

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-3366

Appeal MA16-213

City of Thunder Bay

October 21, 2016

**Summary:** The city withheld portions of a licence agreement responsive to the appellant's request under section 14(1) (personal information) and section 10(1) (third party information) of the *Municipal Freedom of Information and Protection of Privacy Act*. The licence agreement does not contain personal information for the purposes of the *Act*, so section 14(1) does not apply to it. Section 10(1) also does not apply to the licence agreement, so it must be disclosed to the appellant in full.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 10(1), 14(1).

**Orders Considered:** Order PO-2225 and PO-3617.

### OVERVIEW:

The appellant requested a copy of a licence agreement between the City of Thunder Bay (the city), a named individual and a named corporation under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The city issued a decision denying access, in full, to a licence agreement under section 10(1) (third party information) of the *Act*. The appellant appealed the city's decision.

During mediation, the city advised that the named individual who was a party to the licence agreement (the affected party) had consented to partial disclosure of it. As a result, a revised decision was issued granting the appellant partial access to the licence agreement. The city withheld portions of the licence agreement under sections 10(1)

and 14(1) (personal information) of the *Act*.

The appellant wanted access to the entire licence agreement. As no further mediation was possible, the appeal moved to adjudication, where an inquiry is conducted. The appellant, the city and the affected party were invited to provide representations on the issues set out in a Notice of Inquiry. The appellant provided representations, the city and the affected party advised they did not wish to do so.

This order finds that neither the section 14(1) nor 10(1) exemptions apply to the withheld information in the licence agreement. The licence agreement is ordered disclosed in full.

### **RECORD:**

The information at issue consists of withheld portions (at pages 1, 2, 3 and 11) of a licence agreement between the city and the affected party.

### **ISSUES:**

The issues to be determined in this order are:

- A. Does the withheld information contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. If the withheld information contains personal information, does the mandatory exemption at section 14(1) apply to it?
- C. Does the mandatory exemption at section 10(1) apply to the withheld information?

### **DISCUSSION:**

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

Section 2(1) defines "personal information," in part, as follows:

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

...

- (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,

...

- (h) the individual's name where 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;

The list of examples of personal information in section 2(1) is not exhaustive. Therefore, information may still qualify as personal information despite not being listed in section 2(1).<sup>1</sup>

Section 2(2.1) also relates to the definition of personal information. It states:

(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.

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.<sup>2</sup>

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.<sup>3</sup>

#### *Appellant's representations: personal information*

The appellant submits that the licence agreement is a contract that establishes a business relationship between the appellant, a company related to the appellant, and the city. He says that all of the information, financial or otherwise, should be seen as information of the affected party in his business capacity, not his personal capacity.

#### *Analysis*

In deciding this appeal, Order PO-2225 is helpful. That order involved a request for information in Ontario Rental Housing Tribunal (tribunal) databases identifying individuals or corporations who owed money to the tribunal. In Order PO-2225, former Assistant Commissioner Tom Mitchinson found that the names of non-corporate landlords owing money to the tribunal was about those individuals in a business rather than a personal capacity, and therefore did not qualify as "personal information" as defined in section 2(1) of the *Act*.

---

<sup>1</sup> Order 11.

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

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

Order PO-2225 sets out a two-step analysis for determining whether information should be characterized as “personal” or “professional”:

1. In what context do the names of the individuals appear? Is it in a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
2. Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

The appropriateness of this two-step approach, and the distinction it draws between business and personal information was thoroughly considered by Adjudicator Higgins in Order PO-3617, and found to be consistent with the “modern principle” of statutory interpretation.<sup>4</sup> As Adjudicator Higgins observes in Order PO-3617,<sup>5</sup> the two-step analysis in Order PO-2225 is intended to assist in understanding how the term “individual” in the preamble of the definition of personal information, as well as the wording of items (b) and (h) of the definition (reproduced above), would apply to information in the business, professional or official sphere. I will now proceed to consider this appeal in light of the two-step analysis in Order PO-2225.

Considering step one, the withheld information clearly appears in a business or professional context. The information is contained in a licence agreement for a business venture which grants the affected party permission to operate an electronic billboard on a city property.

