

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3321

Appeals MA14-471 and MA15-152

Township of Springwater

June 14, 2016

Summary: The requester made a request to the Township of Springwater (the township) for records relating to a specified property. The township's access decision was appealed by both the requester and a third party. The issues in this order are whether the records contain personal information, whether they are exempt from disclosure under the mandatory exemption in section 14(1) (personal privacy), whether a discretionary exemption can be raised late, and whether the discretionary exemption in section 13 (danger to safety or health) applies to exempt some of the records at issue. The reasonableness of the township's search for responsive records was also raised by the requester. In this order, the adjudicator finds that some of the information at issue is not personal information. She upholds the township's decision with respect to the application of section 14(1) to most of the information for which it was claimed, but she does not uphold the exemption in section 13. She orders the township to disclose some of the records to the requester either in whole, or in part. She also upholds the township's search for records as being reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2 (definition of personal information), 14(1), 13 and 17.

Orders and Investigation Reports Considered: Orders MO-2070, PO-1880, PO-1940 and PO-2048.

OVERVIEW:

[1] This order disposes of the issues raised as a result of two appeals of a decision made by the Township of Springwater (the township) in response to an access request made under the *Municipal Freedom of Information and Protection of Privacy Act* (the

Act). The request was for access to a variety of records relating to a specified property, including:

- Building permit applications, building permits and related invoices, cheques and credit card receipts;
- Correspondence relating to the property over a specified time period; and
- Architectural drawings of the structure on the property.

[2] The township identified responsive records and notified a third party to obtain its views regarding disclosure of the records. The third party responded, advising the township that it did not consent to the disclosure of the records.

[3] After considering the third party's representations, the township issued a decision to the requester granting access, in part. The township withheld portions of the records, claiming the application of the mandatory exemption in section 14(1) (personal privacy). It also advised the requester that some of the records that were requested did not exist.

[4] In turn, the third party (now the third party appellant) appealed the township's decision to this office, claiming that none of the records should be disclosed. As a result, appeal file MA14-471 was opened. During the processing of appeal MA14-471, the third party appellant agreed to disclose some portions of the records to the requester.

[5] When the requester (now the appellant) received the records that the third party appellant agreed may be disclosed, he appealed the township's decision to this office, claiming that all of the records should be disclosed in their entirety. As a result, appeal file MA15-152 was opened.

Appeal MA15-152

[6] During the mediation of the appeal, the appellant advised the mediator that he was of the view that the information the township withheld was not personal information, but rather information about individuals in a business capacity, because it relates to them as representatives of a corporation. The appellant also advised the mediator that additional records should exist such as the building permit, septic permit correspondence and the cheque used to pay for the permit application.

[7] The township advised the mediator that although a building permit was created and provided to the homeowner to post at the property, it did not retain a copy of the building permit. The township also confirmed that there are no records or permits relating to the septic system because there is one original permit created for the septic system, which is provided to the homeowner, with no copies being kept on file. Lastly, the township conducted a further search and located a copy of the requested cheque. The township issued a supplemental decision to the appellant disclosing the cheque to

him, in part.

[8] The appellant maintained his position that the building permit and records related to the septic system ought to exist. As a result, the township's search for records was added as an issue in this appeal.

Appeal MA14-471

[9] During the mediation of this appeal, the third party appellant consented to the disclosure of most of the records, with portions withheld under section 14(1) as set out in the township's decision. In addition, the third party appellant advised the mediator that it objected to the disclosure of some of the records the township had decided to disclose. In particular, the third party appellant objected to the disclosure of:

- The last three pages of the building permit application, depicting the design/layout of the dwelling;
- The architectural drawings/plans of the dwelling; and
- The name and address of the bank on the cheque.¹

[10] The appeals then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. Representations were sought and received from the township, the appellant and the third party appellant, and were shared in accordance with this office's *Code of Procedure* and *Practice Direction 7*. In its representations, the township raised for the first time, the application of the discretionary exemption in section 13 (danger to safety or health). The third party appellant also agreed that this exemption applied. Consequently, whether the township can raise a discretionary exemption late, as well as the application of section 13, were added as issues in appeal MA14-471.

