

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3201

Appeal MA14-20

Town of LaSalle

May 26, 2015

Summary: The Town of LaSalle (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for records pertaining to bylaw infraction complaints about the appellant's property. The town denied access to the records in part, relying on the discretionary personal privacy exemption in section 38(b), as well as the discretionary exemption in section 38(a), in conjunction with section 8 (law enforcement) and section 13 (threat to health or safety). This order partially upholds the town's decision to deny access to the records under section 38(b) only. The order also upholds the town's search for responsive records.

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(1), 14(3)(b), 14(3)(g), 14(2)(e), 17.

Orders and Investigation Reports Considered: Order MO-2955.

OVERVIEW:

[1] The Town of LaSalle (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for the following:

All documents pertaining to complaints received at the town regarding bylaw infractions after [date] to date. [Date] being date of purchase of this property.

[2] The town clarified with the requester that he only wishes to receive records relating to his own property at a named address.

[3] The town issued an interim decision with a fee estimate of \$120.00 for processing the request. The town also advised the requester that his request may affect the interests of third parties (the affected persons) and that they would be notified of the request and provided an opportunity to make representations concerning disclosure of the records.

[4] Based on the representations received from the affected persons, the town issued a final decision granting partial access to the records. Access was denied to the withheld portions of the records pursuant to the discretionary law enforcement exemption in section 8 and the threat to health or safety exemption in section 13, read in conjunction with section 38(a), as well as the discretionary personal privacy exemption in section 38(b) of the *Act*. The town advised that the final fee for processing the request was \$117.40.

[5] The requester (now the appellant) appealed the decision of the town to deny access to the withheld portions of the records. The appellant also appealed the amount of the fee.

[6] During mediation, the town issued a revised invoice, waiving the charges for the time spent searching for and preparing the records. The fee was reduced to \$27.40, accordingly.

[7] The appellant accepted and paid the reduced fee. Consequently, he was provided with a severed copy of the records. After reviewing the records, in addition to objecting to the application of the exemptions, he advised the mediator that more records should exist, raising the reasonableness of the town's search as an issue for this appeal. The appellant indicated that telephone conversations and voicemails were referred to in the records. The appellant expected that logs or notes of these conversations and voicemails would have been kept.

[8] The appellant also noted that in an email which was disclosed to him, it is indicated that complaints against the appellant may have been discussed by the town's By-law Review and Enforcement Committee. Accordingly, the appellant expected to receive records related to committee meetings where his property was discussed.

[9] The mediator discussed the appellant's search concerns with the town. The town explained that no records existed relating to the telephone calls and voicemails referred to in the records.

[10] With respect to the existence of records related to the By-law Review and Enforcement Committee, the town conducted a further search of the agendas and minutes for the last three years to verify if the committee ever discussed the appellant or his property. The town advised that matters involving the appellant's property were never considered by the committee and, therefore, no records exist.

[11] The town advised that it had conducted a search for responsive records in the Council Services/Clerks and Development and Strategic Initiatives Departments, the By-law Review and Enforcement Committee, as well as the records of the By-law Enforcement Officer (the By-law Officer) who had involvement with the appellant's property file matters. Accordingly, the town is of the view that a reasonable search has been conducted.

[12] The mediator imparted the information provided by the town regarding its search to the appellant. The appellant continued to believe that more records should exist related to his request and that the search conducted by the town was not reasonable. As a result, the appellant wanted to pursue access to all of the withheld information.

[13] No further mediation was possible. Accordingly, this file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. I sought the representations of the town and the affected persons initially.

[14] The affected persons did not provide representations, but did not consent to the disclosure of their personal information in the records. The town provided representations. Representations were then shared between the town and the appellant in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[15] In this order, I partially uphold the town's decision under section 38(b). I also uphold its search for records.

