

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3190

Appeal MA14-191

Peterborough Utilities Services Inc.

April 30, 2015

**Summary:** The appellant sought access to all voice recordings of communications between Peterborough Utilities Services and his former tenant. Access was denied to two voice recordings, in their entirety, pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*. In this order, the Adjudicator upholds Peterborough Utilities Services' decision not to disclose the requested information and dismisses the appeal.

**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)(f), 14(2)(d) and (h).

### OVERVIEW:

[1] Peterborough Utilities Services received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to voice recordings of all its communications with the requester's former tenant from November 1, 2013 to the date of the request. The requester advised that he requires this information for insurance purposes, particularly to determine whether the tenant took appropriate steps to safeguard the property.

[2] Peterborough Utilities Services denied access to the responsive information pursuant to the mandatory personal privacy exemptions at section 14(1) of the *Act*. In

its decision, it takes the position that without the former tenant's consent (the affected party), it is not authorized to release the information. It advised that it had contacted the affected party, but that he did not consent to the release of his personal information.

[3] The requester, now the appellant, appealed Peterborough Utilities Services' decision to deny access to the voice recordings.

[4] During mediation, the mediator attempted to contact the affected party, but did not receive a response. Also during mediation, Peterborough Utilities Services stated that it is of the view that the requested information is also protected by the *Personal Information and Protection of Electronic Documents Act (PIPEDA)*. However, it did not issue a supplemental access decision advising that it was denying access on that basis.

[5] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry. During my inquiry into this appeal, I sought representations from all parties. Peterborough Utilities Services and the appellant provided representations in response, which were shared in accordance with the principles outlined in this office's *Practice Direction 7*. The affected party did not provide representations.

[6] In the order that follows, I find that the voice recordings at issue contain the personal information of the affected party and their disclosure would amount to an unjustified invasion of his personal privacy under section 14(1) of the *Act*. Accordingly, I uphold Peterborough Utilities Services' decision and dismiss the appeal.

## **RECORDS:**

[7] The responsive records consist of a CD containing the voice recordings of two telephone calls between Peterborough Utilities Services and the affected party.

## **PRELIMINARY ISSUE:**

[8] During mediation, Peterborough Utilities Services advised that it was of the view that, in addition to the *Act*, *PIPEDA* applies to exempt the information from disclosure. It did not address the possible application of *PIPEDA* to the records in its decision letter. In its representations, Peterborough Utilities Services states:

In addition to [the *Act*] Peterborough Utilities also follows [*PIPEDA*]. [*PIPEDA*] requires consent of an individual to release their personal information (Section 4.3).

[9] Although Peterborough Utilities Services raises the possible application of *PIPEDA* to the information at issue, it does not appear to be taking the position that the *Act*

does not apply or that it is not governed by the *Act*. Rather, it appears to take the position that both the *Act* and *PIPEDA* apply to protect this information from disclosure. Peterborough Utilities Services is an institution under the *Act*. By its decision letter in response to the appellant's access request, it claims that access to the responsive records is denied pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*. Accordingly, I conclude that it is within my jurisdiction to make a determination on whether the information at issue is exempt under that section and that statute, and I will do so in this order.

## **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 14(1) apply to the information at issue?

## **DISCUSSION:**

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

[10] For the mandatory exemption personal privacy exemption at section 14(1) of the *Act* to 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) of the *Act*. The portions that are relevant to the current appeal are the following:

"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,

...

- (c) any identifying number, symbol or other particular assigned to the individual,

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

- (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;

[11] 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.<sup>1</sup>

[12] Section 2.1 also relates to the definition of personal information. It states:

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.

[13] 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.<sup>2</sup> 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.<sup>3</sup>

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

### ***Representations***

[15] Peterborough Utilities Services submits that the voice recordings requested by the appellant contain the personal information of the affected party, including his utility account number, his date of birth, his home address and personal cell phone number.

[16] The appellant does not specifically address whether the voice recordings contain the personal information of the affected party. However he submits that the mandatory personal privacy exemption at section 14(1) does not apply.

### ***Analysis and findings***

[17] Having closely reviewed the voice recordings, I find that both of them contain the personal information of the affected party as that term is defined in section 2(1) of

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<sup>1</sup> Order 11.

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

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

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

the *Act*. As submitted by Peterborough Utilities Services, the first recording contains his utility account number (paragraph (c)), his date of birth (paragraph (a)), his new address and telephone number (paragraph (d)), and his name with other personal information about him (paragraph (h)). The second recording also contains his name, date of birth and new address, as well as his personal opinions or views which do not relate to another individual (paragraph (e)). Accordingly, I find that both voice recordings contain the personal information of the affected party.

[18] At the beginning of the second recording, the name of the appellant is stated by the affected party identifying him as his former landlord. There is no other information about the appellant in this recording. As noted above, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual<sup>5</sup> unless the information reveals something of a personal nature about the individual.<sup>6</sup>

[19] In Order PO-2225 former Assistant Commissioner Tom Mitchinson set out this office's approach to the distinction between personal information and business information. In that order he addressed the issue of whether the names of non-corporate landlords qualified as personal information within the scope of the definition of that term set out in the *Act*.

