

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-3215

Appeal MA14-220

Town of Bradford West Gwillimbury

June 30, 2015

**Summary:** The town received a request for records relating to bylaw complaints made to the town regarding a specified property. The town granted access to the substance of the complaints, but denied access to the name and contact information of the complainant on the basis of the personal privacy exemption in section 14(1) of the *Act*. This order confirms that the name and contact information constitute the complainant's personal information, and upholds the town's decision to deny access to the records.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss. 2(1) (definition of "personal information") and 14(3)(b).

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

### OVERVIEW:

[1] The Corporation of the Town of Bradford West Gwillimbury (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to complaints about a specific property, particularly complaints made to the town's building and fire departments around October, 2013.

[2] In response, the town issued a decision in which it granted partial access to the responsive records. Portions of the records were withheld on the basis of the exemptions in section 14(1) (personal privacy) of the *Act*, with reference to a factor in section 14(2) and the presumptions in section 14(3).

[3] The town then received a follow-up email from the requester asking for access to all correspondence concerning the following two complaints:

- 1) a complaint that was made to [a named town official] regarding [a particular process], and
- 2) a complaint to the building department regarding Construction without a Building Permit [for a particular property].

[4] The town then issued a further decision, advising that partial access was granted to the records responsive to item 1. Portions of the records were again withheld on the basis of the exemption in section 14(1). The town further advised that with respect to item 2, no responsive records for this complaint existed, as it was processed verbally.

[5] The requester (now the appellant) appealed the town's decision.

[6] During mediation, the parties confirmed that this appeal relates to the two related requests. Also during mediation, the town issued a further revised decision, in which it identified that the three records responsive to the request are:

- an email chain beginning in September 2013,
- an identified Service Request, and
- an email chain beginning in March 2014.

[7] The appellant's representative confirmed that she was not appealing the town's decision regarding the March 2014 email chain, and that record is not at issue in this appeal. In addition, the town indicated that the exemptions in sections 14(1) and 38(b) (personal privacy) applied to the withheld portions of the two remaining records.

[8] Mediation did not resolve this matter, and the file was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*.

[9] I initially sent a Notice of Inquiry identifying the facts and issues in this appeal to the town and a party who may have an interest in the records at issue in this appeal (hereafter referred to as "the complainant" or the "affected party"). Both the town and the affected party submitted representations in response. I then sent the Notice of Inquiry, along with the non-confidential portions of the representations of the town and the affected party to the appellant, who also provided representations in response.

## **RECORDS:**

[10] The records remaining at issue in this appeal are the withheld portions of an email chain that begins with a September, 2013 email and an identified Service Request.

[11] The only portions of the records that have been withheld relate to the identity of the complainant, including this individual's name and contact information.

## **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:**

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

[12] 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;

[13] 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>

[14] Sections (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.

[15] 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

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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.

business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.<sup>3</sup>

### ***Representations***

[16] As noted above, the only portions of the records that have been withheld relate to the identity of the complainant, including this individual's name and contact information. The contact information in the record includes the individual's business contact information.

[17] The town takes the position that even though the contact information of the complainant contains business contact information, this information nonetheless constitutes the complainant's "personal information" as defined in section 2(1). In support of its position, the town reviews the circumstances surrounding its receipt of the complaint. It states:

... [the town's] Fire Chief confirmed that the original complaint came in to his department as a walk-in and was provided verbally. It was at the Fire Chief's request that the individual [provided] a written complaint, which was subsequently [sent] by email to the Fire Department. It is the town's position that the individual would not have provided their employment or contact information (other than their name) to the town had the town not asked for it.

[18] As a result, the town characterizes the individual's business information contained in the written complaint as simply the contact information of the complainant, and not an indication that the complaint was made by the individual in their business capacity. It also argues that the information is the personal information of the complainant under paragraph 2(1)(h) of the definition because disclosure of the name or contact information would reveal other personal information about the complainant (that the individual made the complaint).