The withheld information all relates to a specific matter arising from the operation of a baseball team in the city. I cannot describe the business matter further without disclosing some of the withheld information. The withheld information is surrounded by, and forms part of, the commercial arrangements for operating the electronic billboard in the licence agreement. The licence agreement itself acknowledges in the recitals section at the beginning of the agreement that the agreement owes its existence to the commercial activities of the affected party and related entities in operating a baseball team in the city, and in particular to the specific business matter addressed in the withheld information.

As noted above, the city has already disclosed most of the agreement, including the name of the affected party licensee. Much of the withheld information, in addition to being withheld under the exemption for personal information in section 14(1), was withheld under the exemption in section 10(1) of the *Act* for commercial or financial

---

<sup>4</sup> Order PO-3617 is the subject of an application for judicial review.

<sup>5</sup> At para. 69.

information, which suggests the city recognises the withheld information appears in a commercial context.

For the reasons above, I am satisfied that the withheld information appears in a business or professional context for the purpose of the first step of the two-step analysis in Order PO-2225.

Step two asks whether disclosure of the withheld information would reveal something that is inherently personal in nature.

In my view, the information does not reveal something inherently personal about the affected party. As discussed above, the licence agreement acknowledges that the withheld information arises out of, and is about, the affected party's business affairs relating to the operation of a baseball team in the city. The information does not reveal the affected party's personal affairs. Instead, all of the information relates to the running of a baseball team, a commercial operation.

In the circumstances, I am satisfied that disclosing the withheld information in the agreement would not reveal something of a personal nature about the individual. This conclusion is consistent with the conclusions reached regarding similar information in Orders PO-2225 and PO-3617.

Based on the analysis above, I find that the withheld information does not contain any personal information within the meaning of section 2(1) of the *Act*.

**B. If the withheld information contains personal information, does the mandatory exemption at section 14(1) apply to it?**

Because I have found that the information in the record is not personal information, the section 14(1) exemption cannot apply to the withheld information.

**C. Does the mandatory exemption at section 10(1) apply to the withheld information?**

As noted above, some of the information the city withheld under section 14(1), it also withheld under section 10(1) of the *Act*.

Section 10(1) is designed to protect the confidential "informational assets" of businesses or other organizations that provide information to government institutions.<sup>6</sup>

For section 10(1) to apply, the institution and/or the affected party must satisfy each part of the following three-part test:

---

<sup>6</sup> *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, 2005 CanLII 24249 (ON SCDC), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

The withheld information is contained in a licence agreement, a type of contract between the city and the affected party. The contents of a contract involving an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 10(1), as the appellant observes in his representations.<sup>7</sup> The provisions of a contract, in general, have been treated as mutually generated, rather than "supplied" by the third party, even where the contract is preceded by little or no negotiation or where the final agreement reflects information that originated from a single party.<sup>8</sup> There is no evidence before me that the withheld information in the licence agreement was "supplied" for the purposes of section 10(1).

As noted above, the city and the affected party elected not to provide representations for this inquiry. The failure of a party resisting disclosure to provide evidence will not necessarily defeat the claim for exemption, where harm can be inferred from the surrounding circumstances. However, from my review of the withheld information, I see no basis for inferring that there is a reasonable expectation of harm from disclosure of the withheld information.

The lack of evidence that there is a reasonable expectation of harm from disclosure of the withheld information, and that the withheld information was "supplied," means the three-part test for the section 10(1) exemption to apply is not met for the withheld information.

**ORDER:**

1. Neither the section 14(1) nor 10(1) exemptions apply to the withheld information in the licence agreement.
2. I order the city to disclose the licence agreement to the appellant not earlier than November 21, 2016 and not later than November 28, 2016.

Original Signed by: \_\_\_\_\_

October 21, 2016 \_\_\_\_\_

<sup>7</sup> Citing Order MO-2494 in support.

<sup>8</sup>This approach was approved by the Divisional Court in *Boeing Co.*, cited above, and in *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.*, 2013 ONSC 7139 (CanLII).

---

Hamish Flanagan  
Adjudicator