[20] In his analysis, former Assistant Commissioner Mitchinson posed two questions that help to illuminate the distinction between information about an individual acting in a business capacity as opposed to a personal capacity:

- (1) In what context do the names of the individual appear? (Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?)
- (2) Is there something about the particular information at issue, that, if disclosed, would reveal something of a personal nature about the individual?

[21] In Order PO-2225, former Assistant Commissioner Mitchinson concluded that, in that appeal, the names of the non-corporate landlords appear in a business context. He stated:

In my view, when someone rents premises to a tenant in return for payment of rent, that person is operating in a business arena. The landlord has made a business arrangement for the purpose of realizing income and/or capital appreciation in real estate that he/she owns.

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<sup>5</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>6</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

Income and expenses incurred by a landlord are accounted for under specific provisions of the *Income Tax Act* and, in my view, the time, effort and resources invested by an individual in this context fall outside the personal sphere and within the scope of profit-motivated business activity.

... it is reasonable to characterize even small scale, individual landlords as people who have made a conscious decision to enter into a business realm. As such, it necessarily follows that a landlord renting premises to a tenant is operating in a context that is inherently of a business nature and not personal.

[22] With respect to the second question, in Order PO-2225, former Assistant Commissioner Mitchinson found that, even though disclosing the names of the landlords would reveal that they owed money to the Ontario Rental Housing Tribunal, such disclosure would not reveal anything personal about them. He stated:

In my view, there is nothing present here that would allow the information to "cross over" into the "personal information" realm. The fact that an individual is a landlord speaks to a business not a personal arrangement. As far as the second point is concerned the information at issue does not reveal precisely why the individual owes money to the Tribunal, and the mere fact that the individual may be personally liable for the debt is not, in my view, personal, since the debt arises in a business, non-personal context...

[23] Applying the rationale expressed in Order PO-2225, I find that in the circumstances of this appeal, the landlord's name appears in a business context. In addition, I find that there is nothing inherently personal about this information that would allow it to "cross-over" into the personal realm. Accordingly, I find that the name of the appellant does not qualify as his "personal information," but is more accurately defined as his "business information."

[24] Accordingly, I find that the records at issue contain only the "personal information" of the affected party as that term has been defined in section 2(1) of the *Act*.

**Issue B: Does the mandatory exemption at section 14(1) apply to the information at issue?**

[25] Where a requester seeks the 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.

[26] In the circumstances, it appears that the only exception that could apply is section 14(1)(f), which allows disclosure if it can be established that it would not be an unjustified invasion of the personal privacy of the person to whom the information relates. That section reads:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,  
  
if the disclosure does not constitute an unjustified invasion of personal privacy.

[27] 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.

[28] In the circumstances it does not appear that either section 14(3) or (4) are relevant.

[29] 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.<sup>7</sup> 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.<sup>8</sup>

[30] In the circumstances it appears that the factor weighing against disclosure in 14(2)(h) (supplied in confidence) might apply. The appellant's brief representations suggest that he takes the position that the factor weighing in favour of disclosure at section 14(2)(d) (fair determination of rights) might apply. From my review, it does not appear that any other factors, either listed or unlisted, weighing for or against disclosure, are relevant in the circumstances of this appeal.

***14(2)(d): fair determination of rights***

[31] Section 14(2)(d) 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 is relevant to a fair determination of rights affecting the person who made the request.

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<sup>7</sup> Order P-239.

<sup>8</sup> Orders PO-2267 and PO-2733.

[32] For section 14(2)(d) to apply, previous orders have stated that the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>9</sup>

[33] In his representations, the appellant suggests that although the factor at section 14(2)(d) may not "be an exact match to [his] situation" it is "the closest." He does not submit any further information regarding the possible application of this factor. Specifically, the appellant does not specifically identify the right in question being determined, whether that right relates to a proceeding which is either existing or contemplated and not already completed, whether the information contained in the voice recordings is significant to the determination of the right in question and whether it is required in order to prepare for that proceeding or to ensure an impartial hearing.

[34] Accordingly, I find that I have not been provided with sufficient evidence to establish that section 14(2)(d) is a relevant factor that should be given any weight in the circumstances of this appeal.

***14(2)(h): supplied in confidence***

[35] Section 14(2)(h) 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.

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<sup>9</sup> Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).



[36] This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>10</sup>

[37] Having reviewed the two voice recordings at issue, I accept that the information contained within them was supplied by the affected party to Peterborough Utilities Services in confidence. From the content of the records, it is clear that both the affected party and Peterborough Utilities Services had a reasonably held expectation that the specific information that was being provided was to be kept in confidence. Accordingly, I find that the factor weighing against disclosure at section 21(2)(h) is relevant in the circumstances of this appeal.

### ***Conclusion***

[38] In conclusion, I find that there are no relevant factors weighing in favour of the disclosure of the two voice recordings, but there is a relevant factor weighing against their disclosure. Therefore, I find that disclosure would give rise to an unjustified invasion of the affected party's personal privacy as contemplated by the mandatory exemption at section 14(1) of the *Act*. Accordingly, I find that the exemption applies and, as a result, I uphold Peterborough Utilities Services decision not to disclose the voice recordings to the appellant.

### **ORDER:**

I uphold the decision of Peterborough Utilities Services that the voice recordings are exempt from disclosure and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Catherine Corban  
Adjudicator

\_\_\_\_\_  
April 30, 2015

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<sup>10</sup> Order PO-1670.