

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER PO-3531

Appeal PA14-66

Ministry of Community Safety and Correctional Services

September 8, 2015

Summary: The appellant sought access to records relating to an investigation of a fire in which his son died. The ministry denied access to portions of some records on the basis that they were exempt from disclosure under the discretionary personal privacy exemption in section 49(b) and that portions of other records were not responsive to the request. The appellant argued that the request, as framed, was broader than the ministry's interpretation of it. In this order, the ministry's decision to deny access to records was not upheld on the basis that they did not contain "personal information" within the meaning of the definition of that term in section 2(1). In addition, the adjudicator found that the scope of the request was narrowed and the appellant was not entitled to broaden it at the adjudication stage. The ministry was also ordered to issue a decision respecting access to certain responsive coding information in the records.

Statutes Considered: *Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. F.31, as amended, definition of "personal information" in section 2(1), section 24(1) and (2).

Orders and Investigation Reports Considered: PO-3279.

Cases Considered: *Northstar Aerospace v. Ontario (Information and Privacy Commissioner)* 2011 ONSC 2956.

OVERVIEW:

[1] On April 1, 2008, the appellant's child died in a house fire in Ottawa. The Ministry

of Community Safety and Correctional Services (the ministry) received a request from counsel for the appellant under the *Freedom of Information and Protection of Privacy Act* (the *Act*) seeking access to the following information:

Re: [named individual] et al. v. City of Ottawa et al.

- All notes (including pictures, etc.) of [named individual]
- Information on what happened to physical evidence taken from scene by [named individual] referred to in notes of [named individual]
- All notes (including pictures, etc.) of [named individual]
- Any information relating to recalled DiCon Fire Alarm Systems
- Any information the Office of the Fire Marshall deems relevant in a fatal fire.

[2] The ministry issued an initial decision granting partial access to the requested records from the Office of the Fire Marshall (OFM) pertaining to a specified OFM investigation report. In a letter dated October 21, 2013, the ministry stated that on September 26th, 2013 in a telephone conversation with a Program Analyst with its FOI Office, the appellant clarified his request to include only “the OFM reports and notes” of a named fire investigator and a named fire protection engineer. The appellant did not take issue with this characterization of the scope of his request at that time.

[3] In its October 21, 2013 decision, the ministry denied access to the withheld portions of the records in accordance with section 49(a), in conjunction with the discretionary law enforcement exemptions in sections 14(1)(i) and (l) and the personal privacy exemption in section 49(b) of the *Act*. Access was also denied to some parts of the records on the basis that this information, consisting of coding information created at the time the records were printed, was not responsive to the request.

[4] The appellant appealed the ministry’s decision to deny access to the withheld portions of the records. After the appeal was initiated, the ministry issued a supplementary decision to the appellant dated March 19, 2014. In that decision, the ministry granted partial access to certain additional records received from the OFM. Access was denied to the withheld portions of these records under section 49(b) and on the basis that the coding information was not responsive to the request.

[5] The appellant disputed the ministry’s contention that he had narrowed his request, as outlined in its October 21, 2013 decision letter, arguing that he wanted the ministry to conduct a search for records that reflected his request, as written. In addition, the appellant maintained that he did not narrow or clarify his request and that he expected to obtain the notes, draft reports, annotations and emails of two individuals, despite the fact that they were not specifically named in the request, as was

the case with two other individuals. The appellant has, therefore, raised the scope of the request as an issue for this appeal. In response, the ministry asserted to the mediator that the appellant had clarified and narrowed his request as outlined in its October 21, 2013, decision letter. As such, the ministry submits that the notes, draft reports, annotations and emails of the two individuals who were not named in the request are outside its scope.

[6] Following a lengthy on hold period in which he received access to many of the requested records through the civil litigation disclosure process, the appellant reiterated that he wanted to pursue access to the information withheld from pages 113 and 200–210 of the records. The appellant also seeks access to the coding information which was severed from the records on the basis that it is not responsive to the request. He also continues to maintain that any records maintained by the two individuals who are not mentioned in the request are also responsive and ought to have been produced in this appeal.

[7] As further mediation was not possible, the file was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. I sought and received the representations of the ministry, a complete copy of which was shared with the appellant. In its representations, the ministry disclosed additional information which it had initially severed from pages 201 and 206 of the records. The appellant also provided representations that were shared with the ministry, which then made further submissions by way of reply.

[8] In this order, I uphold the ministry's decision, in part, and order it to disclose additional information from the records to the appellant. I also order the ministry to issue the appellant a decision letter respecting access to certain coding information contained in the records already disclosed to him.

