

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-3261

Appeal MA14-219

Sudbury & District Health Unit

November 6, 2015

**Summary:** The Sudbury & District Health Unit (SDHU) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for the addresses of all investigations into mould complaints or concerns in 2013. SDHU denied access to the list of addresses, citing the mandatory personal privacy exemption in section 14(1). In this order, the adjudicator determines that the record does not contain the personal information of identifiable individuals within the meaning of that term in section 2(1) of *MFIPPA*. As such, section 14(1) cannot apply to exempt the record and the record is ordered disclosed.

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

**Orders and Investigation Reports Considered:** PO-3088, PO-1847, P-23, MO-2053.

### OVERVIEW:

[1] The Sudbury & District Health Unit (the health unit or SDHU) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for the following information:

List of all investigations into mould complains or concerns conducted by health unit staff including date, address or location of mould or suspected mould, owner of property and action taken.

[2] The requester subsequently narrowed his request to the complete list of addresses where mould investigations took place in 2013.

[3] The health unit issued a decision to the requester on this narrowed request to deny access to individual addresses pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*. The requester, now the appellant, appealed the health unit's decision.

[4] During mediation, the appellant advised the mediator that he is raising the public interest override in section 16 of the *Act* as an issue in this appeal, as he believes that such information is a matter of public interest. The appellant confirmed with the mediator that he was seeking access to the addresses only.

[5] As the appeal was unable to be resolved at the mediation stage, the appeal was transferred to the adjudication stage where an adjudicator conducts an inquiry. I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the health unit seeking its representations.

[6] I also sent a letter to the homeowners' addresses listed in the record informing them of the request and subsequent appeal. This letter advised the homeowners that I was seeking their representations regarding disclosure of their address. The homeowners were asked to contact this office if they wished to submit representations. If so, a Notice of Inquiry would be sent to them. The homeowners were also given the option to consent in writing to the disclosure of their address to the appellant.

[7] In response, I received a response from one landlord (the landlord) that owns some of the properties listed in the record. Concerning the remaining addresses, some homeowners did not respond<sup>1</sup> and some homeowners contacted this office but did not choose to provide representations or to provide a written consent to the disclosure of their address.<sup>2</sup> In addition, some homeowners' letters were returned in the mail.<sup>3</sup>

[8] I sent a Notice of Inquiry to SDHU and the landlord seeking representations. Both parties provided representations, which I sent to the appellant and sought and received representations from him. The appellant's representations were shared with the health unit and the landlord. Only the health unit provided reply representations, which were then shared with the appellant. The appellant provided surreply representations.

[9] In this order, I do not uphold SDHU's decision and order the record disclosed.

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<sup>1</sup> Over one hundred homeowners did not respond.

<sup>2</sup> Sixteen individuals contacted this office, but did not choose to provide representations nor were willing to provide a written consent to the disclosure of their address to the appellant.

<sup>3</sup> Nineteen letters were returned in the mail.

## **RECORD:**

[10] The health unit describes the record as a list of the addresses where its health inspectors in 2013 either inspected or responded to a complaint relating to possible mould.

## **DISCUSSION:**

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

[11] I must first determine whether the addresses in the record constitute personal information and, if so, to whom it relates. If the addresses are personal information, I will then determine whether the mandatory personal privacy exemption in section 14(1) applies.

[12] That term "personal information" is defined in section 2(1) of the *Act*, 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>4</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>5</sup>

[15] SDHU submits that while an address of a property alone may not, on its face, appear to be personal information a "reasonable expectation of identification" arises because the address may potentially be linked, using various methods or tools such as municipal property assessment rolls or reverse directories, with an owner, resident, tenant, or other identifiable individual.<sup>6</sup>

[16] It is SDHU's position that the information at issue would reveal something of a personal nature about identifiable individuals. It states that, for example, mould can result from too much moisture in a residence as a result of the owner or the person living at a property inappropriately caring for or maintaining the property. It submits that this can indicate something personal about how a person lives or maintains their home. SDHU argues that disclosure of information about the presence of mould or an investigation into mould would reveal more than just information about the property.

[17] The landlord, which owns some of the properties listed in the record, did not provide representations on whether the record contains personal information. Its representations focus on protecting the privacy of its tenants.

[18] The appellant states that he is not sure how a list of addresses qualifies as personal information. He states:

I do not believe it is "reasonable to expect an individual may be identified" and while information about a place where they live, work, associate may be, I fail to see how that qualifies or how it differs from other practices of the health unit, including the disclosure of restaurant inspection records and infection rates in nursing homes.

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<sup>4</sup> Order 11.

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>6</sup> SDHU relies on Orders MO-2053 and PO-2265.

