

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3327

Appeal MA14-48

City of Toronto

June 29, 2016

Summary: The appellant is seeking records relating to the City of Toronto's investigation of an alleged illegal rooming house. The city disclosed most of these records to the appellant but withheld the personal information of other individuals under the mandatory personal privacy exemption in section 14(1) of the *Act*. In this order, the adjudicator upholds the city's decision to deny access to the personal information of these other individuals under section 14(1). However, he finds that the property owner was acting as a landlord in the activities documented in the records. As a result, the property owner's name and telephone number identify him in a business capacity rather than a personal capacity, and sections 2(2.1) and (2.2) exclude this information from the definition of personal information. Given that the property owner's name and telephone number are not his personal information, this information cannot be withheld under the personal privacy exemption in section 14(1) and the adjudicator orders that it be disclosed to the appellant.

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"), 2(2.1), 2(2.2) and 14(1).

Cases Considered: *London Property Management Association v. City of London*, 2011 ONSC 4710 (CanLII).

OVERVIEW:

[1] The appellant submitted an access request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the

following records:

A copy of the investigation report of the illegal rooming house provided on Nov 01, 2013 at [named address] (with descriptions of violations and photos) and a copy of the Notice of Violation dated Nov. 15, 2013.

[2] In addition, the appellant stated that she is seeking access to two Toronto Fire Services inspection reports relating to the same property.

[3] The city located records that are responsive to the appellant's access request at its Municipal Licensing and Standards division and at Toronto Fire Services. It then issued a decision letter to the appellant stating that it was providing her with access to most of these records but was severing the personal information of other individuals under the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

[4] The appellant subsequently wrote to the city and stated that although she had received the city's decision letter, no records were enclosed. She then appealed the city's decision to this office and reiterated that she had not received the records that the city had decided to disclose to her.

[5] During the mediation stage of the appeal process, the city advised the mediator that although it had mistakenly not included the responsive records with the decision letter that it sent to the appellant, it had subsequently sent these records to her.

[6] This appeal was not resolved during mediation and was moved to adjudication for an inquiry. I sought and received representations from both the city and the appellant on the issues to be resolved.

[7] In addition, there is information in the records relating to several individuals other than the appellant, including the owner of the property identified in the appellant's access request. I decided to invite the property owner, who is an affected party in this appeal, to submit representations. I advised him that I was particularly interested in hearing his views as to whether his name and other information about him in the records constitute his "personal information," as defined in section 2(1) of the *Act*, and if so, whether disclosing his personal information to the appellant would constitute an unjustified invasion of his personal privacy under section 14(1). I did not receive any representations from him.

[8] In this order, I find that the personal information of various individuals in the records is exempt under section 14(1). However, I also find that the property owner's name and telephone number identify him in a business capacity (as a landlord) rather than a personal capacity, and sections 2(2.1) and (2.2) exclude this information from the definition of personal information. Given that the property owner's name and telephone number are not his personal information, I find that this information cannot be withheld under the personal privacy exemption in section 14(1) of the *Act* and I order the city to disclose it to the appellant.

RECORDS:

[9] The information remaining at issue in this appeal is found in the records set out in the chart below. I note that the city has provided the IPC with severed and unsevered copies of only those pages of each record that contain information that was withheld from the appellant.

Record	Page number	City's decision	Exemption claimed
Fire inspection report	1	Withheld in part	s. 14(1)
Fire inspection chronology	4	Withheld in part	s. 14(1)
Email from individual to municipal standards officer	5	Withheld in part	s. 14(1)
Email from individual to municipal standards officer	6	Withheld in part	s. 14(1)
Notice of violation	7	Withheld in part	s. 14(1)
Investigation notes	10	Withheld in part	s. 14(1)
Toronto Fire Services referral	12	Withheld in part	s. 14(1)
Computer printout/handwritten notes	18	Withheld in part	s. 14(1)
Toronto Fire Services referral	19	Withheld in part	s. 14(1)

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) apply to the information at issue?