[11] For the reasons that follow, I uphold the township's decision in part, and order it to disclose some records to the appellant. I find that most of the information that the township withheld is personal information that is exempt from disclosure under section 14(1). I find that other records, such as building plans and architectural drawings, do not qualify as personal information and are not exempt under section 14(1). I also find that the plans and drawings are not exempt under 13. Lastly, I uphold the township's search for records as being reasonable.

RECORDS:

[12] The records at issue include building permit applications, a fee estimate, a cheque, dwelling drawings/plans, letters, emails and a memorandum.

¹ In its access decision, the township had decided to disclose this information to the requester.

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 in section 14(1) apply to the records?
- C. Can the township raise a discretionary exemption late?
- D. Does the discretionary exemption in section 13 apply to the records?
- E. Did the township conduct a reasonable search for records?

DISCUSSION:

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

[13] 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), in part:

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,
- (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;

[14] 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.²

² Order 11.

[15] Sections 2(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.

[16] 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.³ 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.⁴

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[18] The township submits that although the title-holder of the property that is the subject matter of the request is a numbered company, the property is solely for the personal use of the owner of the numbered company, who is an identifiable individual.

[19] The appellant submits that the information the township withheld and that it identified as personal information may, in fact, relate to the name, title and contact information of an individual in a business, professional or official capacity. Consequently, the appellant argues, the withheld information does not qualify as personal information as defined in section 2 of the *Act*.

[20] The third party appellant submits that the records contain personal information because it includes information such as an individual's name, signature, bank account and personal banking information. The third party appellant goes on to state:

We understand that the requester is of the view that the personal information redacted by the Township is not personal information, but rather information about individuals in a professional capacity. However, the [third party appellant] argues that if the redacted information were to be disclosed it would reveal something of a personal nature about an individual and that it is reasonable to expect that an individual may be identified if the redacted information is disclosed.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

Further, notwithstanding that the [third party appellant] is a corporate entity, the requested documents relate to property owned for personal use, albeit through a corporation. The [third party appellant] is a single purpose corporation, which was incorporated to acquire and hold the property and is otherwise inactive, without any further assets or liabilities. The [third party appellant's] sole purpose is to be the registered owner of the property and the [third party appellant] does not conduct any business.

[21] With respect to the drawings/plans of the dwelling on the property, the third party appellant submits that they too qualify as personal information because they relate to a dwelling constructed by the principal of the third party appellant for its own personal use.

Appeal MA15-152

[22] With respect to the information that the township withheld under section 14(1), I find that all of it contains the personal information of identifiable individuals, with one exception. In particular, I find that the records contain the names of individuals with their personal addresses, telephone numbers, fax numbers and email addresses, which falls within paragraph (d) of the definition of personal information in section 2(1) of the *Act*. This personal information forms the bulk of the information that the township withheld from the appellant.

[23] In addition, I find that some of the records contain information relating to the marital and family status of identifiable individuals, which falls within paragraph (a) of the definition. Some records also contain information relating to a financial transaction in which individuals have been involved, which falls within paragraph (b) of the definition. Lastly, I find that the records contain individuals' names where it appears with other personal information relating to them, which falls within paragraph (h) of the definition.

[24] In making my finding regarding the information described above, I am mindful of the fact that the title-holder of the property is a numbered company, and that the request relates to the property. However, I find that, in the circumstances, the information remaining is the personal information of identifiable individuals. And, as previously stated, the information in the records identifies these individuals by their names and not by the name of a numbered company.

[25] Conversely, I find that a portion of one record which the township withheld does not qualify as personal information. Record B6.1, which is a letter from a solicitor to the township, contains the name and contact information of another solicitor acting in a professional capacity for the property owner. This information does not qualify as personal information of the solicitor for the purpose of the *Act* and cannot, therefore, be exempt under the personal privacy exemption in section 14(1). As no other exemptions have been claimed with respect to this information, I will order the township to disclose it to the appellant.

Appeal MA14-471

[26] The subject matter of the third party appeal is the name and address of the bank on a cheque, the plans/drawings contained in the last three pages of the building permit application (record B1.2), and the stand-alone architectural plans of the dwelling (record B5.1).

[27] I find that all of the information contained in the cheque qualifies as the personal information of an identifiable individual, falling within paragraph (b) of the definition, because it relates to a financial transaction in which that individual has been involved in a personal capacity.

