

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3352

Appeal MA15-587

City of Brampton

August 30, 2016

Summary: The appeal arises out of a request to the City of Brampton for emails relating to a specified company. The city's decision was to grant partial access to one record and full access to the other two and the appellant appealed that decision to this office. The appellant claims that the records contain his or her personal information within the meaning of section 2(1) and should therefore not be disclosed. This order finds that the records do not contain the personal information of the appellant. Accordingly, the appeal is dismissed.

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")

Orders and Investigation Reports Considered: PO-2225

BACKGROUND:

[1] A requester made a request to the City of Brampton (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to correspondence between the city and a named company over a defined period. The request was later clarified as a request for:

[A]ll correspondence (including but not limited to emails and letters) between the Office of the Chief Administrative Officer (including the Acting CAO and staff) and [the named company] (including [three named individuals]) for the period April 1, 2015 to September 16, 2015.

[2] In accordance with section 21 of the *Act*, the city notified the one individual whose name appeared in the records and who also represents the named company (the affected party) in order to give him or her an opportunity to provide the city with his or her view on disclosure. The affected party opposed disclosure of the records.

[3] The city then issued its decision on access granting partial access to three records. One discrete portion of the records was severed pursuant to the mandatory exemption for personal privacy at section 14(1) of the *Act*, with reference to the presumption against disclosure of personal information relating to employment or educational history at section 14(3)(d). The city's decision was to disclose the remainder of the records in full.

[4] The city notified the requester and the affected party of its decision. The affected party, now the appellant, appealed the city's decision to this office.

[5] During the mediation stage of the appeal process, the appellant maintained the objection to disclosure of any part of the records. The mediator noted in her report that the appellant believes the mandatory exemption at section 14(1) of the *Act* applies to the records in their entirety. In particular, it was noted that the appellant believes the presumptions against disclosure at sections 14(3)(b) (investigation into a possible violation of law) and 14(3)(d) are relevant in this appeal.

[6] The requester confirmed to the mediator that he does not appeal the city's single severance to the records. Access to this portion is therefore not at issue in this appeal. However, the requester continues to seek access to the remainder of the records (hereinafter referred to as "the records"), whose disclosure the appellant opposes.

[7] As no mediation was possible, the appeal was transferred to the adjudication stage of the appeal process for a written inquiry under the *Act*. I sought representations from the appellant. The appellant did not provide representations. On that basis, I did not invite the city or the original requester to make representations, and will refer to the original decision the city made when it agreed to grant partial access to the records in dispute.

[8] In this order, I find that the records do not contain the appellant's personal information and that therefore the personal privacy exemption under section 14(1) cannot apply. I dismiss the appeal.

RECORDS:

[9] The information at issue in this appeal is contained in three emails, described by the city as follows:

Record 1: An email dated August 28, 2015

Record 2: An email dated September 8, 2015

Record 3: An email chain beginning with an email dated September 8, 2015 (it is to this record that a minor severance was made)

DISCUSSION:

[10] The sole issue to be determined is whether the records at issue contain the appellant's personal information within the meaning of section 2(1) of the *Act*. The appellant claims the mandatory exemption at section 14(1) of the *Act* applies to the records in their entirety.

[11] The section 14(1) exemption can only apply to "personal information" within the meaning of the *Act*. Therefore, it is first 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[.]

[12] 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

[13] Sections (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.

[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.²

[15] 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.³

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[17] As mentioned, the appellant did not make representations in this appeal. In the original appeal form, he or she noted that this was a third party appeal and stated that the city had decided to disclose personal information that may relate to the appellant and that the appellant feels this information should not be disclosed. In the Mediator's Report, the mediator noted her conversation with the appellant. The report states that the appellant "objected to the disclosure of any information contained in the records." The report also notes that "[t]he appellant advised that the records are exempt under

¹ Order 11.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

the mandatory exemption in section 14(1) of the *Act*, and particularly referenced sections 14(3)(b) and 14(3)(d) of the *Act*." The appellant did not specify how the information at issue qualifies as his or her personal information.

[18] The appellant is an individual. The emails in the records involve the appellant contacting the city concerning his or her business and one email involves the city's response back to the appellant.

[19] Prior decisions have drawn a distinction between an individual's personal and professional capacity finding that in some circumstances, information associated with a person in a professional capacity will not be considered to be "about the individual" within the meaning of section 2(1) definition of "personal information."

[20] In Order PO-2225, former Assistant Commissioner Tom Michinson set out the following two-step analysis to determine whether the information should be characterized as "personal" or "professional":

- 1) In what context do the names of the individuals appear?
- 2) Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?

[21] For the purposes of this appeal, I adopt the two-step approach described in Order PO-2225.

In what context do the names of the individuals appear?

[22] Assistant Commissioner Michinson noted that one must ask if the context is inherently personal or is it of a business or professional context that would remove it from the personal sphere. It is clear when reviewing the emails that they can be traced back to the individual because his or her name appears in each record along with his or her email address which contains both his or her name and the company name. However, since the emails solely concern actions of the business, I find that there is no personal context to the information. I find the context of all the remaining information in the records is business or professional and not personal information.

Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?

[23] Assistant Commissioner Michinson noted that even if the information appears in a business context, one must query if disclosure of the information would reveal something that is inherently personal in nature.

[24] I have examined the records and I come to the conclusion that they do not contain the personal information of the appellant. As stated, the records contain the

name of the appellant. Besides the name appearing in each of the three records, the records contain no other information about the appellant and no information that would reveal something of a personal nature about the appellant. There does not appear to be anything inherently personal when examining the content of the emails and I find that the information in the records relates solely to business activity.

[25] Having carefully considered the records themselves and for the reasons outlined above, I conclude that the records in this appeal concern a business rather than being about an individual in a personal capacity. This information therefore does not qualify as personal information as defined in section 2(1) of the *Act*.

[26] Given that I have found that the records do not contain the personal information of the appellant, the mandatory personal privacy exemption in section 14(1) cannot apply. Therefore, an analysis under section 14 is not required as the mandatory exemption at section 14 applies only to personal information.

ORDER:

1. I uphold the decision of the city to disclose the records to the requester but for the one severance already identified, and order it to do so by October 5, 2016 but not before September 30, 2016.
2. In order to verify compliance with provision 1 of this order, I reserve the right to require the city to provide me with a copy of the records disclosed to the requester.

Original Signed by: _____

Alec Fadel
Adjudicator

August 30, 2016 _____