

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3391

Appeal MA15-142

County of Norfolk

December 20, 2016

Summary: A media requester sought access to information pertaining to an investigation that was conducted into the establishment of a ginseng field in a specified location. At mediation, the appellant advised that he is only seeking access to a record described in the Mediator's Report as the "Soccer Park Investigation Report", which was among the records that the county had identified as being responsive to the request. The county relied on section 6(1)(b) (closed meeting) of the *Act* to deny access to this record. In its initial representations, the county raised the possible application of sections 12 (solicitor-client privilege) and 14(1) (personal privacy) to the record and then in its reply representations took the position that there was no record that was responsive to the appellant's request. This order finds that the Soccer Park Investigation Presentation found at pages 2 to 19 of the records is responsive to the request and constitutes the sole record at issue in this appeal. It also finds that this record does not qualify for exemption under sections 6(1)(b) and 12 of the *Act* and that after severing certain information, the remaining information does not qualify as personal information for the purposes of the application of the section 14(1) exemption.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 6(1)(b), 12, 14(1) and 17.

OVERVIEW:

[1] The County of Norfolk (the county) received a request under the *Municipal*

Freedom of Information and Protection of Privacy Act (the *Act* or *MFIPPA*) from a media requester for access to information pertaining to an investigation that was conducted into the establishment of a ginseng field in a specified location. The request was worded as follows:

Last fall, Norfolk council hired a third-party investigator to determine the sequence of events that led to the establishment of a ginseng field at the south end of the soccer park in Simcoe. That investigator presented her findings to Norfolk council behind closed doors Feb. 10. The [media requester] requests all written documentation by this investigator provided to the county, up to and including her final report. The [media requester] also requests all written correspondence regarding this matter exchanged between senior county staff and elected officials, up to and including [two named mayors].

[2] The county identified records that were responsive to the request and granted partial access to them, upon payment of a fee of \$98.20. The county relied on sections 6(1)(b) (closed meeting), 7(1) (advice or recommendations), 12 (solicitor-client privilege), 14(1) (personal privacy), 38(a) (discretion to refuse requester's own information) and 38(b) (invasion of privacy) of the *Act* to deny access to the portion it withheld. The county also withheld certain information that it viewed as being non-responsive to the request.

[3] The requester (now the appellant) appealed the county's access decision.

[4] At mediation, the appellant advised that he is only seeking access to a record described in the Mediator's Report as the Soccer Park Investigation Report", which was among the records that the county had identified as being responsive to the request. The county relied on section 6(1)(b) of the *Act* to deny access to this record.

[5] Mediation did not resolve the appeal and it was moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*.

[6] I commenced my inquiry by sending a Notice of Inquiry to the county setting out the facts and issues in the appeal. The county provided responding representations. In its representations, the county set out the following:

It is important to remember that while some of the closed session documents may appear innocuous, this matter relates to a small community with a group of already identified individuals. As a result, [the county] feels that the release of materials may result in a significant encroachment upon the rights to privacy of several identifiable individuals involved in a very negative fashion. We anticipate correlations and linkages will be made that may not be immediately evident in the closed

session documents. For this reason, we ask that the IPC consider the usage of section 6(1) not alone but as being linked to sections 12, 14 and 38(a) and (b). As these sections substantiate our reasoning for believing that further release would reveal the actual substance of the deliberations held in closed session.

[7] Sections 38(a) and (b) only apply if the personal information of the appellant is contained in the record at issue in the appeal. As the appellant's personal information does not appear in the record at issue¹, I find that these sections do not apply.

[8] Representations were exchanged between the county and the appellant in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*. In its representations, the appellant stated that if personal information found its way into the record, it can be severed from the record at issue prior to disclosure. In the course of adjudication, the appellant clarified that it was not seeking access to any personal information or the names or identifying information of any volunteers or officers of volunteer organizations should they appear in the record at issue.

