

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3370

Appeal MA15-450

City of Hamilton

October 31, 2016

**Summary:** The City of Hamilton (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for access to the name and address of the owner of a dog that bit the appellant. This order finds that the dog owner's name and address are not exempt under the personal privacy exemptions in section 14(1) and 38(b) by reason of the factors favouring disclosure in section 14(2).

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1)(d) and (h) (definition of personal information), 38(b), 14(1), 14(2)(b), (d), and (e); *Dog Owners' Liability Act*, R.S.O. 1990, c. D.16.

**Orders and Investigation Reports Considered:** Orders MO-2954, MO-2980, MO-3088.

### OVERVIEW:

[1] The City of Hamilton (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for access to "the complete file from Hamilton Animal Services including, but not limited to, any interviews, incident notes, and reports" with respect to a dog bite incident on a specified date involving the requester.<sup>1</sup>

[2] The city granted partial access to six pages of records consisting of a three-page Animal Incident report, a two-page Rabies Risk Assessment Tool, and a Rabies Investigation - Confinement form. The personal information of the dog owner was

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<sup>1</sup> The requester is a minor and is represented by their father in this appeal.

withheld pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] The requester, now the appellant, appealed the city's decision on the basis that disclosure of the substance of the incident notes and dog owner's identity and address is necessary to continue their liability investigation and any potential claim in this matter.

[4] During the course of mediation, the appellant clarified that she was only seeking access to the dog owner's identity and address from the records at issue. The mediator spoke with the city, who maintained her position as to these severances.

[5] The city clarified for the mediator that the records at issue are two pages from the three-page Animal Incident Report and the Rabies Investigation - Confinement form. The city stated that the two-page Rabies Risk Assessment Tool was already disclosed in full to the appellant at the request stage.

[6] The mediator notified the affected person (the dog owner) of the request, who declined to consent to release of their personal information.

[7] As mediation did not resolve the issues in this appeal, the file was transferred to the adjudication stage where an adjudicator conducts an inquiry. I sought the representations of the city and the affected person initially. I also added the issue of the discretionary exemption in section 38(b) as the records may contain the personal information of the appellant.

[8] I received representations from the city. The affected person did not provide representations. The city's representations were shared with the appellant in accordance with section 7 of the IPC's<sup>2</sup> *Code of Procedure* and *Practice Direction 7*. The appellant provided representations in response.

[9] After finding out that the affected person did not provide representations in this appeal, the city advised that it now agreed to disclose the name of the dog owner.

[10] In this order, I order disclosure of the affected person's name and address.

## **RECORDS:**

[11] At issue are the severances on three pages of responsive records, specifically on the two-page Animal Incident Report and the one-page Rabies Investigation - Confinement form. As stated above, the appellant is only seeking access to the dog owner's name and address from the records at issue.

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<sup>2</sup> The Information and Privacy Commissioner, Ontario, Canada.

## **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 personal privacy exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

## **DISCUSSION:**

### **A. DO THE RECORDS CONTAIN "PERSONAL INFORMATION" AS DEFINED IN SECTION 2(1) AND, IF SO, TO WHOM DOES IT RELATE?**

[12] 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) 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;

[13] 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.<sup>3</sup>

[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.<sup>4</sup>

[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.<sup>5</sup>

[16] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>6</sup>

[17] The city describes the records and the information at issue as follows:

- Record 1 is titled *Animal Incident Report* and contains the personal information of the "person exposed" and the dog owner. Specifically, the record contains the name of the "person exposed" [the appellant]; her parents' names, address, and telephone number; and, the name, address, and telephone number of the dog owner.
- Record 2 is titled *Rabies Incident addition to Report Form* and contains solely the personal information of the dog owner; specifically, the dog owner's name.
- Record 3 is titled *Rabies Investigation - Confinement* and contains solely the personal information of the dog owner; specifically, the dog owner's name, address, and telephone number.

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<sup>3</sup> Order 11.

<sup>4</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>6</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[18] The appellant agrees with the city's description of the records and adds that the records contain "personal information" as defined in paragraphs (d) and (h) of the definition of personal information in section 2(1).