RECORDS:

[16] The records remaining at issue are outlined in the following index of records prepared by the town:

Record #	Date	Town's description of record	Town's position on exemptions
1	Feb. 19, 2013	Task notes of Bylaw Officer which include e-mails and photographs, to and from third parties between the years 2007 and 2010, as well as, correspondence to	Names, addresses, phone numbers, e-mail addresses and workplace name and address of third party should be severed from task notes and e-mails in accordance with Sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and

		[appellant] dated March 25, 2010.	<p>(b).</p> <p>Personal information of additional party in e-mail of Aug. 31, 2007 should be severed in accordance with Section 14(1)(f) and 38(b).</p> <p>References to location of third party's property, comments relating to third party's own property and personal opinions/comments of third party should be severed in e-mails from third party, in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f), 14(3)(b) and (g), 38(a) and (b).</p> <p>Personal comment of Bylaw Officer in task note of June 7, 2010 should be severed in accordance with Section 8(2)(c) and 14(3)(g).</p>
2	Feb. 8, 2011	E-mail from third party together with photograph to Bylaw Officer.	<p>Name, e-mail address and address of third party should be severed in accordance with Sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p> <p>Personal opinion/comment of third party should be severed in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f), 14(3)(b) and (g), 38(a) and (b).</p> <p>Photograph marked should be severed as it could disclose a third party from the location taken, in accordance with Sections 8(1)(d), 8(2) and 13.</p>

4	Feb. 11, 2011	E-mail between third party and Bylaw Officer.	<p>Name and e-mail address of third party should be severed in accordance with Sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p> <p>Personal opinion of third party should be severed in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f),</p>
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			<p>14(3)(b) and (g), 38(a) and (b).</p> <p>Personal comment of Bylaw Officer should be severed in accordance with Section 8(2)(c) and 14(3)(g).</p>
5	Feb. 16, 2011	E-mail from third party to Bylaw Officer.	<p>Name and e-mail address of third party should be severed in accordance with Sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p>
6	Apr. 5, 2011 and Mar. 10, 2011	E-mails between third party and Bylaw Officer.	<p>Name, address and e-mail address of third party should be severed in accordance with Sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p> <p>Personal comment of Bylaw Officer should be severed in accordance with Section 14(1)(f) and 38(b).</p>
7	Apr. 12, 2011 and Apr. 11, 2011	E-mails between third party and Bylaw Officer.	<p>Name, address and e-mail address of third party should be severed in accordance with Sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p> <p>Personal opinion of third party should be severed in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f), 14(3)(b) and (g), 38(a) and (b).</p> <p>Personal comment of Bylaw Officer should be severed in accordance with Section 8(2)(c) and 14(3)(g).</p>
10	May 4, 2011 and May 2, 2011	E-mails between third party and Bylaw Officer.	<p>Name and e-mail address of third party should be severed in accordance with sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p> <p>Personal opinion/comments of third party should be severed in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f), 14(3)(b) and (g), 38(a) and (b).</p>
11	June 6, 2011	E-mails between third party and Bylaw Officer.	<p>Name, house address and e-mail address of third party should be severed in accordance with sections</p>

	and June 2, 2011		<p>8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p> <p>Personal opinion/comment of third party should be severed in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f), 14(3)(b &g), 38(a) and (b).</p> <p>Reference to location of third party's property and personal opinion/comments of third party should be severed in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f), 14(3)(b) and (g), 38(a) and (b).</p>
13	June 22, 2011 June 14, 2011 and June 2, 2011	E-mails between third party and Bylaw Officer.	<p>Name, house address and e-mail address of third party should be severed in accordance with sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p> <p>Personal opinion/comments of third party should be severed in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f), 14(3)(b) and (g), 38(a) and (b).</p>
14	Jan. 14, 2013	Task notes of Bylaw Officer which include e-mails, correspondence and photographs, to and from third parties during the year 2013.	<p>Names, addresses, phone numbers, e-mail addresses and workplace name and address of third party should be severed from task notes and e-mails in accordance with Sections 8(1)(d), 13, 14(1)(f), 14(2)(e) and 38(a) and (b).</p> <p>References to location of third party's property, comments relating to third party's own property and personal opinions/comments of third party should be severed in e-mails from third party, in accordance with Sections 8(1)(d), 8(2)(c), 13, 14(1)(f), 14(3)(b) and (g), 38(a) and (b).</p> <p>Personal information of additional party in task note of Bylaw Officer on Mar. 12, 2013 under [3 times] -</p>

			<p>should be severed in accordance with Section 14(1)(f) and 38(b).</p> <p>Personal comments of Bylaw Officer should be severed in accordance with Section 14(1)(f) and 38(b).</p> <p>Photographs marked should be severed as they could disclose a third party from the location taken, in accordance with Sections 8(1)(d), 8(2) and 13.</p>
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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 discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- C. Did the institution exercise its discretion under sections 38(b)? If so, should this office uphold the exercise of discretion?
- D. Did the institution conduct a reasonable search for records?