[9] In this order I find that the Soccer Park Investigation Presentation found at pages 2 to 19 of the records is responsive to the request and constitutes the sole record at issue in in this appeal. I also find that this record does not qualify for exemption under sections 6(1)(b) and 12 of the *Act* and that after severing certain information, the remaining information does not qualify as personal information for the purposes of the application of the section 14(1) exemption.

RECORDS:

[10] At issue in this appeal is the Soccer Park Investigation Presentation found at pages 2 to 19 of the records.

ISSUES:

- A. What is the scope of the request/what records are responsive to the request?
- B. Does the discretionary exemption at section 6(1)(b) apply to the record?
- C. Does the discretionary exemption at section 12 apply to the record?

¹ See in this regard the definition of personal information at section 2(1) of *MFIPPA*, discussed below.

DISCUSSION:

Issue A: What is the scope of the request/what records are responsive to the request?

Scope of the request

[11] In its reply representations for the first time the county took the position that the specified report in the appellant's request does not exist. This raised the scope of the request and responsiveness as issues in the appeal.

[12] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;
 - ...
- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[13] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.²

[14] To be considered responsive to the request, records must "reasonably relate" to the request.³

[15] In the county's reply it changed its position with respect to the responsiveness of the record it originally identified as responsive to the request. It submitted that the appellant's responding representations make it "very clear that he is only seeking one document [being] the 'independent third-party report of the soccer pitch prepared by the [named Forensic Accountant]'". It submits:

² Orders P-134 and P-880.

³ Orders P-880 and PO-2661.

Norfolk county can confirm that no document exists. [The named Forensic Accountant] was hired by the county and did perform an investigation but the county did not engage her to present a written report of her findings. Since this document does not exist we seek that this appeal be dismissed outright at this time. ...

[16] The appellant takes issue with this position and submits that the county's own news release and the county's responding representations refer to the named Forensic Accountant's report. The appellant submits:

... In his letter to the Tribunal Services Department dated Aug. 10, [the Clerk/Manager of Council Services] refers on the first page to "the investigation and materials presented to Council" at the in-camera meeting where [the named Forensic Accountant] tabled her findings.

At the top of the second page, [the Clerk/Manager of Council Services] says "It is the belief of Norfolk County that release of documents related to this closed session will reveal the actual substance of deliberations that occurred therein."

Later on the same page, in section C, [the Clerk/Manager of Council Services] again refers to "the closed session documents" and how "Norfolk County feels that the release of materials may result in a significant encroachment upon the privacy rights of several identifiable individuals involved in a very negative fashion."

[17] The appellant adds that any documents presented by the named Forensic Accountant during her presentation are part of her report and are captured by its request. The appellant adds that, "because the county says [the named Forensic Accountant's] report was verbal, the minutes of that meeting constitute a written record of her report. We ask that you order these released to us as well, as per our request."

[18] The appellant submits that its understanding is that the named Forensic Accountant was hired precisely because the county had no documentation to indicate what had happened at the soccer park and that the Clerk/Manager of Council Services' own words strongly suggest these documents are related to the named Forensic Accountant's investigation.

[19] The appellant further advises that if the county's position is accepted, it will file a new, much broader request. The appellant adds that "[i]t would certainly save everyone a lot of time, effort and paperwork if we took the opportunity of the current application to resolve this matter in favour of transparency and public accountability."

Analysis and finding

[20] The request was clear and unambiguous. With specific reference to the closed meeting, the appellant sought "all written documentation by this investigator provided to the county, up to and including her final report". At mediation, the appellant advised that it is only seeking access to a record described in the Mediator's Report as the "Soccer Park Investigation Report". The county clearly knew what record was at issue and relied on sections 6(1)(b), 12 and 14(1) of the *Act* to deny access to it. This was the record that was addressed by me at adjudication and described as "the requested soccer park investigation report" as being the record at issue in the Notices of Inquiry sent to the parties. In the circumstances and based on my review of the wording of the request, the material provided by the parties during the appeal and the manner in which this appeal has proceeded, I find that the Soccer Park Investigation Presentation found at pages 2 to 19 are responsive to the request and constitutes the sole record at issue in this appeal.

