

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3345

Appeal MA15-570

City of Toronto

August 10, 2016

Summary: The appellant requested access to a petition soliciting views about a parking issue on a particular residential street. The city granted partial access to the petition, withholding only the petition signees' names, home addresses and telephone numbers on the basis of section 14(1) of the *Act*. The appellant seeks access only to the house numbers of petition signees. In this order, the adjudicator upholds the city's decision to withhold the house numbers under section 14(1). This conclusion is based, among other things, on the finding that signing the petition does not amount to the petition signees' consent to disclosure of their personal information within the meaning of the exception at section 14(1)(a).

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)(a), 14(1)(f), 14(2)(d), 14(2)(f), 14(2)(h).

Orders and Investigation Reports Considered: PO-1723, MO-1506, M-580, MO-1309.

OVERVIEW:

[1] The appellant made a request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

a copy of a petition regarding the removal of "No Parking" signs submitted by [a named individual] of [a specified address] to [a named city councillor].

[2] The city granted the appellant partial access to the requested petition.

Specifically, the city disclosed the portion of the petition setting out petition signees' views concerning a parking issue on a particular residential street, but withheld the signees' names, home addresses and telephone numbers on the basis of section 14(1) (personal privacy) of the *Act*.

[3] The appellant appealed the city's decision to this office.

[4] During the mediation stage of the appeal process, the appellant specified that he does not seek access to the names or telephone numbers of petition signees, and only seeks access to their house numbers.

[5] The mediator notified some of the individuals who signed the petition, as they may be affected parties to this appeal. None of the individuals contacted by the mediator consented to the disclosure of his or her house number to the appellant.

[6] As no further mediation was possible, the appeal was transferred to the adjudication stage for an inquiry under the *Act*. In the course of my inquiry, I sought and received representations from the city and the appellant, which were shared in accordance with this office's *Code of Procedure* and *Practice Direction Number 7*. In the circumstances, I deemed it unnecessary to notify any additional affected parties.

[7] In this order, I uphold the city's decision to withhold the house numbers of petition signees under section 14(1). I dismiss the appeal.

INFORMATION AT ISSUE:

[8] At issue in this appeal are the house numbers of signees to a petition concerning a parking issue on a specified street.

ISSUES:

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

DISCUSSION:

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

[9] The city seeks to withhold the house numbers of petition signees on the basis of the personal privacy exemption at section 14(1) of the *Act*. In order for this section to apply, it must first be shown that this information comprises the personal information of individuals other than the requester.

[10] "Personal information" is defined at section 2(1) of the *Act* to mean recorded

information about an identifiable individual, including:

(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[.]

[11] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under section 2(1) may still qualify as personal information.¹

[12] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. On my review, none of these sections applies in the circumstances of this appeal.

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

[14] It is clear that the information at issue, house numbers, forms part of petition signees' home addresses. The city submits that the appellant, as a resident of the street, likely already knows the individuals who reside at particular house addresses on his street, or else has the ability to use other publicly available information to identify them. In fact, the appellant provided with his representations a list of home owners by house number. In these circumstances, I have no trouble accepting that the house numbers at issue comprise the personal information of identifiable individuals within the meaning of paragraph (d) of the definition at section 2(1) of the *Act*.

[15] Given this finding, it is unnecessary to consider the city's additional arguments that this information also qualifies as the petitioners' personal information within the meaning of paragraphs (e) and (f) of the definition.

[16] I confirm that none of the information at issue is the personal information of the requester, who is the appellant in this appeal.

B. If the information at issue is personal information, does the mandatory exemption at section 14(1) apply?

[17] Where a requester seeks personal information of another individual, section

¹ Order 11.

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

14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

[18] I find that none of the exceptions in paragraphs (b) to (e) applies. As the city acknowledges, some previous orders of this office have deemed personal information appearing in petitions to meet the requirements of the exception at section 14(1)(a). I will first consider the application of section 14(1)(a) before considering the only other applicable exception, at section 14(1)(f).

Section 14(1)(a): consent

[19] The exception at section 14(1)(a) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except [...] upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access[.]

[20] In Order PO-1723, this office considered the equivalent to section 14(1)(a) in the *Act's* provincial counterpart³ and concluded that, in order to qualify as a consent for the purpose of excepting personal information from the mandatory application of the personal privacy exemption, it must be a specific written consent to the disclosure of the individual's personal information. In the circumstances of Order PO-1723, the adjudicator determined that the affected party's disclosure of personal information to the requester in the context of a dispute between them did not qualify as a consent to disclosure of information under the *Act*, and was not determinative of whether the personal privacy exemption in the *Act* applied to that information.

[21] Order PO-1723 provides a more contextual approach to considering personal information appearing in petitions than the approach applied in some previous orders. In Orders 154, 171 and 172, for example, this office found that petitions are generally documents of public nature (that they "by their very nature are not documents that have an aura of confidentiality"⁴), and on this basis treated personal information in petitions as having been provided with the petitioners' implicit consent to its disclosure. Those orders were cited with approval in Order MO-1506, which applied this categorical approach to again find an implicit consent to disclosure of personal information appearing in a petition. At the same time, the adjudicator found support for his finding in the absence of any notation on the face of the petition that would indicate any express or implied expectation of confidentiality on the part of petitioners.

[22] This office deviated from a strictly categorical approach to petitions in other orders considering the particular context and circumstances in which personal information appears in a petition. In Order M-580, for example, the adjudicator acknowledged that while petitions may, by their very nature, lack an aura of

³ Section 21(1)(a) of the *Freedom of Information and Protection of Privacy Act*.