DISCUSSION:

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

[17] 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;

[18] 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

[19] 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.

¹ Order 11.

[20] 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.²

[21] 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.³

[22] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[23] In its initial representations, the town relies on the information set out in its index of records, above, as to what portions of what records are exempt on the basis they contain personal information. It also relies on the findings in Order MO-2955.

[24] The appellant indicates that the records only contain his personal information and do not contain the personal information of other individuals. He relies on Order MO-2955 and also relies on paragraph (e) of the definition of personal information in section 2(1) as he states that the records contain the personal opinions or views of individuals that relate to him.

Analysis/Findings

[25] The records are all emails and attachments to these emails sent or received by the Bylaw Officer. The records concern by-law complaints made about the appellant's garage and yard. The town has disclosed most of the information in the records to the appellant. Remaining at issue in the records are the names,⁵ telephone numbers and addresses⁶ and personal e-mail addresses⁷ of individuals other than the appellant, as well as these individuals' personal opinions not related to another individual.⁸

[26] There are some statements that contain the personal opinions of these individuals about themselves, as well as statements containing these individuals' views of the appellant.⁹

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁵ Paragraph (h) of the definition of personal information in section 2(1).

⁶ Paragraph (d) of the definition of personal information in section 2(1).

⁷ Paragraph (c) of the definition of personal information in section 2(1).

⁸ Paragraph (e) of the definition of personal information in section 2(1).

⁹ Paragraphs (e) and (g) of the definition of personal information in section 2(1).

[27] The town has severed from the records any information that could identify the complainants and other identifiable individuals acting in their personal capacity listed in the records. The town has also severed some comments made by the complainants and the Bylaw Officer about the appellant, which contain their views or opinions about themselves or about the appellant.

[28] I note that Record 1 contains a comment about the appellant made by the Bylaw Officer.¹⁰ There are also comments made by the Bylaw Officer in Records 4, 7, 13, and 14 that are not about other identifiable individuals, but are instead about possible by-law infractions or are general comments. The Bylaw Officer was acting in her official capacity. As the personal privacy exemption in section 38(b) cannot apply to these comments in these records, I will order this information disclosed. In making this finding, I have considered section 38(a), in conjunction with section 8(1)(d) and 8(2)(c), or with section 13, could also apply to this information where claimed. I have not received any representations from the town on these discretionary exemptions, and based on my review of the records alone, I find that none of these discretionary exemptions apply to the comments of the Bylaw Officer in Records 1, 4, 7, 13, and 14.

[29] I have considered the reference to Order MO-2955 referred to by the appellant where Adjudicator Frank DeVries found that a portion of one complaint did not qualify for exemption under section 38(b) as it did not contain the personal information of an identifiable individual. However, the information remaining at issue in this order does contain the personal information of identifiable individuals, namely the complainants and other identifiable individuals.

[30] The remaining information consists of the personal information of the appellant and other individuals, including the complainants in their personal capacity. I will now consider whether this information at issue in the records is exempt by reason of the discretionary personal privacy exemption in section 38(b).

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

[31] 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.

[32] 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

¹⁰ Paragraph (g) of the definition of personal information in section 2(1).

is discretionary, the institution may also decide to disclose the information to the requester.

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

[34] If any of paragraphs (a) to (e) of section 14(1) apply, the personal privacy exemption is not available. If any of the paragraphs in section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1). Neither section 14(1)(a) to (e) or 14(4) apply in this appeal.

[35] 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.¹¹

[36] 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).

[37] The institution relies on the presumptions at sections 14(3)(b) and (g). These sections read:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

(g) consists of personal recommendations or evaluations, character references or personnel evaluations;

[38] The town states that these sections apply to the references to the location of a third party's property, comments relating to this individual's own property and their own personal opinions/comments. As well, it states that the personal comments of the Bylaw Compliance Officer should be severed in accordance with section 14(3)(g).

[39] The appellant's representations focus on the application of the absurd result principle, which will be discussed below.

¹¹ Order MO-2954.