[21] Accordingly, my inquiry will only address the request for access to the requested Soccer Park Investigation Presentation found at pages 2 to 19 of the responsive records.

Issue B: Does the discretionary exemption at section 6(1)(b) apply to the record?

Section 6(1)(b): closed meeting

[22] Section 6(1)(b) reads:

A head may refuse to disclose a record,

that reveals the substance of deliberations of a meeting of a council, board, commission or other body or a committee of one of them if a statute authorizes holding that meeting in the absence of the public.

[23] For this exemption to apply, the institution must establish that

1. a council, board, commission or other body, or a committee of one of them, held a meeting
2. a statute authorizes the holding of the meeting in the absence of the public, and

3. disclosure of the record would reveal the actual substance of the deliberations of the meeting⁴

[24] Previous orders have found that:

- “deliberations” refer to discussions conducted with a view towards making a decision⁵; and
- “substance” generally means more than just the subject of the meeting.⁶

[25] Section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting. For example, it has been found not to apply to the names of individuals attending meetings, and the dates, times and locations of meetings.⁷

[26] The first and second parts of the test for exemption under section 6(1)(b) require the institution to establish that a meeting was held by the institution and that it was properly held *in camera*.⁸

[27] In determining whether there was statutory authority to hold a meeting *in camera* under part two of the test, I must determine whether the purpose of the meeting was to deal with the specific subject matter described in the statute authorizing the holding of a closed meeting.⁹

[28] With respect to the third requirement set out above, the wording of the provision and previous decisions of this office make it clear that in order to qualify for exemption under section 6(1)(b), there must be more than merely the authority to hold a meeting in the absence of the public. Section 6(1)(b) of the *Act* specifically requires that disclosure of the record would reveal the actual substance of deliberations which took place at the institution’s *in camera* meeting, not merely the subject of the deliberations.¹⁰

[29] Section 6(2) of the *Act* sets out exceptions to section 6(1)(b). Section 6(2)(b) states:

Despite subsection (1), a head shall not refuse under subsection (1) to disclose a record if,

⁴ Orders M-64, M-102 and MO-1248.

⁵ Order M-184.

⁶ Orders M-703 and MO-1344.

⁷ Order MO-1344.

⁸ Order M-102.

⁹ *St. Catharines (City) v. IPCO*, 2011 ONSC 2346 (Div. Ct.).

¹⁰ Orders MO-1344, MO-2389 and MO-2499-I.

in the case of a record under clause (1)(b), the subject matter of the deliberations has been considered in a meeting open to the public.

[30] The county submits that section 239(2)(b), (c) and (f) of the *Municipal Act, 2001*¹¹ (the *Municipal Act*) is the statutory authority for its holding the February 10, 2015 meeting in the absence of the public. Those sections read:

(2) A meeting or part of a meeting may be closed to the public if the subject matter being considered is,

(b) personal matters about an identifiable individual, including municipal or local board employees;

(c) a proposed or pending acquisition or disposition of land by the municipality or local board;

(f) advice that is subject to solicitor-client privilege, including communications necessary for that purpose;

[31] The county further submits that section 270(1)5 of the *Municipal Act, 2001* requires it to adopt and maintain policies with respect to "the manner in which the municipality will try to ensure that it is accountable to the public for its actions, and the manner in which the municipality will try to ensure that its actions are transparent to the public". It submits that its Policy EBS-53 addresses this requirement. It submits that the policy reads, in part:

"All information, documentation or deliberation received, reviewed or taken in Closed Session of Council and its Committees shall remain confidential unless otherwise approved by Council in Open Session in accordance with the County's Procedural By-law;"

[32] The county submits this policy supports the use of section 6(1)(b) in this instance.