RECORDS:

[9] The records remaining at issue are the withheld portions of pages 113 and 200–210 of the records, as well as certain coding information that appears on the copies of the records provided to this office that were disclosed in part, to the appellant.

ISSUES:

- A. What is the scope of the request? What records are responsive to the request?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

DISCUSSION:

Issue A: What is the scope of the request? What records are responsive to the request?

[10] Section 24 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

. . .

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[11] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹ To be considered responsive to the request, records must "reasonably relate" to the request.²

[12] The ministry and the appellant take widely divergent views of the scope and extent of the request in this appeal. Much of this confusion stems from the manner in which the request was originally framed by the appellant and the subsequent restatement of the scope of the request by the ministry in a letter to the appellant dated October 21, 2013. The ministry wrote to the appellant on that date confirming its understanding of the scope of the request following a telephone conversation with him on September 26, 2013. In that letter, the ministry confirmed with the appellant that the request was to be limited to "the OFM report and notes of [a named fire investigator] and [a named fire protection engineer]."

Coding information

[13] The appellant also maintains that the coding information which was severed from

¹ Orders P-134 and P-880.

² Orders P-880 and PO-2661.

the records released to him contain responsive information. He submits that this information would reveal how and when the initial investigator's report was "edited, corrected or reviewed by his superiors" for a later 46-page confidential report dated October 2009 which contained significantly different information to that which appeared in an earlier 31-page version that was disclosed to him, in part.

[14] The ministry appears to argue that this coding information is only part of the "retrieval process" through which it obtained access to the reports in response to the appellant's access request.

[15] I note that the dates indicated in the coding information predate by several years the date of the appellant's request. In that case, it cannot be described as information relating to the "retrieval process" which documents when a ministry staff person copied the records from an electronic database in response to the appellant's request. Rather, the coding information which appears on the documents relates to some earlier retrieval of them by an individual unrelated to the access request process. I agree with the appellant that this information is responsive to his request and I will order the ministry to provide the appellant with an access decision respecting it.

Records prepared by other identified individuals

[16] The ministry argues that the scope of the appeal was agreed to by the appellant and staff in its FOI Office and that this agreement was confirmed in writing on October 21, 2013 to include only the notes and reports of two identified individuals. It submits that if the appellant objected to this characterization of the request, he ought to have raised it at the time he received the letter from the ministry.

[17] The appellant argues that there ought to be other responsive records which originated with at least three other individuals: an OFM Supervisor (PY), a Fire Investigator Supervisor (WR) and an engineer (BS). He believes these individuals had some involvement in the preparation of a 46-page fire investigation report, which is similar, in part, to a 31-page report that was disclosed to him as part of the litigation which is ongoing related to these events. The appellant also indicates that he only became aware of the involvement of these other individuals in the investigation after the disclosure of a number of the records. He also refers to the broadly-worded original request in which he requested, in a very general way, "any information the Office of the Fire Marshall deems relevant in a fatal fire" to substantiate taking a wider view of the scope of his request to include records maintained by other individuals.

[18] In my view, the ministry satisfied its obligations to the appellant under section 24 when it contacted him by telephone and clarified with him the scope of the request. This action was confirmed in its letter to him of October 21, 2013. The ministry deemed it necessary to clarify the request with the appellant because of the ambiguity around the words "any information the Office of the Fire Marshall deems relevant in a fatal fire". I find that the scope of the request is accurately described in the ministry's

October 21, 2013 letter and, if he disagreed, the appellant was at liberty to raise any concerns with the ministry at that time. Accordingly, I will treat the request as being limited to "the OFM report and notes of [a named fire investigator] and [a named fire protection engineer]."

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

[19] 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 where 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;

[20] 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.³

[21] Sections 2(2), (3) and (4) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(3) 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.

(4) For greater certainty, subsection (3) 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.

[22] 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.⁴ 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.⁵

[23] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁶

Representations on the personal information issue

[24] The ministry takes the position that portions of records 113 and 200-210 contain names, addresses, telephone numbers and dates of birth of identifiable individuals other than the appellant and that this information qualifies as "personal information" within the meaning of the definition of that term in section 2(1). The ministry also argues that information about fire-related damage in adjoining properties also constitutes the personal information of the individuals who lived there. This information includes "whether doors were locked, whether smoke alarms were maintained, and where specifically in the units was damage sustained." The ministry relies upon Order PO-3279 which determined that property-related information relating to a fire investigation "could be personal information depending on the circumstances of the

³ Order 11.