[40] Concerning section 14(3)(b), even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.¹² The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹³ Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.¹⁴ The presumption can apply to a variety of investigations, including those relating to by-law enforcement¹⁵ and violations of environmental laws or occupational health and safety laws.¹⁶

[41] I agree with the town that the personal information it has identified in the records as subject to section 14(3)(b) is subject to this exemption. This information was compiled and is it identifiable as part of investigations into possible violations of law. It is clear from the records that they are about by-law enforcement investigations. Therefore, this personal information in the records identified by the town was compiled as part of bylaw enforcement investigations, section 14(3)(b) applies to it.

[42] Regarding section 14(3)(g), the terms "personal evaluations" or "personnel evaluations" in that section refer to assessments made according to measurable standards.¹⁷ The thrust of section 14(3)(g) is to raise a presumption concerning recommendations, evaluations or references about the identified individual in question rather than evaluations, etc., by that individual.¹⁸

[43] The town has applied section 14(3)(g) on its own, without section 14(3)(b), to certain comments made by the By-law Officer and a third party in Records 1, 4 and 7.

[44] I found above that the comments of the By-law Officer do not include the personal information of individuals other than the appellant. Concerning the comments by a third party for which this presumption has been claimed, I find that this information does not fall within section 14(3)(g) as it does not constitute personal recommendations, evaluations, character references or personnel evaluations. Instead, this personal information constitutes the third party's opinions of themselves combined with their opinions of the appellant. This, in my view, does not constitute a personal recommendation or evaluation for the purposes of the section 14(3)(g) presumption and I find that it does not apply.¹⁹

¹² Orders P-242 and MO-2235.

¹³ Orders MO-2213, PO-1849 and PO-2608.

¹⁴ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

¹⁵ Order MO-2147.

¹⁶ Orders PO-1706 and PO-2716.

¹⁷ Orders PO-1756 and PO-2176.

¹⁸ Order P-171.

¹⁹ See Order MO-2654.

[45] 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.²⁰

[46] 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).²¹

[47] The institution relies on the factor at section 14(2)(e) for the names, addresses, phone numbers, e-mail addresses of third parties. 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 individual to whom the information relates will be exposed unfairly to pecuniary or other harm;

[48] 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.

[49] Besides the contact information, the town has also applied section 14(2)(e) to other information in the records that would reveal the identity of individuals other than the appellant. As well it has applied it to certain comments made by these individuals in the records.

[50] I have considered the relationship between the complainants and the appellant. Based on my review of the information in the records, and in the absence of representations as to why this factor in section 14(2)(e) applies, I find that I do not have sufficient evidence to determine that disclosure of the information for which the town has claimed section 14(2)(e) will expose the complainants unfairly to pecuniary or other harm. Therefore, I find that this factor, that weighs against disclosure, does not apply.

[51] As stated above, for records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.

²⁰ Order P-239.

²¹ Order P-99.

[52] I found above that the presumption against disclosure in section 14(3)(b) applies to the personal information it was claimed for in the records as it was compiled as part of various by-law enforcement investigations. In addition, there are no factors in section 14(2) favouring disclosure of the personal information of other individuals that apply to the remaining personal information for which section 38(b) has been claimed.

[53] Therefore, after weighing the factors and presumptions in sections 14(2) and (3) and balancing the interests of the parties, I find that disclosure of the remaining personal information in the records would be an unjustified invasion of the personal privacy of the complainants and other identifiable individuals who are referred to in the records in their personal capacity. Accordingly, I find that all of the withheld personal information relating to individuals other than the appellant in the records is exempt by reason of section 38(b), subject to my review of the absurd result principle and the town's exercise of discretion.

[54] As I have found that section 38(b) applies to all of the remaining information in the records, it is not necessary for me to also find whether section 38(a), in conjunction with section 8(1)(d) and 8(2)(c), or with section 13, also apply to this information where claimed. In any event, as I have not received any representations from the town on these discretionary exemptions, based on my review of the records alone I find that none of these discretionary exemptions apply to any of the information at issue in the records in the circumstances of this appeal.

Absurd result

[55] Where the requester originally supplied the information, or the requester is otherwise aware of it, the information may not be exempt under section 38(b), because to withhold the information would be absurd and inconsistent with the purpose of the exemption.²²

[56] The absurd result principle has been applied where, for example:

- the requester sought access to his or her own witness statement²³
- the requester was present when the information was provided to the institution²⁴
- the information is clearly within the requester's knowledge²⁵

²² Orders M-444 and MO-1323.