[33] The county adds:

It is important to remember, that while some of the closed session documents may appear innocuous, this matter relates to a small community with a group of already identified individuals. As a result, [the county] feels that the release of materials may result in a significant encroachment upon the rights to privacy of several identifiable individuals

¹¹ *Municipal Act, 2001*, S.O. 2001, c. 25.

involved in a very negative fashion. We anticipate correlations and linkages will be made that may not be immediately evident in the closed session documents.

[34] The county submits that the county solicitor "took a key role in both reviewing the findings of the outside investigator and providing advice to Council on how to respond" and "was in attendance and spoke to the matter in closed session". The county submits that "[f]or these reasons we feel that the decision and deliberations of Council cannot be viewed outside of established solicitor client privilege".

[35] Regarding section 6(2)(b) of the *Act*, the county submits that it took proactive steps to prepare a media release of some appropriate information and that a review of the press release was done by the Records Management/FOI Coordinator prior to it being made public.

[36] The county submits:

It is important to note that this press release was issued by the County Managers office and has never appeared on a Council agenda or been brought before them for discussion. Within this context it is clear that Council has not publicly deliberated upon what was discussed in closed session despite making a limited public release. We are confident that the County has released as much information as possible on this issue and do not feel that the press release should be considered to enact section 6(2)(b) of *MFIPPA*. To do so would penalize the municipality for taking a very reasonable and proactive approach towards transparency.

[37] The appellant submits that it is interested in learning what county officials did or did not do that gave rise to this unusual situation of an intensive farm operation arising next to a busy soccer park. It submits that the named Forensic Accountant is an accountant, not a lawyer, and the document the appellant seeks was fully formed and complete before it arrived at council's closed door meeting.

[38] The appellant further submits that:

... Further, to the best of our knowledge, the county is not involved in any litigation where [the named Forensic Accountant's] report might be tabled as evidence. In sum, we are not requesting the minutes of the in-camera meeting where [the named Forensic Accountant's] report was considered, nor are we interested in obtaining information related to what the county solicitor said in response to the report at that meeting.

[39] The appellant submits that section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting. It submits:

... As for [the named Forensic Accountant's] report possibly divulging the details of this in-camera discussion, that is speculative in the extreme. This is a complex issue with a long, convoluted history. The deliberations of this in-camera session could have gone off in a myriad of different directions. To re-iterate, we are not seeking the minutes of the in-camera meeting in question nor do we wish to report on it.

[40] The appellant submits that it understands and respects the business case for municipalities acting in private when it comes to real estate matters, however:

... But [the named Forensic Accountant's] report, as we understand the terms of reference, has nothing to do with a pending business transaction. Rather, it has to do with the sequence of events and personalities involved leading to the surprise establishment of an intensive farming operation on county land beside a county-owned sports park. As such, this report is about process and not fiduciary or financial factors that traditionally justify deliberating municipal real estate matters behind closed doors.

[41] Regarding the county's assertion that "[w]e anticipate correlations and linkages will be made that may not be immediately evident in the closed session documents", the appellant submits:

This comment betrays a misunderstanding of the journalistic process. As a professional newsroom, we would read the document and prepare questions of clarification where necessary. We would ferret out ambiguities and eliminate them so readers would have no reason to speculate or "read between the lines." We would ask thoughtful, respectful questions and expect county officials to help us understand [the named Forensic Accountant's] report in its entirety.

[42] I will now consider each part of the three-part test to determine whether section 6(1)(b) applies to the records.

Part 1 – meeting of council, board, commission or other body, or a committee of one of them

[43] The county states that Council held a meeting on February 10, 2015. Amongst the responsive records was a copy of a memo from the county Clerk/Manager of Council Services which confirms that a closed session took place at Council on February 10, 2015.