[28] Turning to the last three pages of the building permit application (record B1.2), I find that it contains some personal information, namely the name and address of an identified individual. This information qualifies as the personal information of an identifiable individual, falling within paragraph (d) of the definition in section 2(1) of the *Act*.

[29] The remaining content at issue in record B1.2 consists of drawings of the proposed dwelling, which were prepared by a building design firm. Similarly, record B5.1 consists of the detailed architectural plans of the dwelling, which were prepared by an architectural firm.

[30] Past orders of this office have found that building plans, including residential plans, do not qualify as personal information as defined by section 2(1) the *Act*, because they reveal only information about a property, and do not represent recorded information *about* an identifiable individual,⁶ unless there is personal information in them such as the property owner's name and telephone number.

[31] Based on my review of the drawings in records B1.2 and B5.1, I find that they do not contain recorded information about an identifiable individual, other than the name and address of an identified individual which I have referred to above. The records are building plans for the property and thus relate solely to the property. Accordingly, I find that the portions of record B1.2 that are at issue (except the name and address) and record B5.1 do not contain *personal information* within the meaning of section 2(1) of the *Act*, and cannot be exempt under the personal privacy exemption in section 14(1).

[32] In sum, I find that most of the information the township withheld qualifies as personal information as defined in section 2(1). The information that I find is not personal information consists of:

- The solicitor's name and address in record B6.1;

⁶ See Orders M-23, M-175, MO-2053, MO-2081, PO-2322, MO-2695, MO-2792, MO-2994 and MO-3125.

- The last three pages of record B1.2 with the exception of the identified individual's name and address; and
- Record B5.1.

[33] As previously stated, as no other exemptions have been claimed with respect to record B6.1, I will order the township to disclose the solicitor's name and address to the appellant. With respect to the last three pages of record B1.2 and record B5.1, the discretionary exemption in section 13 has also been claimed by the township. As the township raised this exemption late, I will consider whether it can do so, and potentially whether section 13 applies. Concerning the information that qualifies as personal information, I will now determine whether it is exempt from disclosure under section 14(1).

Issue B: Does the mandatory exemption in section 14(1) apply to the personal information in the records?

[34] 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. The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, which allows for disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14. Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. In addition, section 14(4) lists situations that would not be an unjustified invasion of privacy.

[35] If any of the paragraphs in 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.⁷

[36] The township submits that the personal information contained in the records is exempt under section 14(1). The third party appellant submits that disclosure of the personal information would constitute an unjustified invasion of personal privacy. The third party appellant argues that the factors in section 14(2)(f) and (h) are applicable because the information is highly sensitive and confidential. Concerning the cheque in particular, the third party appellant states that disclosing the account number, name, and the name and address of the bank branch would permit disclosure of personal financial information.

[37] The appellant submits that there is a public interest in the records because of the relationship between the third party appellant and an elected member of a municipal council in the province.

⁷ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

[38] Having reviewed the parties' representations and the records, I find that none of the exceptions in section 14(1)(a) to (e) apply in these circumstances, and that none of the limitations on section 14(1)(f) in section 14(4) apply either.

[39] As previously stated, if any of the paragraphs in section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14(1). I find that the presumption in section 14(3)(f) applies in these circumstances, which states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[40] In Order PO-2048, Assistant Commissioner Sherry Liang found that, to the extent that the records at issue identified individual property owners in the context of the submission of detailed plans and drawings describing proposed changes to their property, the presumption in section 21(3)(f) (the provincial equivalent of section 14(3)(f)) applied to that specific information. I adopt the approach taken in Order PO-2048 and apply it to the personal information identified in the records at issue, which is contained in records relating to the construction of a residential dwelling. In my view, this information describes the individuals' finances and assets.

[41] Having found that the presumption in section 14(3)(f) applies, the personal information in the records is exempt from disclosure under section 14(1). The appellant has raised the possible application of the public interest override in section 16. The appellant's argument appears to be that the personal information of individuals involved in a relationship with a municipal councillor is not subject to the privacy protection afforded by the exemption in section 14(1). I disagree. I find that there is no compelling public interest in the disclosure of the personal information at issue in these circumstances, and that section 16 is, therefore, not applicable. I also note that the third party appellant has consented to the disclosure of portions of the cheque, and I will, accordingly order the township to disclose those portions only to the appellant.

Issue C: Can the township raise a discretionary exemption late?