²³ Orders M-444 and M-451.

²⁴ Orders M-444 and P-1414.

²⁵ Orders MO-1196, PO-1679 and MO-1755.

[57] However, if disclosure is inconsistent with the purpose of the exemption, the absurd result principle may not apply, even if the information was supplied by the requester or is within the requester's knowledge.²⁶

[58] The appellant states that the name of the complainants is clearly within his knowledge. He states that:

It is clear in this case that complaints emanate from one source only regarding alleged Bylaw infractions at my property. The coterminous property owners, [names] are the source of these copious, and persistent complaints. At one point when I was attempting reconciliation with [name] he stated emphatically that, "He was a draftsman. He knew the bylaws and would see that they were enforced". In my Fax to the Town dated April 22, 2011, I mentioned the neighbours, [names], with no denial sent to me by the Town or the neighbours...

Many references in correspondence to the [names] involvement are found in the Freedom of Information package provided. In fact, my tenant in the property in question has told me [name] has complained to him on occasion. The individuals here have forfeited their privilege of exemption as they have voluntarily and pointedly acknowledged their actions.

[59] The appellant also refers to one record where a first name of an individual was inadvertently not severed from the record.

Analysis/Findings

[60] Most of the information severed from the records reveals the identity of the complainants. The appellant submits that he is aware of the identity of the complainants. Even if that is the case, nevertheless, based on the events described by the appellant in his representations, and considering the records as a whole, I find that disclosure of the identity of the complainants in the circumstances of this appeal is inconsistent with the purpose of the personal privacy exemption in section 38(b). The purpose of this exemption is to protect the personal privacy of other individuals. Therefore, I find that the absurd result principle does not apply.

C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

[61] The sections 38(b) exemption is discretionary and permits an institution to disclose information, despite the fact that it could withhold it. An institution must

²⁶ Orders M-757, MO-1323 and MO-1378.

exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[62] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[63] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.²⁷ This office may not, however, substitute its own discretion for that of the institution.²⁸

[64] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:²⁹

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization

²⁷ Order MO-1573.

²⁸ Section 43(2).

²⁹ Orders P-344 and MO-1573.

- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[65] The town states that it has treated all similar transactions confidentially, in order to protect the integrity of the Bylaw Complaint process. The town relies on the findings in Order MO-2955. In that order, Adjudicator Frank DeVries found that:

As a result of this order I am requiring the city to disclose the substance of one portion of one of the complaints to the appellant. The city has disclosed the remaining information relating to the specifics of each of the bylaw complaints, including their outcomes. The only information remaining at issue is the identifying information about the complainant(s). I have found that disclosure of this information would constitute an unjustified invasion of personal information, and that it qualifies for exemption under section 38(b). In the circumstances, based on the nature of the information remaining at issue and on the representations of the parties, I am satisfied that the city properly exercised its discretion to deny access to the information remaining at issue

[66] The appellant states that he should be entitled to information about himself in the records. He relies on the findings in Order MO-2955 in which a statement was held to be the personal information of the appellant, as it contains the views or opinions of another individual about the individual under paragraph (g) of the definition only. The adjudicator in that case ordered disclosure of this information as disclosure would not reveal the identity of the person who made these statements.

[67] In this appeal, disclosure of the remaining information at issue would reveal the identity of the complainants and other identifiable individuals. Based on my review of the records and taking into account the findings in Order MO-2955, I find that the town exercised its discretion in a proper manner concerning this information taking into account the purpose of the personal privacy exemption in section 38(b). Therefore, I will uphold the town's exercise of discretion.

D. Did the institution conduct a reasonable search for records?

[68] 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 17.³⁰ 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.

[69] 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.³¹ To be responsive, a record must be "reasonably related" to the request.³²

[70] 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.³³

[71] 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.³⁴

[72] 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.³⁵

[73] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.³⁶

[74] The institution was required to provide a written summary of all steps taken in response to the request. In particular, it was asked:

1. Did the institution contact the requester for additional clarification of the request? If so, please provide details including a summary of any further information the requester provided.
2. If the institution did not contact the requester to clarify the request, did it:

³⁰ Orders P-85, P-221 and PO-1954-I.

³¹ Orders P-624 and PO-2559.

³² Order PO-2554.