[44] Having regard to the above, I am satisfied that on February 10, 2015 a meeting of Council took place. Accordingly, I find that part one of the test has been met.

Part 2 – statute authorizes the holding of the meeting in the absence of the public

[45] The county submits that sections 239(2)(b), (c) and (f) of the *Municipal Act, 2001* is the statutory authority for its holding the February 10, 2015 meeting in the absence of the public.

[46] However, I find that the county has failed to provide me with sufficient evidence supporting their position that matters set out in sections 239(2)(b), (c) and/or (f) relating to the record were discussed at the meeting. In particular, the county's representations failed to specify any "personal matters about an identifiable individual, including municipal or local board employees", "advice that is subject to solicitor-client privilege, including communications necessary for that purpose" or in particular "a proposed or pending acquisition or disposition of land" by the county. Furthermore, on my review of the record at issue I am satisfied that nothing on its face suggest that this involves *personal matters* about an identifiable individual, including municipal or local board employees, contains "advice that is subject to solicitor-client privilege, including communications necessary for that purpose" or although relating to land, and discussing land, relates to "a proposed or pending acquisition or disposition of land" by the county. Accordingly, I find that the county has failed to satisfy the second part of the test. As all three parts of the test have not been met I find that the record does not qualify for exemption under section 6(1)(b).

[47] Although it is not necessary to do so, I have also considered whether the third part of the test has been met.

Part 3 – disclosure of the record would reveal the actual substance of the deliberations of the meeting

[48] The county offers very little in support of its position that disclosing the record would reveal the actual substance of the deliberations of the closed session. As set out above, it submits that:

We anticipate correlations and linkages will be made that may not be immediately evident in the closed session documents. For this reason we ask that the IPC consider the usage of section 6(1) not alone but as being linked to sections 12, 14 and 38(a) and (b). As these sections substantiate our reasoning for believing that further release would reveal the actual substance of the deliberations held in closed session.

[49] It also submits that the release of documents related to this closed session will reveal "the actual substance of deliberations that occurred therein as well as be a breach of an appropriate use of solicitor-client privilege".

[50] As set out above, the appellant submits that to the best of its knowledge, the county is not involved in any litigation where the named Forensic Accountant's report might be tabled as evidence. Furthermore, the appellant is not requesting the minutes of the in-camera meeting where the record was considered, nor is the appellant interested in obtaining information related to what the county solicitor said in response to the report at that meeting.

[51] The appellant further submits that section 6(1)(b) is not intended to protect records merely because they refer to matters discussed at a closed meeting and that it is understood that the report had nothing to do with a pending business transaction. And is "about process and not fiduciary or financial factors that traditionally justify deliberating municipal real estate matters behind closed doors."

[52] Under part 3 of the test it must be shown that disclosure of the record would reveal the actual substance of the deliberations of the meeting. As noted above, "deliberations" refer to discussions conducted with a view towards making a decision and "substance" generally means more than just the subject of the meeting.

[53] I have reviewed the record at issue along with the copy of a memo from the county Clerk/Manager of Council Services which confirms that a closed session took place at Council on February 10, 2015, to determine whether part 3 of the test has been met. In my view, the county has failed to adduce sufficient evidence in support of its position that disclosure of the record would either reveal the substance of deliberations or reveal any discussion that took place in closed session. In making my decision, I note that record contains information gathered in the course of an investigation and does not record any information relating to any decisions or discussions that took place at the closed meeting session. Accordingly, I find that part 3 of the test has also not been met.

[54] As a result, the record does not qualify for exemption under section 6(1)(b) of the *Act*. In light of this conclusion, it is not necessary for me to also determine if the section 6(2)(b) exception applies.

Issue C: Does the discretionary exemption at section 12 apply to the record?

General principles

[55] Section 12 states as follows:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[56] Section 12 contains two branches. Branch 1 (“subject to solicitor-client privilege”) is based on the common law. Branch 2 (“prepared by or for counsel employed or retained by an institution...”) is a statutory privilege. The institution must establish that one or the other (or both) branches apply.