[42] The remaining information at issue is contained in the last three pages of record B1.2 (except the name and address, which is exempt) and all of record B5.1 During the inquiry of this appeal, the township raised for the first time, the application of the discretionary exemption in section 13 to these records.

[43] The *Code of Procedure* (the *Code*) provides basic procedural guidelines for parties involved in appeals before this office. Section 11 of the Code addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal. Section 11.01 states:

In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide to not consider a new discretionary exemption claim made after the 35-day period.

[44] The purpose of the policy is to provide a window of opportunity for institutions to raise new discretionary exemptions without compromising the integrity of the appeal process. Where the institution had notice of the 35-day rule, no denial of natural justice was found in excluding a discretionary exemption claimed outside the 35-day period.⁸

[45] In determining whether to allow an institution to claim a new discretionary exemption outside the 35-day period, the adjudicator must also balance the relative prejudice to the institution and to the appellant.⁹ The specific circumstances of each appeal must be considered individually in determining whether discretionary exemptions can be raised after the 35-day period.¹⁰

[46] The parties were therefore asked to consider the following with respect to section 11.01:

- Whether the appellant has been prejudiced in any way by the late raising of a discretionary exemption;
- Whether the township would be prejudiced in any way by not allowing it to apply an additional discretionary exemption in the circumstances of this appeal; and
- By allowing the township to claim an additional discretionary exemption, would the integrity of the appeals process be compromised in any way.

[47] The township submits that it did not intend to prejudice the appellant by the late raising of section 13, and that it was simply attempting to afford both the requester and the property owner their respective rights under the *Act*. The township goes on to state that it would not be prejudiced if the late raising of section 13 was not permitted, but that the third party appellant may express concern in this regard. Lastly, the township submits that the integrity of the appeals process would not be compromised should the late raising of section 13 be permitted. The other parties' representations do not address this issue.

[48] In Order MO-2070, Adjudicator Catherine Corban explained the purpose of this

⁸ *Ontario (Ministry of Consumer and Commercial Relations v. Fineberg)*, Toronto Doc. 220/95 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 1838 (C.A.). See also *Ontario Hydro v. Ontario (Information and Privacy Commissioner)* [1996] O.J. No. 1669 (Div. Ct.), leave to appeal dismissed [1996] O.J. No. 3114 (C.A.).

⁹ Order PO-1832.

¹⁰ Orders PO-2113 and PO-2331.

office's policy on the late raising of discretionary exemptions. She stated:

Previous orders issued by the Commissioner's office have held that the Commissioner or his delegate has the power to control the manner in which the inquiry process is undertaken. This includes the authority to establish time limits for the receipt of representations and to limit the time frame during which an institution can raise new discretionary exemptions not originally cited in its decision letter, subject, of course, to a consideration of the particular circumstances of each case.

The objective of the policy is to provide government institutions with a window of opportunity to raise new discretionary exemptions, but not at a stage in the appeal where the integrity of the process is compromised or the interests of the appellant in the release of the information is prejudiced. In my view, the objective of the policy is applicable to this situation. This approach was upheld by the Divisional Court in the case of *Ontario (Ministry of Consumer and Commercial Relations) v. Fineberg*.¹¹

In adjudicating the issue of whether to allow the City to claim this discretionary exemption at this time, I must weigh the balance between maintaining the integrity of the appeals process against any evidence of extenuating circumstances advanced by the City.¹² I must also balance the relative prejudice to the City and the appellant in the outcome of my ruling.

. . .

Earlier identification of an exemption claim permits the appellant time to consider and reflect on its application, consult on the issue if it deems it necessary and gives the appellant an opportunity to address the exemption claim in mediation. In some situations, as well, failure to claim a discretionary exemption in a timely manner may have an effect on whether all relevant evidence or information is retained by the appellant for use in the appeal. In my view, these considerations relate to the overall integrity of the appeals process and must be taken into account by an Adjudicator in deciding whether to grant a request for the late raising of a new discretionary exemption.

[49] More specifically, in Order PO-1880, former Adjudicator Irena Pascoe dealt with the late raising of section 20 (the provincial equivalent to section 13). She stated:

A number of previous orders have also recognized that the harm articulated in section 20 is different from the harms contemplated by other exemptions contained in the *Act*, since it relates to the health and

¹¹ (21 December 1995) Toronto Docket 220/89.