⁴ Orders 171 and 172.

confidentiality, there may be cases where, because of the sensitivity of their content, the requirements of a presumed unjustified invasion of privacy will be met. In that case, the adjudicator found that the disclosure of petitioners' information in a complaint about the condition of a requester's property would be a presumptive unjustified invasion of their personal privacy, based on the circumstances surrounding the creation of the petition. Similarly, in Order MO-1309, the adjudicator found there was no indication that signatories to a petition dealing with a local issue reasonably expected or consented to the disclosure of their names and addresses to a wider audience or for a purpose other than that specified in the petition. In those circumstances, the adjudicator concluded that the petitioners had not consented to the disclosure of their personal information for the purposes of an access request, and found their information exempt under section 14(1).

[23] I find the approach taken in Orders M-580 and MO-1309 to be more in keeping with the *Act's* purposes of providing the public with a right of access to information while at the same time protecting the privacy of individuals whose personal information is held by institutions.⁵ Rather than applying a categorical treatment to personal information appearing in petitions, this approach considers circumstances including the nature and sensitivity of the petition to determine, among other things, whether a petition signee has consented to disclosure within the meaning of section 14(1)(a) of the *Act*.

[24] Applying this contextual approach to the circumstances of this appeal, I conclude that the exception at section 14(1)(a) does not apply. I accept the city's evidence that, unlike a petition clearly intended to be treated as a public document (as in the case of a petition posted in a public place or debated in a public meeting, for example), the petition at issue in this appeal is more sensitive in nature and contains no express indication that its contents will be made available to the wider public. The petition solicits signees' views on the parking situation on a particular residential street. The city reports that the petition was started by one resident, with signatures and views collected on an individual basis before being provided to a city councillor. There is no indication in the petition as to what use would be made of the signees' personal information by the petitioning group or by the city. Although, in fact, the city ultimately prepared a staff report addressing the issue of parking on the street, the petition itself was never publicly shared or attached to the staff report, as the city had no intention of making it a public document. As the city also observes, when some petition signees were contacted by staff of this office, they explicitly withheld their consent to disclosure of their personal information under the *Act*.

[25] Based on all these circumstances, I find that the act of signing the petition cannot be deemed to be a consent of the petitioners for the purpose of disclosure under the *Act*. As there is no other basis on which to find that consent of the petitioners has been obtained, the exception at section 14(1)(a) has no application.

⁵ *Act*, section 1.

Section 14(1)(f): disclosure not an unjustified invasion of personal privacy

[26] As none of the exceptions in paragraphs (a) to (e) applies, the only applicable exception is paragraph (f), which allows disclosure if it would not be an unjustified invasion of personal privacy.

[27] Sections 14(2) and (3) of the *Act* help in determining whether disclosure would or would not be an unjustified invasion of privacy within the meaning of section 14(1)(f). In addition, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[28] I am satisfied that none of the presumptions at section 14(3) nor any the exceptions at section 14(4) applies.

[29] If no section 14(3) presumption applies and the exception in section 14(4) does not apply, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁶ In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.⁷

[30] The city argues that the factors at sections 14(2)(f) and (h) of the *Act* weigh against disclosure. The appellant makes submissions that could be said to implicitly raise the factor at section 14(2)(d). These sections state:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence[.]

[31] The city submits that the potential difference in views between the appellant and petition signees gives rise to a reasonable expectation that disclosure of petitioners' information would cause them significant personal distress, which this office has established is the basis for the application of section 14(2)(f).⁸ The city elaborates on a history of parking disputes between these parties in confidential representations.

⁶ Order P-239.

⁷ Orders PO-2267 and PO-2733.

⁸ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

Additionally, the city submits that the factor at section 14(2)(h) applies. I am satisfied that the personal information in the petition was supplied by petition signees to the petition's creator, and by the petition's creator to the city councillor's office, in confidence, for the purpose of addressing local street parking issues only, and that this expectation was reasonable in the circumstances. There is no basis to conclude that any of the petition signees or the petition's creator contemplated further disclosure for any other purpose, including for the purpose of disclosure under the *Act*.

[32] The appellant's representations focus largely on his dissatisfaction with the position taken by petition signees on the street parking issue, and his suspicion that some of the petition's signees are not residents of the portion of the street that he argues would be most affected by the parking issue. In support of his position, the appellant provides lists of the names of homeowners by house address and photographs to illustrate his concerns about parking on his street. These representations fail to establish any basis for disclosure. In particular, the appellant's submissions, without more, fail to demonstrate that disclosure of petitioners' house numbers is necessary to ensure a fair determination of the appellant's rights within the meaning of section 14(2)(d). Among other things, the appellant has not demonstrated that he is pursuing a legal right, as opposed to a non-legal right based solely on moral or ethical grounds, or that any such right is related to an existing or contemplated proceeding, as required by section 14(2)(d).⁹

[33] As I find the factor at section 14(2)(h) weighs against disclosure, and that no factors weigh in favour of disclosure, I conclude that disclosure of the personal information at issue would constitute an unjustified invasion of petitioners' personal privacy. I therefore uphold the city's decision to withhold the information under section 14(1) of the *Act*. I dismiss the appeal.

ORDER:

1. I uphold the city's decision under section 14(1).

Original signed by: _____

Jenny Ryu
Adjudicator

_____ August 10, 2016

⁹ Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).