Branch 1: common law privilege

[57] At common law, solicitor-client privilege encompasses two types of privilege: (i) solicitor-client communication privilege; and (ii) litigation privilege.

Solicitor-client communication privilege

[58] Solicitor-client communication privilege protects direct communications of a confidential nature between a solicitor and client, or their agents or employees, made for the purpose of obtaining or giving professional legal advice.¹² The rationale for this privilege is to ensure that a client may freely confide in his or her lawyer on a legal matter.¹³ The privilege covers not only the document containing the legal advice, or the request for advice, but information passed between the solicitor and client aimed at keeping both informed so that advice can be sought and given.¹⁴

[59] The privilege may also apply to the legal advisor’s working papers directly related to seeking, formulating or giving legal advice.¹⁵

[60] Confidentiality is an essential component of the privilege. Therefore, the institution must demonstrate that the communication was made in confidence, either expressly or by implication.¹⁶

Branch 2: statutory privilege

[61] Branch 2 is a statutory privilege that applies where the records were “prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.” The statutory and common law privileges, although not identical, exist for similar reasons.

Statutory solicitor-client communication privilege

[62] Like the common law solicitor-client communication privilege, this privilege covers records prepared for use in giving legal advice.

¹² *Descôteaux v. Mierzewski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹³ Orders MO-1925, MO-2166 and PO-2441.

¹⁴ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.).

¹⁵ *Susan Hosiery Ltd. v. Minister of National Revenue*, [1969] 2 Ex. C.R. 27.

¹⁶ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

Statutory litigation privilege

[63] This privilege applies to records prepared by or for counsel employed or retained by an institution "in contemplation of or for use in litigation." It does not apply to records created outside of the "zone of privacy" intended to be protected by the litigation privilege, such as communications between opposing counsel.¹⁷

[64] In support of its position that the record is subject to section 12 of the *Act* the county submitted that it anticipated that correlations and linkages will be made that may not be immediately evident in the closed session documents and that the county Solicitor took a key role in both reviewing the findings of the outside investigator and providing advice to Council on how to respond. In addition, the county submitted that the county solicitor was in attendance and spoke to the matter in closed session. The county submits that "[f]or these reasons we feel that the decision and deliberations of Council cannot be viewed outside of established solicitor client privilege".

[65] The appellant submits that the named Forensic Accountant is an accountant, not a lawyer, and the document it seeks was fully formed and complete before it arrived at council's closed door meeting. It further submits that to the best of its knowledge the county is not involved in any litigation where the named Forensic Accountant's report might be tabled as evidence. The appellant further submits that it is not interested in obtaining information related to what the county solicitor said in response to the report at the closed meeting.

[66] In my view, the county has failed to provide sufficient evidence to establish that section 12 applies to the record at issue. In my view, there is no solicitor-client communication that would be revealed by its disclosure nor is there any evidence before me to establish that the record was "prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation."

[67] Accordingly, I find that section 12 does not apply to the record at issue.

[68] As I have concluded that the record does not qualify for exemption under sections 6(1)(b) and/or 12 of the *Act*, subject to my discussion below, I will order that the record be disclosed to the appellant.

¹⁷ See *Ontario (Attorney General) v. Big Canoe*, [2006] O.J. No. 1812 (Div. Ct.); *Ontario (Ministry of Correctional Service) v. Goodis*, cited above.

PERSONAL INFORMATION

Issue D: Does the record contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[69] As the county has also raised the application of section 14(1) of the *Act*, I will consider whether disclosure of the record would constitute an unjustified invasion of personal privacy under section 14(1) of the *Act*. However, first I must determine whether the record contains “personal information” as described in the definition of that term in section 2(1) of the *Act*. 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;

[70] 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.¹⁸

[71] Sections 2(2.1) and 2(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.

