Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-2656

Appeal MA11-76

City of Toronto

October 13, 2011

Summary: The appellants challenged the reasonableness of the City of Toronto's search for responsive records and sought access to the name and email address of an affected party contained in a Service Request. The city's search was upheld as reasonable and the name and email address of the affected party was found to be exempt from disclosure under section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act*.

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), 14(1) and 17.

OVERVIEW:

[1] This appeal arises out of a request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act* or *FIPPA*) from a lawyer on behalf of the appellants for access to information pertaining to a personal injury suffered by one of the appellants. The initial request was for a variety of records spanning a specified time period for an area in which the personal injury was alleged to have occurred. These included records relating to patrol, inspection, maintenance, repair, traffic volume, work orders and names of any contractors and/or subcontractors that had been hired by the city in connection with any road maintenance and/or repair for the specified area. The city disclosed a number of records that were responsive to the request. The city relied on section 14(1) (invasion of privacy) of the *Act* to deny access to the portion it withheld. The city also advised that certain requested records did not exist. At mediation, the city explained its search efforts and clarified an error in

its initial decision letter. At the close of mediation, only the following matters remained at issue in this appeal:

- the reasonableness of the city's search for responsive records
- access to the name and address of an individual (the affected party) that was severed from a disclosed document entitled "Service Request".

[2] As mediation did not resolve the appeal, it was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*.

[3] I commenced the inquiry by sending a Notice of Inquiry to the city and the affected party setting out the facts and issues in the appeal and inviting their representations. In response, the affected party provided a letter objecting to the disclosure of her personal information. The city provided responding representations. I then sent a Notice of Inquiry to the appellants' representative, along with the complete representations of the city. The appellants' representative advised that he would not be providing representations in response to the Notice.

RECORDS:

[4] The sole information at issue in this appeal is the name and email address severed from Record 75, being a Service Request.

ISSUES:

A. Did the city conduct a reasonable search for responsive records?

B. Does the name and email address of the affected party in the Service Request qualify as personal information?

C. If it qualifies as personal information would disclosing the name and email address of the affected party constitute an unjustified invasion of personal privacy pursuant to section 14(1) of the *Act*?

DISCUSSION:

A. Did the city conduct a reasonable search for responsive records?

[5] 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.[1] 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.

[6] 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.[2] To be responsive, a record must be "reasonably related" to the request.[3]

[7] 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.[4]

[8] 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.[5]

[9] 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.[6]

[10] In support of its position that it conducted a reasonable search for responsive records the city refers to:

- the content of its original decision letter, and
- letters and email correspondence that were included in city's representations and shared with the appellants from representatives of Toronto Water (District Operations and Maintenance), Toronto Transportation Services Division and from a field investigator for Transportation Services (Road Operations) setting out the results of their searches and confirming that there are no other responsive records.

[11] The appellants' challenged the adequacy of the city's search, but did not file any representations to provide an evidentiary basis to refute it. As set out above, in order to satisfy its obligations under the *Act*, the city must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records within its

[1] Orders P-85, P-221 and PO-1954-I.
[2] Orders P-624 and PO-2559.
[3] Order PO-2554.
[4] Orders M-909, PO-2469, PO-2592.
[5] Order MO-2185.
[6] Order MO-2246.

custody and control.[7] In my view, based on the evidence before me the city has made a reasonable effort to locate responsive records that are within its custody or control.

[12] In all the circumstances, I find that the city has provided sufficient evidence to establish that it has conducted a reasonable search for responsive records within its custody and control.

B. Does the name and email address of the affected party in the Service Request qualify as personal information?

[13] The section 14 personal privacy exemption applies only to "personal information" as defined in section 2(1) of the *Act*. That section defines "personal information" as "recorded information about an identifiable individual." Paragraphs (a) to (h) of the definition in section 2(1) describe the various types of information that qualify as personal information under the definition. In particular, paragraph 2(h) includes in the definition of "personal Information": "the individual's name if it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual."

[14] 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.[8]

[15] The portion of the Service Request that was disclosed to the appellants reveals that the affected party contacted the city with respect to the affected party's concern about the state of a particular roadway. In my view, in the circumstances of this appeal, disclosing the affected party's name and email address (which contains her name), would thereby reveal something of a personal nature about her. I am, therefore, satisfied that the record contains the personal information of the affected party, within the meaning of the definition of personal information at section 2(1) of the *Act*.

C. Would disclosing the name and email address of the affected party constitute an unjustified invasion of personal privacy pursuant to section 14(1) of the *Act*?

[16] The city claims that disclosing the name and email address of the affected party would constitute an unjustified invasion of her personal privacy. Where the appellants seek the personal information of another individual, section 14(1) of the *Act* prohibits an institution from disclosing this information unless one of the exceptions in

[7] Orders P-624 and PO-2559.
[8] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

paragraphs (a) through (f) of section 14(1) applies. In this appeal, the only available exception is 14(1)(f), which states:

> 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. [Emphasis added]

[17] Sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f). Section 14(2) provides some criteria for the institution to consider in making this determination; section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy; and section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy. The Divisional Court has stated that once a presumption against disclosure has been established under section 14(3), it cannot be rebutted by either one or a combination of the factors set out in section 14(2).[9]

[18] The city submits that none of the presumptions under section 14(3) and none of the exceptions in section 14(4) apply in the circumstances of this appeal. I agree.

[19] The city further submits that none of the factors or circumstances favouring disclosure under section 14(2) apply. The appellants have provided no representations on this point. In my view, I have not been provided with sufficient evidence to establish that any of the factors or circumstances in section 14(2) apply in the circumstances of this appeal.

[20] I find that it has not been established that disclosure of the information at issue **does not** constitute an unjustified invasion of the affected party's personal privacy. Accordingly, I find that the exception in section 14(1)(f) does not apply. I therefore conclude that the name and email address of the affected party is exempt under section 14(1) of the *Act*.

ORDER:

I uphold the city's decision and dismiss the appeal.

Original Signed by: October 13, 2011
Steven Faughnan
Adjudicator

[9] *John Doe v. Ontario (Information and Privacy Commissioner*) (1993), 13 O.R. (3d) 767 (Div. Ct).