[19] In reply, SDHU states that it regulates restaurants under the *Health Protection and Promotion Act* and Ontario Public Health Standards Food Safety Protocol (the Protocol). It states that it is part of the health unit's mandate to regulate the delivery of local, comprehensive food safety programming. It states that paragraph 4(c) of the Protocol requires the health unit to establish and implement a procedure for the public disclosure of results of inspections of food premises. SDHU submits that given the personal nature of the mould investigations at residences, a similar protocol for public disclosure does not exist.

### ***Analysis/Findings***

[20] In the Notice of Inquiry, I asked SDHU, the landlord and the appellant to consider the application of Order PO-3088 to the record at issue in this appeal.<sup>7</sup> None of the parties provided representations on this order; nevertheless, I have considered it in this order.

[21] In Order PO-3088, trichloroethylene (TCE) had leaked from a facility into neighbouring properties in the City of Cambridge. TCE had contaminated the local groundwater and a potential health hazard may have existed due to the movement of contaminant vapours from the groundwater into the basement of nearby homes. The records which were the subject of the appeal in Order PO-3088 contained the addresses and location where testing for TCE had been conducted, along with the test results about the amount of contamination that existed in the groundwater, soil and air.

[22] In Order PO-3088, the Ministry of the Environment (the ministry) decided to grant access to the records and the owner of the facility from which the leak occurred appealed this decision.<sup>8</sup> One homeowner also provided representations in that appeal and submitted that the test results with the address information was his personal information. He submitted that disclosure of the test results could permanently reduce the value of his home, negatively affect his family's net worth, and reduce his ability to sell his home.

[23] In Order PO-3088, the third party appellant made similar arguments to the homeowner. It also submitted that paragraph (d) of the definition of "personal information" in section 2(1) was applicable as the records contained the location and results of TCE tests that if disclosed would constitute the personal information of each of the individual homeowners. The third party appellant stated:

..if the location of a person's home is considered private and therefore personal information under the *Act*, it follows that the location and results

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<sup>7</sup> In the Notice of Inquiry, I also provided the parties with this hyperlink to Order PO-3088 at: <http://www.canlii.org/en/on/onipc/doc/2012/2012canlii33049/2012canlii33049.pdf>

<sup>8</sup> The third party appellant.

of tests taken within the privacy of a person's home should be considered private and personal information under the *Act*.

[24] The third party appellant distinguished Orders PO-2322 and MO-2053. In Order PO-2322, the records concerned the possible salt contamination of wells on private property. In Order MO-2053, the records were addresses of the locations of the septic systems. Both orders determined that the records at issue were "about" the properties in question and not "about" an identifiable individual. The third party appellant in Order PO-3088 submitted that the records at issue in these two orders did not involve information gathered in the privacy of an individual's home with the understanding that the information would remain confidential. It also submitted that there was no risk that disclosure of such information would result in financial consequences to the individual identifiable property owners.

[25] In Order PO-3088, the ministry submitted that the records did not contain "personal information" as the addresses and the results of the environmental testing are not "about" individuals. The ministry stated, "Even the indoor air quality is not about the individuals who reside at the location, but about the air within structures on the property." The ministry stated that if environmental test results were considered to be personal information, it would seriously hamper the due diligence requirements prospective purchasers must undertake in terms of environmental issues.

[26] Adjudicator Stephanie Haly in Order PO-3088 found that the records at issue did not contain personal information for the purposes of the *Act*. She did not accept the third party appellant's position that the information was about an "individual" within the meaning of the term "personal information". She found that the location where the information was obtained is not relevant to the issue of whether the information relates to the property or to the individual. She determined that what is relevant is the distinction addressed by former Commissioner Sidney B. Linden in Order 23,<sup>9</sup> which has been applied in a number of subsequent orders of this office, including Orders MO-2053 and PO-2322. In Order 23, Commissioner Linden made the following findings regarding the distinction to be made between information that qualifies as "personal information" and information about residential properties:

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the *Act*, which defines "personal information" as "...any recorded information about an identifiable individual..." In my view, the operative word in this definition is "about". The Concise Oxford Dictionary defines "about" as "in connection with or on the subject of". Is the information in question, i.e. the municipal location of a property and its estimated market value, about an identifiable individual? In my view, the answer is

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<sup>9</sup> Also known as Order P-23.

"no"; the information is about a property and not about an identifiable individual.

The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of "personal information".