[72] 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.¹⁹

[73] 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.²⁰ To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.²¹

[74] The county submits that this matter relates to a small community with a group of already identified individuals. As a result, the county feels that the release of materials may result in a significant encroachment upon the rights to privacy of several identifiable individuals involved in a very negative fashion. The county states that "[w]e anticipate correlations and linkages will be made that may not be immediately evident in the closed session documents."

[75] The appellant submits that it is interested in learning what county officials did or did not do that gave rise to this unusual situation of an intensive farm operation arising next to a busy soccer park but that if personal information found its way into the record, it can be severed from the record at issue prior to disclosure. In the course of adjudication, the appellant clarified that it was not seeking access to any personal

¹⁸ Order 11.

¹⁹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

²⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

²¹ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

information or the names or identifying information of any volunteers or officers of volunteer organizations should they appear in the record at issue.

Analysis and finding

[76] As noted above, the record at issue consists of a Soccer Park Investigation Presentation. The county's position is that information contained in the record qualifies as personal information because the release of the record may result in a significant encroachment upon the rights to privacy of several identifiable individuals involved in a very negative fashion and that correlations and linkages will be made that may not be immediately evident in the closed session documents.

[77] In my view, the information contained in the record fall under two categories:

1. Information relating to individuals not employed by the county; and
2. Information relating to individuals employed by the county.

[78] I will first consider whether the information relating to individuals not employed by the county meets the definition of "personal information" and then will go on to consider the information relating to individuals employed by the county. For the purposes of this order, the term "employees" will refer to individuals employed by the county, as well as its elected officials.

Information relating to individuals not employed by the county.

[79] The information relating to several individuals not employed by the county is contained in the record at issue. Some of these individuals' names appear in a business rather than personal capacity and revealing their names would not reveal something personal about them.

[80] Other individuals' names along with other identifying information appear in their capacity as volunteer members or officers of an organization. In the course of adjudication, the appellant clarified that he was not seeking access to any personal information or the names or identifying information of any volunteers or officers of volunteer organizations should they appear in the record at issue. Accordingly, it is not necessary to determine whether this qualifies as personal information, and the names or identifying information of any volunteers or officers of volunteer organizations will be severed from the record. I have highlighted this information in green on a copy of the pages of the record provided to the county along with this order. I find that after severing this information, disclosure of the remaining information will not reveal personal information.

Information relating to individuals employed by the county

[81] Several individuals employed by the county are identified, by name along with, in some cases, their job position. I am satisfied that the names of these individuals and any information relating to them in the record relates to their business, professional or official capacity as opposed to some personal capacity.

[82] In my view, the information identifying these individuals in the record does not qualify as "personal information" within the meaning of the definition in section 2(1). Accordingly, the exemption at section 14(1) can not apply to this information. That said, having regard to certain information in the record itself, I am of the view that very small portions of information such as a personal email address and/or a telephone number is the personal information of these individuals. Accordingly, I find that this information meets paragraph (h) of the definition of "personal information". As the appellant does not seek access to personal information I will also order that this information be withheld. I have highlighted this information in green on a copy of the pages of the record provided to the county along with this order.

ORDER:

1. I find that the Soccer Park Investigation Presentation found at pages 2 to 19 of the records is responsive to the request.
2. I do not uphold the county's decision to withhold the non-highlighted information on a copy of the Soccer Park Investigation Presentation that I have provided to the county along with a copy of this order and I order the county to disclose the non-highlighted portions to the appellant by sending it to the appellant by **January 27, 2017, but not before January 23, 2017**. For greater certainty the county is not to disclose to the appellant the information that I have highlighted in green on a copy of the Soccer Park Investigation Presentation.
3. In order to verify compliance with this order I reserve the right to require the county to provide me with a copy of the Soccer Park Investigation Presentation as disclosed to the appellant.

Original Signed by: _____

Steven Faughnan
Adjudicator

December 20, 2016 _____