[19] The affected party (complainant) confirms in their representations that the contact information was provided to the town by them as an individual, notwithstanding that it contains business information. The affected party also argues that despite section 2(2.1), the information qualifies as their personal information as it is reasonable to expect that an individual will be identified if the information is disclosed. In addition, the affected party states that, even if their name is redacted, the disclosure of the business information contained in the signature line of the email will disclose their identity as the complainant.

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

[20] The appellant does not directly address the issue of whether the information contains the personal information of the complainant, rather, the appellant takes the position that the identity of the complainant should be released regardless of whether or not they were acting in their professional or business capacity. The appellant further argues that if the complainant was acting in their professional capacity when making the complaints, those portions of the records revealing the employer of the complainant should be released in addition to the individual's identity, as this information is "crucial" to a potential defamation lawsuit.

### ***Findings***

[21] To begin, I note that the town at one point raised the possible application of the discretionary exemption in section 38(b). This exemption can only apply if the records at issue contain the personal information of the appellant. The appellant in this appeal is a named company, and none of the parties provided representations suggesting that any personal information of the appellant or any representative of the appellant was at issue. I find that the records do not contain the personal information of the appellant and section 38(a) cannot, therefore, apply.

[22] With respect to whether the records contain the personal information of the complainant, I accept that information provided by a party which identifies them in their professional or business capacity is generally not considered to constitute that individual's personal information. However, previous orders have established that, 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>4</sup>

[23] In the circumstances of this appeal, based on the records themselves and the information provided by the town and the affected party, I am satisfied that the name and contact information of the complainant contained in the records constitutes that individual's personal information.

[24] None of the parties provided representations suggesting that the written by-law complaint or email were related to or provided as part of the performance of the complainant's employment responsibilities. The town has provided evidence that the complainant walked into the town offices and made the complaint verbally. The fire chief confirms that it was only at his request that the complainant provided a written complaint, and the subsequent email sent by the complainant from what is clearly the complainant's business email account contains the additional business information of the complainant. In these circumstances, based on the evidence in the records and the manner in which this complaint was initially made to the town, I am satisfied that the complaint was made by the complainant in his or her personal capacity, and that

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<sup>4</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

disclosure of the business information contained in the subsequent email record would reveal something of a personal nature about the individual (that this individual made the complaint to the town).

[25] Having determined that the records only contain the personal information of the complainant, I will review whether the exemption in section 14(1) applies to that information.

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

[26] 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. The only paragraph that might apply is paragraph 14(1)(f) which 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] Section 14(2) provides some criteria for determining whether the disclosure of the personal information constitutes an unjustified invasion of personal privacy. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists the types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

[28] None of the parties have submitted that section 14(4) applies in the circumstances, and I find that it does not apply in this appeal.

[29] The town takes the position that the factor in section 14(2)(h) applies in the circumstances of this appeal. The affected party argues that the presumption in section 14(3)(b) and the factor in section 14(2)(f) apply to deny access to the information. The appellant takes the position that the factor in section 14(2)(d) applies in favour of the disclosure of the complainant's name and contact information. These sections read:

14(2) 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,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

14(3) 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;

### ***Representations***

[30] With respect to the presumption in section 14(3)(b), the affected party (complainant) takes the position that the presumption of an unjustified invasion of privacy in section 14(3)(b) applies, arguing that the record in question was received by the town as part of an investigation into a possible violation of a by-law. The affected party states that the by-law complaint resulted in an investigation by the town, and was a product of the complainant's "legitimate concern for public safety ... relating to whether or not a ... property was compliant with [identified] provincial and municipal codes..." The affected party states that the complaint resulted in an investigation, and that this is sufficient to establish that the presumption in section 14(3)(b) applies, regardless of whether or not the complaint resulted in a finding of a code infraction.