### ***Analysis/Findings***

[19] Based on my review of the parties' representations and the records, I agree that Record 1 contains the personal information of both the appellant and the affected person, whereas the remaining two records only contain the personal information of the affected person.<sup>7</sup>

[20] I also agree that the personal information remaining at issue in the records comes within paragraphs (d) and (h) of the definition of personal information in section 2(1), as it consists of the affected person's name and home address, along with her name where the disclosure of the name would reveal other personal information about the affected person.

[21] As Record 1 contains the personal information of the appellant and the affected person, I will consider whether the discretionary personal privacy exemption in section 38(b) applies to it. As the remaining two records, Records 2 and 3, contain only the personal information of the affected person, I will consider whether the mandatory personal privacy exemption in section 14(1) applies to these records.

### **B. Does the mandatory personal privacy exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?**

[22] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[23] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[24] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing

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<sup>7</sup> The records relate to the health of a dog and do not relate to the physical or mental health of the appellant. Record 1 does not contain information related to the physical health of the appellant, as set out in section 4(1)(a) of *Personal Health Information Protection Act*. For that section to apply, it must be reasonable to conclude that there is "some connection" between the record and the physical health of the appellant. See Order MO-3088.

that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy under section 14(1)(f).

[25] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 38(b) or 14(1). If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under sections 38(b) or 14(1). In this appeal, these paragraphs do not apply.

[26] In applying either of the section 38(b) or 14(1) exemptions, sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy.

[27] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy.

[28] For records claimed to be exempt under section 14(1) (i.e., records that do not contain the requester's personal information), a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if a section 14(4) exception or the "public interest override" at section 16 applies.<sup>8</sup>

[29] If the records are not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy and the information will be exempt unless the circumstances favour disclosure.<sup>9</sup>

[30] For records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.<sup>10</sup>

[31] The city submits that the presumption at section 14(3)(b) applies, which reads:

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

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<sup>8</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

<sup>9</sup> Order P-239.

<sup>10</sup> Order MO-2954.

necessary to prosecute the violation or to continue the investigation;

[32] The city states that the information contained in each of the records was gathered in the course of the city's Public Health Services department staff's animal incident investigation in accordance with Ontario's *Rabies Prevention and Control Protocol* (the protocol) and the *Health Protection and Promotion Act (HPPA)*.<sup>11</sup>

[33] In its representations in reply to the appellant's representations, the city agreed to the disclosure of the dog owner's name.

[34] The appellant does not dispute the city's representations and also states that three factors favouring disclosure in sections 14(2)(b), (d) and (e) apply. These sections read:

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,

(b) access to the personal information may promote public health and safety;

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

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm.

[35] The appellant states that the affected person's dog, suddenly and without any warning, caused injury to a young child<sup>12</sup> while playing in a park. The appellant states that without the information at issue it is impossible to proceed with a claim against the dog owner to see whether she will be found liable for her actions and the actions of her dog.

[36] The appellant submits that a judge will likely grant the full release of the information at issue under Rule 30.10 of the *Ontario Rules of Civil Procedure*.<sup>13</sup> The

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<sup>11</sup> *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7.

<sup>12</sup> The appellant is a minor and is represented by her father in this appeal.

<sup>13</sup> This rule reads:

30.10 (1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the moving party to proceed to trial without having discovery of the document. R.R.O. 1990, Reg. 194.

appellant states that not releasing this information is a waste of the government's and the appellant's time, costs and resources.

***Analysis/Findings re: sections 14(1) and 38(b)***

[37] I will first consider the application of the presumption in section 14(3)(b) to the records.

[38] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.<sup>14</sup> The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.<sup>15</sup>

[39] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.<sup>16</sup>

[40] The presumption can apply to a variety of investigations, including those relating to by-law enforcement<sup>17</sup> and violations of environmental laws or occupational health and safety laws.<sup>18</sup>

[41] Concerning section 14(3)(b), I do not find that the withheld personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of law. Although the city refers to *HPPA* and the protocol concerning an animal incident investigation, it does not refer to the violation of law that is being investigated, nor is that apparent to me from my review of the records, *HPPA* and the protocol.

[42] In the Notice of Inquiry, the city was asked:

Was the personal information compiled and is it identifiable as part of an investigation into a possible violation of law? Please identify the law or legislative provision.