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁶ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

appeal and whether the information would reveal something of a personal nature about an individual or individuals.” It also relies on the decision of the Divisional Court in *Northstar Aerospace v. Ontario (Information and Privacy Commissioner)*⁷ on the basis that the court “held that a home address and environmental test results, when combined, are ‘about’ an individual and within the definition of personal information.”

[25] The ministry concludes this aspect of its representations by stating that “the investigation of the properties was sufficiently detailed that it reveals personal details about the individuals living in the townhouse units. And as such, their address, plus the results of a fire investigation of their home should be considered their personal information.”

[26] The appellant does not dispute that the records may contain personal information, but states that he is not seeking such information as it relates to tenants of adjoining properties. Rather, he is primarily interested in obtaining information “that relates to fire alarms that may or may not have functioned”.

Findings

[27] Record 113 consists of a fire inspector’s notes of his conversations with the appellant’s children with respect to their recollection of the events that led to the fire. It must be noted that the appellant was present when these interviews took place and it is evident that he was aware of the information conveyed by the children to the investigator. I find that the undisclosed portions of record 113 contain the personal information of several of the appellant’s children, one of whom is referred to by name, as well as the address where the interview took place. In addition, the record qualifies as the personal information of the child giving the statement as it represents her personal views or opinions, as contemplated by paragraph (e) of the definition in section 2(1).

[28] As noted above, the investigator’s notes clearly indicate that the appellant was present when the interview took place. I find that to deny him access under these circumstances would give rise to an absurd result. Accordingly, I find that the personal privacy exemptions in sections 21(1) and 49(b) do not apply to the personal information of the appellant’s children and the address where the interviews took place which appears in record 113.

[29] Records 200-205 and 209 do not contain personal information relating to any identifiable individuals. Only personal information can qualify for exemption under either section 21(1) or 49(b). As these appear to be the only exemptions applied by the ministry to these pages, I will order that they be disclosed to the appellant, subject to the ministry’s decision respecting access to the coding information in each of them.

⁷ 2011 ONSC 2956

[30] Records 206, 207, 208 and 210 all consist of descriptions by the fire investigator of the damage to properties that he observed while conducting the survey of the units adjoining the location of the fire. Record 206 includes the name, date of birth, address and telephone number of one of the individuals who provided information to the inspector. This information is found on lines 10-15 and 22-24 of the left side of record 206. As the appellant has indicated that he is not seeking access to any of this information, I will not review it further in this order. Record 206 also includes the names and business telephone numbers of several employees of the restoration company retained by the landlord of the properties. I find that this information does not constitute the personal information of these individuals as the information relates to them only in their professional capacities, as employees of the restoration firm.

[31] The remaining information in records 206, 207, 208 and 210 consists of the investigator's notes in which he describes the damage to the properties and the functionality of various smoke alarms located in each unit. The investigator does not refer in any way to the contents of the homes or the property of those who lived in them. The notes strictly describe the fire and water damage in each unit and the location and status of each fire alarm therein.

[32] I find that, in the absence of any description of the contents of the units, the state of the property or any reference to those who lived there, this information does not qualify as "personal information" for the purposes of the definition of that term in section 2(1). I find that the disclosure of this information would not reveal anything of a personal nature about the individuals who lived in the units and it does not, accordingly, fall within the definition of "personal information".

[33] In addition, I find that the principles described in *Northstar* have no application because the information about the units that is described in the records relates only to the damage caused by the fire and not to any inherent or existing condition that might be tied to a particular unit. For these reasons, I find that the majority of records 206, 207, 208 and 210, with the exception of the specific information about one individual in record 206 which is described above, do not contain personal information and cannot, therefore, qualify for exemption under the personal privacy exemptions in sections 21(1) or 49(b). As no other exemptions have been claimed for this information and no mandatory exemptions apply to it, I will order that it be disclosed to the appellant, with the exception of the non-responsive information identified in record 206 above.

[34] Because I have found that none of the responsive information in the records qualifies as personal information, it is not necessary for me to address whether it is exempt from disclosure under sections 21(1) or 49(b).

ORDER:

1. I order the ministry to provide the appellant with a decision with respect to access to the undisclosed coding information contained in the records, using the date of this order as the date of the request.
2. I order the ministry to disclose to the appellant copies of record 113, records 200-205, all of record 206 with the exception of lines 10-15 and 22-24 on the left side of the page and records 207, 208, 209 and 210 by providing him with a copy by no later than **October 13, 2015**, but not before **October 8, 2015**.
3. In order to verify compliance with order provision 2, I reserve the right to require the ministry to provide me with a copy of the records that are disclosed to the appellant.

Original Signed by: _____
Donald Hale
Adjudicator

_____ September 8, 2015