[31] The appellant takes the position that the presumption in section 14(3)(b) does not apply, but does not provide reasons in support of its position.

[32] Regarding the factors in section 14(2), the town takes the position that the factor in section 14(2)(h) is relevant, as the individual supplying the information had a reasonable expectation that it would be treated confidentially. In addition, the town states that if the names of complainants are disclosed, relevant information about by-law violations may not be provided to the town, which could jeopardize the safety and wellbeing of its residents.

[33] The affected party takes the position that a complainant's identity is highly sensitive information and that the factor in section 14(2)(f) applies in favour of non-disclosure.



[34] The appellant submits that the disclosure of the complainant's identity and contact information is justified in the circumstances and does not constitute an unjustified invasion of personal privacy. It relies on the factor in 14(2)(d), and asserts that the appellant requires the name of the complainant in order to initiate legal proceedings. The appellant refers to Order M-898 in support of its position that its ability to exercise a legal right to sue for defamation should be facilitated by identifying the complainant. The appellant states that it intends to commence a defamation action against the complainant(s) in order to stop what it characterizes as "frivolous and vexatious" by-law complaints to the town. The appellant alleges that it can only do so if it is provided with the identity of the complainant(s) and that this interest overrides any privacy interests the complainant may have.

### ***Findings***

[35] Previous decisions have determined that 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.<sup>5</sup>

[36] 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. The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.

[37] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.

[38] The presumption can apply to a variety of investigations, including those relating to by-law enforcement.<sup>6</sup>

[39] As noted above, the affected party (complainant) takes the position that the presumption of an unjustified invasion of privacy in section 14(3)(b) applies because the record was received by the town as part of an investigation into a possible violation of a by-law. The affected party states that the by-law complaint resulted in an investigation by the town, and that this is sufficient to establish that the presumption in section 14(3)(b) applies, regardless of whether or not the complaint resulted in a finding of an infraction.

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<sup>5</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>6</sup> Order MO-2147.

[40] On my review of the records and the representations of the parties, I am satisfied that the presumption in section 14(3)(b) applies to the name and contact information of the affected party complainant. I am satisfied that the personal information of the complainant contained in the records was compiled by the town in the course of its investigation of a possible violation of law (a possible by-law infraction). This information therefore fits within the presumption in section 14(3)(b). Accordingly, I find that the disclosure of the personal information contained in the records is presumed to constitute an unjustified invasion of the personal privacy of an identifiable individual under section 14(3)(b) of the *Act*.

[41] As noted above, 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(1). 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. There is no suggestion that either section 14(4) or 16 apply in the circumstances of this appeal.

[42] The appellant takes the position that it requires the complainant's identity and contact information to assist it in bringing an action for defamation against the complainant, and relies on the factor in section 14(2)(d) and Order M-898 in support of its position. Previous orders have confirmed that, for section 14(2)(d) to apply, 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>7</sup>

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<sup>7</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.).

[43] I note that the circumstances in Order M-898 were quite different from the circumstances in this appeal, as the possible defamation action in that order dealt with the publication of a "sham" newspaper. I also note that previous orders have found that section 14(2)(d) does not apply if information can be obtained through other processes.<sup>8</sup> However, having found that the presumption in section 14(3)(b) applies to the information at issue in this appeal, it is not necessary for me to determine whether the factor in section 14(2)(d) applies, as the factor alone cannot override the operation of the presumption.<sup>9</sup>

[44] Accordingly, having found that the presumed unjustified invasion of personal privacy has been established under section 14(3), I uphold the town's decision to deny access to the records under section 14(1) of the *Act* as disclosure of the information will result in an unjustified invasion of the complainant's personal information.

**ORDER:**

I uphold the town's decision to deny access to the records at issue and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Frank DeVries  
Senior Adjudicator

\_\_\_\_\_ June 30, 2015

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<sup>8</sup> See Orders M-1146 and PO-1728.

<sup>9</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).