[43] The city did not identify the law or legislative provision. Accordingly, I find that I do not have sufficient evidence to determine that the presumption in section 14(3)(b) applies to the records.

[44] 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 and the information will be exempt unless the circumstances favour

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<sup>14</sup> Orders P-242 and MO-2235.

<sup>15</sup> Orders MO-2213, PO-1849 and PO-2608.

<sup>16</sup> Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

<sup>17</sup> Order MO-2147.

<sup>18</sup> Orders PO-1706 and PO-2716.



disclosure.<sup>19</sup>

[45] In order to find that disclosure does not constitute an unjustified invasion of personal privacy under section 14(1), 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.<sup>20</sup>

[46] As stated above, for records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.<sup>21</sup>

[47] Section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy.

[48] In this appeal, I find that the factors favouring disclosure in sections 14(2)(b) and (d) apply. In Order MO-3088, another dog bite case, the appellant had also been bitten by a dog. The appellant in that appeal only sought disclosure of the name of the affected person, not the contact information, in order to initiate proceedings. In Order MO-3088 I found that:

Based on my review of the record and the parties' representations, and relying on the findings in Order MO-2980, I find that the factors that favour disclosure [in sections 14(2)(b) and (d)] apply and outweigh the factors favouring privacy protection concerning the name of the dog owner.

I find that disclosure of the name of the owner of the dogs would promote public safety. In this regard, I adopt the reasoning concerning the factor in section 14(2)(b) in Order MO-2980, where Adjudicator Colin Bhattacharjee stated:

One of the underlying purposes of the civil liability provisions in the *DOLA*<sup>22</sup> is to promote public safety by ensuring that dog owners are held accountable if their dog bites or attacks another person. Moreover, the *DOLA* gives the court the discretion to order "that the owner of the dog take the measures specified in

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<sup>19</sup> Order P-239.

<sup>20</sup> Orders PO-2267 and PO-2733.

<sup>21</sup> Order MO-2954.

<sup>22</sup> *Dog Owners' Liability Act*, R.S.O. 1990, Chapter D.16.

the order for the more effective control of the dog or for purposes of public safety."<sup>23</sup>

I find, therefore, that disclosing the dog owner's name to the appellant in this particular case may promote public safety under section 14(2)(b), because it may lead to civil proceedings and a possible court order with public safety ramifications. Consequently, this factor weighs in favour of disclosing the dog owner's name to her and I would give moderate weight to it.

[49] For section 14(2)(d) to apply, the appellant must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing<sup>24</sup>

[50] Concerning section 14(2)(d), I also adopt in this order, as I did in Order MO-3088, the findings of Adjudicator Bhattacharjee in Order MO-2980, where he stated:

The appellant is seeking the dog owner's name for the purpose of ensuring that her right to sue and seek damages from him under the *DOLA* is fairly determined. In my view, she has established that the four-part for section 14(2)(d) is applicable to this information because:

- (1) her right to sue and seek damages from the dog owner is drawn from statutory law (the *DOLA*);
- (2) this right is related to a contemplated proceeding against the dog owner under the *DOLA*;

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<sup>23</sup> Section 4(3)(b).

<sup>24</sup> 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.).

(3) the personal information she is seeking (i.e., the dog owner's name) has some bearing to her right to sue, because she needs to identify the defendant to bring a successful action; and

(4) she requires the dog owner's name to prepare for the proceeding under the *DOLA*.

I find, therefore, that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d). Consequently, this factor weighs in favour of disclosing the dog owner's name to her.

In my view, the existence of other possible methods of access does not preclude the appellant from exercising her access rights under the *Act* to seek the dog owner's name before she files a civil claim. As the victim of a dog attack, she has a right to seek the information in the most efficient, cost-effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would enable her to exercise her legal right to seek redress.

However, I agree with previous orders that have found that the existence of other possible methods of access reduces the weight that should be accorded to the section 14(2)(d) factor. I have found that disclosing the dog owner's name to the appellant in this particular case is relevant to a fair determination of her rights under section 14(2)(d), and this factor weighs in favour of disclosing the dog owner's name to her. Given the existence of other possible methods of access to this information, I would slightly reduce the weight given to this factor but find that it should still be given considerable weight in this appeal.