Subparagraph (h) provides that an individual's name becomes "personal information" where it "...appears with other personal information relating to the individual or where the disclosure of the name would reveal other information about the individual" (emphasis added). In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the requested information, in my view, the individual's name could not be said to "appear with other personal information relating to the individual" or "reveal other personal information about the individual", and therefore subparagraph (h) would not apply in the circumstances of these appeals. [Emphasis in original]

[27] Adjudicator Haly in Order PO-3088 also relied on the findings of Senior Adjudicator John Higgins in Order MO-2053, where he reviewed the jurisprudence following Order 23 which clearly sets out this distinction between information about property and "personal information". In that order, he stated:

Subsequent orders have further examined the distinction between information about residential properties and "personal information". Several orders have found that the name and address of an individual property owner together with either the appraised value or the purchase price paid for the property are personal information (Orders MO-1392 and PO-1786-I). Similarly, the names and addresses of individuals whose property taxes are in arrears were found to be personal information in Order M-800. The names and home addresses of individual property owners applying for building permits were also found to be personal information in Order M-138. In addition, Order M-176 and Investigation Report I94-079-M found that information about individuals alleged to have committed infractions against property standards by-laws was personal information. *In my view, the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals.*

The information at issue in this case bears a much closer resemblance to information which past orders have found to be about a property and not

about an identifiable individual. For example, in Order M-138, the names and home addresses of individual property owners who had applied for building permits were found to be personal information, but the institution in that case did not claim that the property addresses themselves were personal information, and the addresses were disclosed. In Order M-188, the fact that certain properties owned by individuals were under consideration as possible landfill sites were found not to be personal information. Similarly, in Order PO-2322, former Assistant Commissioner Tom Mitchinson found that water analysis and test results concerning an identified property were information about the property, not personal information. [Emphasis in original]

[28] In Order MO-2053, Senior Adjudicator Higgins went on to find that two fields of information titled "street no" and "street name" for locations of septic systems were information about the property and not "about" an identifiable individual.

[29] Adjudicator Haly in Order PO-3088 applied the rationale in Order 23, and subsequent orders and found that the test results combined with the addresses are "about" the property in question and not "about" the individual homeowners. As such, the records relating to the various addresses fell outside the scope of the definition of "personal information" in section 2(1) of the *Act*. Similarly, she included in her findings those records containing "location" information combined with test results, such as those containing GPS coordinates, maps, bore hole locations and well locations.

[30] Adjudicator Haly also found the consequences of disclosure, being potential financial loss, were more properly considered under the application of the exemptions of the *Act*. She stated that the determination of whether information is "personal information" for the purposes of the *Act* is not made based on the possible consequences of its disclosure.

[31] Adjudicator Haly also addressed the third party appellant's and the homeowner's arguments that individual homeowners would be identifiable from a disclosure of their addresses or other location information using publicly available resources. She determined that the fact that the names of individual owners could be determined by a search in the registry office or elsewhere did not convert the municipal address from information about a property to personal information. She referred to Order PO-1847, where former Adjudicator Katherine Laird noted that, in the context of a discussion about correspondence concerning possible land use, "...where records are **about a property**, and not **about an identifiable individual**, the records may be disclosed, with appropriate severances, notwithstanding the possibility that the owners of the property may be identifiable through searches in land registration records and/or



municipal assessment rolls.”<sup>10</sup> (Emphasis in original)

[32] Adjudicator Haly in Order PO-3088 found that the address information combined with the test results did not qualify as “personal information” within the scope of the definition of that term in section 2(1) of the *Act*.

[33] I adopt the findings of Adjudicator Haly in Order PO-3088 and the orders referred to by her in that order. I do not accept SDHU’s and the landlord’s arguments that the record in this appeal reveals something of a personal nature about identifiable individuals. The record in this appeal contains a list of addresses of locations where SDHU responded to a mould complaint in 2013. SDHU may or may not have conducted an inspection for mould. Even if an inspection was conducted, the record does not reveal whether mould was found. Nor does the record indicate who the complainant was or even if the address was occupied by a homeowner or a tenant.

[34] I find that the record does not contain personal information as it does not reveal something of a personal nature about identifiable individuals and is instead information about the properties listed in the record. The record is not about identifiable individuals. I will order the record disclosed notwithstanding the possibility that the owners or tenants of the addresses in the record may be identifiable through various searches, such as through land registration records, municipal assessment rolls, or reverse directories.

[35] As the information in the record is not personal information within the meaning of that term in section 2(1) of *MFIPPA*, the mandatory personal privacy exemption in section 14(1) cannot apply to exempt this information. As no other mandatory exemptions apply and no discretionary exemptions have been claimed for this information, I will order the record disclosed.

[36] As the record is not exempt under section 14(1), it is also not necessary for me to consider whether the public interest override in section 16 of *MFIPPA* applies to the information in the record.

## **ORDER:**

1. I order Sudbury & District Health Unit to disclose the record to the appellant by **December 14, 2015** but not before **December 9, 2015**.
2. In order to verify compliance with order provision 1, I reserve the right to require a copy of the record disclosed by Sudbury & District Health Unit to the appellant to be provided to me

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<sup>10</sup> See also Orders MO-2081 and MO-2472.

Original Signed by: \_\_\_\_\_

Diane Smith  
Adjudicator

November 6, 2015 \_\_\_\_\_