plans were supplied to a municipality "in confidence". In his analysis, the Commissioner stated as follows:

¹² Orders PO-2043, PO-2371 and PO-2497.

While I appreciate that the building plans were submitted as part of the building permit application process, the expectation that the plans would be used for this purpose alone is not equivalent to a reasonable expectation of confidentiality. In addition, the city provided evidence that it is its practice to make building plans available to the public upon request, for a fee. Such a practice is contrary to a reasonable and objective expectation of confidentiality on the part of the appellant.... Finally, the building plans were not stamped "Confidential" or otherwise noted as having been provided in confidence.... While the lack of a "Confidential" stamp is not necessarily determinative, in my view, the circumstances of this appeal, the city's routine practices and the plans themselves lead me to conclude that they were not supplied with a reasonable expectation of confidentiality.

[41] Commissioner Beamish concluded that part two of the test for the application of section 10(1) to the records at issue was not met, and that section 10(1) did not apply to the information in the building plans.

[42] I adopt the approach taken by the Commissioner and apply it to the circumstances of this appeal. I agree with the Commissioner that although the survey and building plans were submitted to the city as part of the building permit application process, the expectation that the records would be used for this purpose alone is not equivalent to a reasonable expectation of confidentiality. Further, even though the appellant advised the city that he objects to the disclosure of the building plans through its Routine Disclosure Policy, this is not equivalent to a reasonable expectation of confidentiality. Finally, none of the documents are stamped "confidential" or otherwise noted as having been provided in confidence.

[43] In addition, as was the case in Order MO-2735, the city has provided evidence of its practice to make building plans and permit applications available to the public upon request, for a fee. This practice is contrary to a reasonable and objective application of confidentiality on the part of the appellant.

[44] Therefore, in light of all these circumstances, I do not find that there was a reasonable expectation of confidentiality on the part of the appellant in the records at issue and find that part two of the test for the application of section 10(1) to the records at issue is not met. As the appellant has failed to establish that the information at issue was "supplied in confidence," it has not met part two of the test for the application of section 10(1). This is sufficient to conclude that the information at issue is not exempt under sections 10(1)(a), (b) or (c). However, for the sake of completeness, I will address part three of the test.

Part 3: Harms

[45] To meet this part of the test, the appellant must provide “detailed and convincing” evidence to establish a “reasonable expectation of harm”. Evidence amounting to speculation of possible harm is not sufficient.¹³

[46] The failure of a party resisting disclosure to provide detailed and convincing evidence will not necessarily defeat the claim for exemption where harm can be inferred from other circumstances. However, only in exceptional circumstances would such a determination be made on the basis of anything other than the records at issue and the evidence provided by a party in discharging its onus.¹⁴

[47] The need for public accountability in the expenditure of public funds is an important reason behind the need for “detailed and convincing” evidence to support the harms outlined in section 10(1).¹⁵

[48] Parties should not assume that harms under section 10(1) are self-evident or can be substantiated by submissions that repeat the words of the *Act*.¹⁶

[49] As indicated previously, the appellant did not submit representations.

[50] In its representations, the city submits that the appellant has failed to demonstrate that one or more of the harms outline in section 10(1) could reasonably be expected to result from the disclosure of the records. The city included the appellant’s objection letter and response to the city’s notification with its representations.

[51] I have reviewed the records and the appellant’s objection letter and response to the city’s notification. I agree with the city and find that the appellant did not provide sufficient evidence to support his claim that section 10(1) applies to the records at issue. Further, in the absence of any representations during the inquiry, I find that the appellant has not provided me with the necessary “detailed and convincing” evidence to demonstrate that the harms in section 10(1) could reasonably be expected to result from the disclosure of the records.

[52] Therefore, I find that the appellant has not satisfied the third part of the section 10(1) test and the exemption does not apply to the records at issue.

¹³ *Ontario (Workers’ Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 (C.A.).

¹⁴ Order PO-2020.

¹⁵ Order PO-2435.

¹⁶ *Ibid.*

ORDER:

1. I uphold the city's decision and dismiss the appeal.
2. I order the city to disclose all of the information in the records to the requester by **December 31, 2014** but not before **December 24, 2014**, except for the appellant's name and address, which appear on pages A2, A3, A4 and A6 of the records.
3. I reserve the right to require the city to provide me with a copy of the records as disclosed to the requester.

Original Signed by: _____
Justine Wai
Adjudicator

November 24, 2014