¹² Order P-658.

safety of an individual . . . As a result, in a number of cases, affected parties, who would not normally be entitled to raise the application of discretionary exemptions which have not been claimed by the institution [Order P-257], have been permitted to rely on sections 14(1)(e) and 20, due to the nature of these exemptions and the particular circumstances surrounding those cases [Orders R-980015 and PO-1787] . . .

[50] I adopt the approach taken by both adjudicators to this office's policy on the issue of late raising of discretionary exemptions and, in particular, the late raising of section 13. I have decided to permit the township to claim section 13 with respect to the last three pages of record B1.2¹³ and to record B5.1. I am not satisfied that any of the factors identified above as supporting the application of the policy are present in this case. Most importantly, I have also concluded that the appellant will not be prejudiced by the late raising of section 13, as he was given an opportunity to address the exemption claim during this inquiry, and no delay has resulted from the additional claim. Accordingly, I will allow the township to make the claim that the discretionary exemption in section 13 applies to the records identified above, and I will now determine whether that exemption applies.

Issue D: Does the discretionary exemption in section 13 apply to the records?

[51] Section 13 states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[52] For this exemption to apply, the institution must provide detailed and convincing evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹⁴

[53] An individual's subjective fear, while relevant, may not be enough to justify the exemption.¹⁵ The term *individual* is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.¹⁶

[54] The township submits that in the decision *Big Canoe v. Ontario*,¹⁷ the Court suggested that:

¹³ I have already found the name and address contained in these pages to be exempt under section 14(1).

¹⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

¹⁵ Order PO-2003.

¹⁶ Order PO-1817-R.

¹⁷ (1999) 46 O.R. (3d) 395 (C.A.).

- harm to an individual need not be probable for an institution to rely on this exemption;
- an expectation of probable harm is not required;
- a threat to safety is not restricted to an actual physical attack; and
- the requirements of this exemption are met where an individual's behaviour is such that the recipient reasonably perceives it as a threat.

[55] The township also states that in Order PO-1940 correspondence from the requester, either in the appeal at issue, in other appeals before this office, or held by an institution claiming the exemption may be considered. The township then asks that this office and the property owner *reflect* in this regard.

[56] The township goes on to state:

The records in question are the architectural drawings; the property owner has expressed concern regarding their safety should their plans be made public; *it is unreasonable to require a government institution to show an expectation of probable harm to an individual in order to rely on the personal safety exemption provision*, the property owner and/or occupants could be subject to a threat should their plans be made public; however it is more appropriate for the property owner to speak to their concerns in this regard.

[57] The third party appellant submits that disclosure of the drawings/plans can reasonably be expected to seriously threaten the safety and health of an individual. In particular, it argues that disclosure of the records will provide the public with information regarding the layout of a dwelling used by the property owner for personal use, and could ultimately endanger the security and safety of an individual.

[58] The appellant submits that this office has previously set precedent regarding these types of records in Order MO-1967 and the orders referred to in it. The appellant states that, as was the case in the appeal resulting in Order MO-1967, a reasonable case has not been made to uphold the exemption in section 13. The appellant states:

Viewing architectural drawings does not pose any threat to safety and security. All personal and public building structures can be viewed from publicly accessible streets and walkways. An individual can view any given structure and visually see where all of the windows, doors and access points are. With today's information technology tools, any home can be viewed using Google Streets or Google Earth. These tools have not been banned from use due to safety and security threats. Therefore the argument that architectural drawings pose any security threat is without basis, as was the case in IPC Order MO-1967. The institution has not

provided any special case for the exemption and now claims that they are not required to, which is completely absurd.

[59] As previously stated, the township's argument is that the property owners/occupants could be subject to a threat should the records at issue be disclosed. The argument of the third party appellant is that the public disclosure of the layout of the dwelling could ultimately endanger the security and safety of an individual.

[60] The party with the burden of proof under section 13, that is, the party resisting disclosure, must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm.

[61] Having reviewed the representations and the records themselves, in my view, the disclosure of these architectural plans/drawings could not reasonably be expected to seriously threaten the safety or health of an individual or result in a reasonable expectation of harm to any individual, including the owner or occupants of the dwelling.