³³ Orders M-909, PO-2469 and PO-2592.

³⁴ Order MO-2185.

³⁵ Order MO-2246.

³⁶ Order MO-2213.

- (a) choose to respond literally to the request?
 - (b) choose to define the scope of the request unilaterally? If so, did the institution outline the limits of the scope of the request to the requester? If yes, for what reasons was the scope of the request defined this way? When and how did the institution inform the requester of this decision? Did the institution explain to the requester why it was narrowing the scope of the request?
3. Please provide details of any searches carried out including: by whom were they conducted, what places were searched, who was contacted in the course of the search, what types of files were searched and finally, what were the results of the searches? Please include details of any searches carried out to respond to the request.
 4. Is it possible that such records existed but no longer exist? If so please provide details of when such records were destroyed including information about record maintenance policies and practices such as evidence of retention schedules.
 5. Do responsive records exist which are not in the institution's possession? Did the institution search for those records? Please explain.

This information is to be provided in affidavit form. The affidavit should be signed by the person or persons who conducted the actual search. It should be signed and sworn or affirmed before a person authorized to administer oaths or affirmations.

[75] The town did not address this issue in its initial representations.

[76] The appellant states that the town's complaints of bylaw violations are predicated on the use of his property for an activity other than that allowed under the zoning bylaw permitted uses. He is claiming that prior to making his request, he had asked for a copy of the zoning bylaw in effect at the time that the structure was erected and a copy of the structure's building permit. He states that the town's reply was limited to a description of the term "legal nonconforming".

[77] The appellant also states that he requested that the town's telephone logs be searched and that the town's response was that none were available. He points out, however, that the records he received included emails between the Bylaw Officer and the Freedom of Information Co-ordinator (the Co-ordinator).

[78] In reply, the town provided affidavits concerning searches made by the Bylaw Officer and the Director of Council Services/Clerk, who is also the Co-ordinator.

[79] The Coordinator states that she personally searched all minutes and agendas of the Bylaw Enforcement Committee from the inception of the Committee in 2007 until the date of the request on November 1, 2013, to determine whether the appellant or his property was discussed. As well, she searched with the Bylaw Officer to gather all records relating to the request.

[80] The Bylaw Officer states that she personally searched and provided all records in relation to the request to the Co-ordinator.

[81] The town also states that the telephone logs are actually the task notes of the Bylaw Officer which were provided to the appellant and that there are no other telephone logs that are maintained by additional staff regarding bylaw complaints.

[82] In his surreply representations, the appellant does not provide additional comments about the adequacy of the town's search.

Analysis/Findings

[83] The appellant's request was for all documents pertaining to complaints about his property in relation to any bylaw infractions from the date of purchase of his property to the date of the request.

[84] In his representations, the appellant states that he did not receive a copy of the zoning bylaws in effect at the time that the structure on his property was erected. He provided a copy of the first page of a letter dated prior to the date of his request from the town detailing the by-laws in effect from the time he purchased his property. The appellant did not seek an actual copy of these bylaws in his request.

[85] The appellant also states in his representations that he did not receive a copy of building permit for the structure on his property and refers to the first page of the same letter that he received from the town prior to making his request. There is no reference in this letter to the appellant asking for a copy of a building permit.

[86] If the appellant wishes to receive the building permit or a copy of the zoning by-law he should specifically request these items. His request that gave rise to this appeal

merely seeks records relating to complaints about his property regarding bylaw infractions from the date of his purchase of his property to the date of the request.

[87] Even without taking into account the town's affidavits that were provided at the reply stage, I find that the town has conducted a reasonable search for responsive records. The appellant has not provided a reasonable basis for me to conclude that additional responsive records relating to bylaw complaints about his property exist. Therefore, I am upholding the town's search for records.

ORDER:

1. I order the town to disclose by **June 16, 2015** the comments about the appellant of the Bylaw Officer in Records 1, 4, 7, 13, and 14. For ease of reference, I have provided the town with a copy of these records with the information to be disclosed highlighted.
2. I uphold the town's decision to withhold the remaining information in the records.
3. I uphold the town's search for records.
4. I reserve the right to require the town to provide me with a copy of the records disclosed to the appellant in accordance with order provision 1.

Original Signed By _____
Diane Smith
Adjudicator

_____ May 26, 2015