DISCUSSION:

PERSONAL INFORMATION

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

[10] The city claims that disclosing the severed information in the records to the appellant would be an unjustified invasion of other individuals' personal privacy under section 14(1). However, the mandatory personal privacy exemption in section 14(1) only applies to "personal information." Consequently, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
- (c) any identifying number, symbol or other particular assigned to the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

[11] 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.¹

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.²

[13] The city submits that the information at issue in the records includes the following personal information:

- the name, telephone number and address of the individual who made the complaint;
- the name and telephone number of the property owner;
- the name and telephone number of another individual living at the property; and
- the names, telephone numbers and vehicle license plate number for the tenants of the property.

[14] The city submits that the severed information in the records falls within paragraph (d) of the definition of personal information in section 2(1).

[15] The appellant's representations do not address whether the records contain personal information.

[16] The records at issue relate to an investigation/inspection of a property that was undertaken by the city's Municipal Licensing and Standards division and Toronto Fire Services, as a result of a complaint. It appears that the owner lived at this property but rooms were rented to other individuals. The city has severed information relating to several individuals from these records, including the following:

- the name and telephone number of the property owner;
- the name and email address of another individual living at the property;
- the names of several other individuals living at the property;
- the name and address of a neighbour;
- the name of a tenant; and

¹ Order 11.

² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

- the license plate numbers of two vehicles.

The property owner's name and telephone number

[17] A key issue that must be addressed with respect to the name and telephone number of the property owner is whether this information identifies him in a personal capacity or a business, professional or official capacity. Sections 2(2.1) and (2.2) exclude certain information from the definition of personal information. They 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.

[18] Consequently, if the property owner's name and telephone number identify him in a business, professional or official capacity, this information is not his personal information, and it cannot be withheld under the personal privacy exemption in section 14(1). The disclosed contents of the records themselves appear to identify the property owner as a landlord. For example:

- an email from another individual living at the property to a city inspector acknowledges that three people living there are "renters";
- the Fire Inspection Report relating to the property contains a note indicating that an inspection was conducted as a result of an anonymous complaint regarding smoke alarms not functioning in "a possible rooming house"; and
- a Notice of Violation addressed to the property owner identifies three violations of city by-laws which all relate, either directly or indirectly, to the presence of tenants in the home.

[19] In addition, the city states in its representations that the information in the records was compiled as part of an investigation into an "alleged non-permitted boarding and lodging house."

[20] In my view, the contents of the records identify the property owner as a landlord who is renting space to tenants but has not complied with the requirements of a city bylaw. It is well established in IPC orders and court decisions that a landlord acts in a

business capacity, not a personal capacity.³

[21] In *London Property Management Association v. City of London*,⁴ the Divisional Court examined whether the names, addresses and telephone numbers of landlords collected by the city under a licensing by-law qualified as “personal information.” It found that landlords who lease rental units are engaged in business whether or not the landlord is an individual leasing a rental unit in his own home or a corporate landlord leasing units in a large apartment building. Consequently, it concluded that the names, addresses and telephone numbers of landlords identify them in a business capacity and fall within section 2(2.1) of the *Act*, which excludes such information from the definition of personal information.

[22] In the circumstances of this appeal, I find that the property owner was acting as a landlord in the activities documented in the records. His name and telephone number, which appear in several places in the records, identify him in a business capacity rather than a personal capacity. As a result, sections 2(2.1) and (2.2) exclude this information from the definition of personal information.

[23] Given that the property owner’s name and telephone number are not his personal information, they cannot be withheld under the personal privacy exemption in section 14(1) of the *Act* and must be disclosed to the appellant.

The information relating to other individuals

[24] As noted above, the city has also severed the following information from the records: the name and email address of another individual living at the property; the names of several other individuals also living there; the name and address of a neighbour; and the name of a tenant. I am satisfied that all of this information falls within paragraphs (d) and (h) of the definition of personal information in section 2(1).

