

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-3380

Appeal MA15-199

North Bay Parry Sound District Health Unit

November 23, 2016

**Summary:** The appellant made a request to the North Bay Parry Sound District Health Unit (the health unit) under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA)* for a dog bite file. The health unit denied access to the responsive Rabies Investigation Forms, Progress Notes, and Environmental Health Progress Notes by Public Health Inspectors, citing the mandatory personal privacy exemption in section 14(1) of *MFIPPA*. This order partly upholds the health unit's decision as certain information in the records was found not to be personal information.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (definition of personal information), 14(1).

### OVERVIEW:

[1] The North Bay Parry Sound District Health Unit (the health unit) received the following access request pursuant to under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)*:

As a concerned citizen of the City of North Bay, I would like to see and have a copy of the complete file of the alleged bite file of [a named dog] on [date] including Rabies QA [question and answer] Form.

[2] The health unit denied access to the responsive records, explaining as follows:

As per my explanation in our telephone conversation on [date], dogs are not public property and therefore are not subject to the public's ability to obtain the file. Only the dog owner(s) and bite victims would be provided with the file for this type of request.

[3] The requester (now appellant) appealed the health unit's decision.

[4] During mediation, the mediator first addressed the adequacy of the decision letter with the health unit and the health unit issued a revised access decision to the appellant. In its decision, the health unit denied access to the responsive records pursuant to the mandatory personal privacy exemption in section 14(1) and the discretionary personal privacy exemption in section 38(b) of the *Act*. After further discussions with the mediator, the health unit confirmed that it no longer relies on section 38(b) of the *Act*.

[5] The mediator attempted to seek consent from one individual whose personal information may be contained in the records, however, this party was not reached.

[6] At mediation, the appellant confirmed that she is not pursuing access to personal information such as names, telephone numbers, addresses, dates of births and ages of individuals. Since no further mediation was possible, this file was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry.

[7] I sent a Notice of Inquiry, setting out the facts and issues in this appeal, to the health unit and the individuals whose personal information may be in the records, seeking their representations.

[8] The health unit provided a response to the Notice of Inquiry, indicating only that it continues to deny access to the records, relying on section 14(1).

[9] Only one of the individuals contacted (the affected person) responded to the Notice of Inquiry and indicated that she consented to partial disclosure of her information. The affected person completed and returned to this office a consent form indicating that she consents to partial release of her information, along with a note that:

To the best of my knowledge any/all info I had has already been made available.

[10] This office followed up with the affected person to obtain details as to what exactly she consented to disclosure of. The affected person did not respond.

[11] In this order, I partly uphold the health unit's decision under section 14(1).

## **RECORDS:**

[12] All 38 pages of responsive records remain at issue. File 1 (pages 1 to 4) and File 2 (pages 1 to 34) include Rabies Investigation Forms, Progress Notes, and Environmental Health Progress Notes by Public Health Inspectors.

## **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) apply to the information at issue?

## **DISCUSSION:**

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

[13] 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;

[14] 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>1</sup>

[15] Sections 2(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.

[16] 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>

[17] 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>

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

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<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.

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

[19] As stated above, I sent Notices of Inquiry to the health unit, to the individuals listed in the records, and to the appellant seeking their representations. I did not receive any representations on the issues in this appeal.<sup>5</sup>

[20] Based on my review of the records, I find that they do not contain the personal information of the appellant.

[21] The records do, however, contain the personal information of other individuals, including these individuals' home addresses, telephone numbers, dates of birth, personal opinion or views, family status, and the name of individuals in their personal capacity where disclosure would reveal other personal information about these individuals in accordance with paragraphs (a), (d), (e), and (h) of the definition of personal information in section 2(1) of the *Act*. I will consider whether the mandatory personal privacy exemption in section 14(1) applies to this information.

[22] The records also contain information about the dog, which does not reveal personal information about identifiable individuals. As well, certain information in the records originates from individuals in their professional capacity providing information surrounding the incident in the records and the condition of the dog.

[23] The information in the records about the dog, as well as the information in the records originating from individuals in their professional capacity that does not reveal personal information of other individuals, is not personal information about identifiable individuals. As the personal privacy exemption in section 14(1) cannot apply to this information, and no other mandatory exemptions apply and no discretionary exemptions have been claimed, I will order this information disclosed.

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

[24] Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies.

[25] The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception, allowing disclosure if it would not be an unjustified invasion of personal privacy, is more complex, and requires a consideration of additional parts of section 14.

[26] Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure. This section reads:

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<sup>5</sup> The only response I received to any of the Notices of Inquiry was a partial consent from the affected person as set out above.

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.

[27] 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 section 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 section 14(1). In this appeal, these paragraphs do not apply.

[28] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1).

[29] 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 under section 14(1). 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.<sup>6</sup> In this case, I do not have evidence that any of the presumptions apply.

[30] 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 disclosure.<sup>7</sup>

[31] 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.

[32] 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>8</sup>

[33] In this appeal, I have no evidence that any of the factors favouring disclosure in section 14(2) apply. As such, the mandatory exemption in section 14(1) applies to exempt the personal information in the records.

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<sup>6</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>7</sup> Order P-239.

<sup>8</sup> Orders PO-2267 and PO-2733.

**ORDER:**

1. I order the health unit to disclose to the appellant the information in the records that I have found not to be personal information by **December 30, 2016** but not before **December 23, 2016**. For ease of reference, I have provided the health unit with a copy of the records highlighting the information to be disclosed.
2. I uphold the health unit's decision to deny access to the remaining information at issue in the records.

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

\_\_\_\_\_ November 23, 2016