[62] In Order PO-1940, former Adjudicator Laurel Cropley found that section 20 (the provincial equivalent of section 13) applied to deny records to an appellant who was deemed to be *angry and potentially dangerous* after having engaged in a pattern of abusive and intimidating correspondence with the institution. In that order, she stated:

. . . Where an individual's behaviour is such that the recipient reasonably perceives it as a *threat* to his or her safety, the requirements of this section have been satisfied . . .

[63] In the circumstances of the present appeals, I do not accept that the evidence tendered by township and the third party appellant meets the required threshold for exemption under section 13. In the absence of further evidence, I find the arguments that the disclosure of the drawings/plans could threaten the safety of the dwelling's occupants to be speculative at best. Adopting the approach taken by former Adjudicator Cropley in Order PO-1940, there is no evidence before me that the appellant or any other individual poses a threat to the property's owner or its occupants, either with or without the records at issue. The township also referred to Order PO-1940 in its representations, yet has provided no evidence to link the appellant's conduct to a threat to others' safety. Based on the evidence before me, there is no evidence of the kinds of behaviour that past orders of this office have required to find that section 13 is applicable.

[64] Consequently, I find that the disclosure of the information at issue could not reasonably be expected to seriously threaten the safety and/or health of any person. Accordingly, I find that the information in the records at issue cannot be withheld under section 13. Having found that the exemption in section 13 does not apply, it is not necessary for me to determine whether the township properly exercised its discretion.

Issue E: Did the township conduct a reasonable search for records?

[65] The appellant raised the issue of reasonable search during the mediation of appeal MA15-152.

[66] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution had conducted a reasonable search for records as required by section 24.¹⁸ 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.

[67] 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.¹⁹ To be responsive, a record must be "reasonably related" to the request.²⁰ 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.²¹ 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.²²

[68] 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.²³

[69] The township submits that it made *all reasonable efforts* to search for responsive records, including the exceptional step of contacting its financial institution to obtain a copy of the cheque used as payment for the building permit, as its usual practice is to not keep copies of cheques used for payment of building permits. Concerning the appellant's claim that there should be copies of the building and septic system permits, the township states that it does not keep copies of these records because the applications that result in the creation of the permits contain all the required information.

[70] The appellant did not address this issue in his representations.

[71] On my review of the representations provided by the township, I am satisfied that it has conducted reasonable searches for responsive records, taking into account all of the circumstances of this appeal. As previously stated, a reasonable search is one in which an experienced employee expends a reasonable amount of effort to locate records which are reasonably related to the request. The township has provided an

¹⁸ Orders P-85, P-221 and PO-1954-I.

¹⁹ Orders P-624 and PO-2559.

²⁰ Order PO-2554.

²¹ Order M-909, PO-2469 and PO-2592.

²² Order MO-2185.

²³ Order MO-2246.

explanation of the nature and extent of the search conducted in response to the request and also during the mediation of the appeal. I am also satisfied with the township's explanation as to why it does not have copies of building and septic system permits. Further, because the appellant did not provide representations on this issue, I find that he has not provided sufficient evidence to establish a reasonable basis for concluding that the township's search was inadequate, or that further records exist. Consequently, I am satisfied that these searches were reasonable in the circumstances.

[72] In sum, I uphold the township's decision in part. I find that all of the personal information the township withheld is exempt under section 14(1). Conversely, I find that some information which does not qualify as personal information is not exempt, and that the information the township withheld under section 13 is also not exempt from disclosure. Lastly, I uphold the townships searches as being reasonable.

ORDER:

1. I uphold the township's decision, in part.
2. I order the township to disclose the cheque to the appellant²⁴, in part. I have included a copy of the cheque and have highlighted the portions that are **not** to be disclosed to the appellant.
3. I order the township to disclose the name and address of the solicitor contained in record B6.1 to the appellant.
4. I order the township to disclose the last three pages of record B1.2 to the appellant, withholding the name and address of the individual for whom the drawings were prepared.
5. I order the township to disclose record B5.1 in its entirety to the appellant.
6. The above records are to be disclosed by **July 19, 2016** but not before **July 14, 2016**.
7. I reserve the right to require the township to provide this office with copies of the records it discloses to the appellant.
8. I uphold the township's search as being reasonable.

Original Signed By: _____
Cathy Hamilton
Adjudicator

_____ June 14, 2016

²⁴ References to the appellant in these order provisions is the appellant in appeal MA15-152.