[25] Finally, the city has withheld the license plate numbers of two vehicles. Previous IPC orders have established that a license plate number that belongs to an identifiable individual can be considered to be the personal information of that an individual, because it constitutes “an identifying number . . . assigned to the individual,” as stipulated in paragraph (c) of the definition.⁵ Consequently, I find that the license plate numbers of the two vehicles qualify as personal information.

[26] I will now determine whether the personal information in the records that was withheld by the city is exempt under the personal privacy exemption in section 14(1) of the *Act*.

³ E.g., see Order MO-2752.

⁴ 2011 ONSC 4710 (CanLII).

⁵ Orders MO-2021, MO-1863 and MO-1917.

PERSONAL PRIVACY

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

[27] Where a requester seeks the personal information of another individual, the personal privacy exemption in section 14(1) of the *Act* prohibits the city from disclosing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. In my view, the only exception that could apply is section 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.

[28] The city has withheld the personal information of several individuals from the appellant. Under section 14(1)(f), if disclosing these individuals' personal information to the appellant would not constitute an unjustified invasion of their personal privacy, it is not exempt from disclosure. Sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy.

[29] If any of paragraphs (a) to (h) of section 14(3) applies, disclosure of these individuals' personal information to the appellant is presumed to constitute an unjustified invasion of their personal privacy under section 14(1). The city submits that the presumption in section 14(3)(b) applies to these individuals' personal information. This provision states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[30] The section 14(3)(b) presumption can apply to a variety of investigations, including those relating to by-law enforcement.⁶

[31] The city submits that the personal information at issue was compiled as part of an investigation into an "alleged non-permitted boarding and lodging house," which is considered a contravention of a city by-law. It cites three previous IPC orders that have

⁶ Order MO-2147.

found that personal information that was compiled and is identifiable as part of an investigation into a possible violation of a municipal by-law falls within the section 14(3)(b) presumption, and it submits that similar circumstances exist here.⁷

[32] The appellant's representations do not address whether the presumption in section 14(3)(b) applies to the withheld personal information in the records.

[33] The city has withheld the personal information of several individuals from the appellant. In my view, this personal information was clearly compiled by the city as part of an investigation into possible violations of the city's by-laws by the property owner. Consequently, I find that disclosing these individuals' personal information to the appellant is presumed to constitute an unjustified invasion of their personal privacy under section 14(3)(b).

[34] The Ontario Divisional Court has found that 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.⁸ It cannot be rebutted by one or more factors or circumstances under section 14(2).⁹

[35] Given that I have found that the section 14(3)(b) presumption applies to the personal information of various individuals, I find that this presumption cannot be rebutted by any of the factors in section 14(2). In addition, I find that none of the circumstances listed in paragraphs (a) to (d) of section 14(4) applies to this personal information, and given that the public interest override at section 16 has not been raised by the appellant, it also does not apply to the withheld personal information in the records.

[36] In short, I find that disclosing the personal information of various individuals in the records to the appellant would constitute an unjustified invasion of their personal privacy, and the city has properly withheld this information under section 14(1) of the *Act*.

ORDER:

1. I uphold the city's decision to deny access to the personal information of various individuals in the records.
2. I order the city to disclose the name and telephone number of the property owner to the appellant. I have provided the city with a copy of the specific pages of the records that contain this information and have highlighted in green

⁷ Orders MO-1845, MO-1496 and M-982.

⁸ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

⁹ *John Doe*, cited above.

the information that must be remain severed under order provision 1. To be clear, only the non-highlighted information should be disclosed to the appellant.

3. I order the city to disclose those pages of the records to the appellant by **August 5, 2016** but not before **August 2, 2016**.

Original Signed by:

Colin Bhattacharjee
Adjudicator

June 29, 2016