[51] In Order MO-3088, I also found that the unlisted factor favouring disclosure referred to in Order MO-2980 applies. In Order MO-2980, Adjudicator Bhattacharjee stated:

In Order MO-2954, Adjudicator [Laurel] Cropley stated that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. She found that this is an unlisted factor favouring disclosure and gave significant weight to this unlisted factor.

The facts in the appeal before me are different than those before Adjudicator Cropley in Order MO-2954, but the same general principle applies. The appellant was knocked down and bitten by a pit bull dog on a public street. In my view, the police's refusal to provide the appellant with the dog owner's name is fettering her right to bring civil proceedings

under the *DOLA* to hold the dog owner accountable and seek redress for her injuries.

In the particular circumstances of this appeal, I give significant weight to this unlisted factor but only with respect to the dog owner's name. In my view, there is insufficient evidence before me to find that this unlisted factor would apply to the dog owner's other personal information or the personal information of the other possible dog owner and the witness.

[52] I adopt this finding in Order MO-2980 and also give significant weight to this unlisted factor, which I find favours disclosure of the name and address of the affected person.

[53] I have considered the factor in section 14(2)(e) relied upon by the appellant. This factor favours privacy protection and applies where the person to whom the information relates, namely the affected person, would be exposed by disclosure unfairly to pecuniary or other harm, not to the requester of this information (the appellant in this appeal). In the absence of representations from the affected person, I cannot find that the factor in section 14(2)(e) applies.

[54] I also note that in Order MO-3088, I found that in order for section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved. I stated that although the affected person may perhaps be exposed to pecuniary harm as a result of the *DOLA* proceedings, I find that this harm is not unfair, but is merely a consequence that any defendant would be exposed to in a civil action. Accordingly, I also found in Order MO-3088 that the factor in section 14(2)(e) did not apply.

[55] I find that the factors favouring disclosure in sections 14(2)(b) and (d), as well as the unlisted factor that the *Act* should not be used in a way that prevents individuals from exercising their legal rights, outweigh the privacy rights of the affected person concerning disclosure of her name and address.

[56] In making this finding, beside these factors favouring disclosure of the affected person's name and address, I have also taken into account:

- the city's revised position during adjudication of this appeal to disclose the affected person's name,
- The appellant's representation that the affected person provided her details to the relevant authority in the presence of the appellant and her father directly after the dog bite incident,
- that disclosure of the affected person's name and address is necessary to proceed with any potential claim in this matter,

- the lack of representations from the affected person in response to the Notice of Inquiry,<sup>25</sup> and
- the ability of the appellant to obtain this information under Rule 30.10 of the *Ontario Rules of Civil Procedure*.

### *Conclusion*

[57] In conclusion, concerning the name and address of the affected person, consistent with the findings in Orders MO-2980 and MO-3088, I have found that this information is not exempt as:

- Disclosing the dog owner's name and address in this particular case is relevant to a fair determination of the appellant's rights under section 14(2)(d). This factor weighs in favour of disclosure and should be given considerable weight.
- Disclosing the dog owner's name and address in this particular case may promote public safety under section 14(2)(b). This factor weighs in favour of disclosure and should be given moderate weight.
- The evidence does not demonstrate that the damage or harm envisioned by section 14(2)(e) by disclosing the dog owner's name and address in this particular case would be "unfair" to the affected person. Consequently, this factor should not be given weight.
- An unlisted factor in section 14(2) is that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. Non-disclosure of the dog owner's name and address is fettering the appellant's right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries. This unlisted factor, which weighs in favour of disclosure, should be given considerable weight with respect to the dog owner's name and address.

[58] I have considered and weighed the factors in section 14(2) and I have balanced the interests of the parties in determining that disclosure of the affected person's name and address would not be an unjustified invasion of personal privacy.

### **ORDER:**

I order the city to disclose the affected person's name and address to the appellant by **December 6, 2016** but not before **December 2, 2016**.

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<sup>25</sup> The affected person was sent the Notice of Inquiry by courier and did not respond to it. After this, she was called two different times by this office, but did not return these calls.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

October 31, 2016 \_\_\_\_\_