

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3410

Appeal MA16-256

The Corporation of the City of St. Thomas

February 9, 2017

Summary: The city received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to information about the building permit of a garage at a specified address. After notifying certain affected parties, the city granted access to the records, in part, relying on the personal privacy exemption at section 14(1) of the *Act* for the withheld portions. Two affected parties appealed the city's decision to disclose the records. In this order, the adjudicator upholds the city's decision to disclose the portions of the records at issue.

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") and 14(1).

Orders and Investigation Reports Considered: Orders PO-3656, PO-3616, MO-2081, MO-2132, MO-2916, MO-3369, and MO-3015.

BACKGROUND:

[1] The City of St. Thomas (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following information:

"Records for [specified address] as follows applied for and issued after January 31, 2012: of any type: site alteration permits, demolition permits,

building permits, swimming pool permits and swimming pool fence permits, until present day.

Copies of all documents up to the present date pertaining to the remodeling and remedial work in the professional engineer's design permit (inside and outside the structure) which was used to issue the "conditional" building permit for the garage under construction at [specified address] [specified building permit]."

[2] The city identified the responsive records and notified a number of affected parties to obtain their view regarding the disclosure of the records. Two affected parties did not consent to the disclosure of the records. The other affected party did not respond.

[3] After considering the position of the two affected parties, the city issued a decision granting access to the records, in part. The city advised that portions of the records were withheld in accordance with the personal privacy exemption at section 14(1) of the *Act*.

[4] The two affected parties (now the third party appellants) appealed the city's decision to this office. The original requester did not appeal the city's decision to withhold certain portions of the records.

[5] During the course of mediation, the original requester advised that he did not wish to continue to seek access to certain records. The third party appellants consented to the release of some of the records, which the city released to the original requester.

[6] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process, where an adjudicator conducts a written inquiry under the *Act*. The adjudicator initially assigned to this appeal invited the city, the third party appellants, and the original requester to provide representations on the issues in this appeal. He received representations from them. This file was subsequently transferred to me.

[7] In this order, I uphold the city's decision to disclose certain portions of the records.

RECORDS:

[8] The only records remaining at issue are the ones marked as 2.6 (the portions that the city intends to disclose), 2.7, 2.8, and 3.1 (the portions that the city intends to disclose) in the index of the records the city provided to this office.

[9] The records at issue consist of an application for a permit to construct or demolish with an attached standard garage 18" x 24" plan (2.6), photographs taken by

the city (2.7 and 2.8), and an engineer drawing (3.1).

[10] Small portions of both the application for a permit to construct or demolish and the engineer drawing were withheld by the city and are not at issue in this appeal.

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 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?

[11] In order to determine whether the personal privacy exemption at section 14(1) of the *Act* applies, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates.

[12] Personal information 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.¹

[14] 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.

[15] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be "about" the individual.²

[16] Even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.³

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

¹ Order 11.

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

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

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

[18] In its representations, the city submits that record 2.6 (the portions that the city intends to disclose) and record 3.1 (the portions that the city intends to disclose) do not contain personal information. They also submit that records 2.7 and 2.8 do not contain personal information as they consist of photographs taken by the city on two separate occasions.

[19] Although the third party appellants and the original requester provided representations, their representations did not directly address whether the records at issue contain personal information.

Analysis and findings

[20] In Order MO-2081, Adjudicator Catherine Corban points out that information relating to property alone has been found not to be about an "individual", even if owned by an individual. Other previous orders of this office have found that, generally speaking, information about a property is not "personal information" unless it reveals something of a personal nature about an individual.⁵

[21] After reviewing record 2.6 (the portions that the city intends to disclose), I find that it does not contain personal information as the information does not reveal something of a personal nature about any individual. The first part of record 2.6 is the application for a permit to construct or demolish while the second part is a standard garage 18" x 24" plan. Both these parts contain information about a property alone, or more specifically about how to build a specific size garage.

[22] With respect to records 2.7 and 2.8, I agree with the city that they do not contain personal information of any individuals. Record 2.7 consists of two photographs taken by the city. These photographs appear to be of a hole in a construction area in an unidentifiable location. Record 2.8 consists of four photographs taken by the city. Two of the photographs appear to be of the garage on the two adjacent properties. Another photograph is of a measuring tape between the two garages. In this case, I find that these photographs, in records 2.7 and 2.8, do not reveal something of a personal nature about any individual. They are about a property alone.

[23] The remaining photograph is of a woman who is holding a measuring tape in her hands. This woman has been identified as an employee of the city. As mentioned above, the general rule is that information associated with an individual in a professional, official or business capacity will not be considered to be 'about' the individual, and thus is not considered to be personal information. With that in mind, I find that the photograph of the city's employee is not personal information as she was in the photograph due to her professional capacity.

[24] Record 3.1 consists of an engineer's drawing of a garage. After reviewing the

⁵ See, for example, Orders MO-2081 and PO-3656.

portions that the city intends to disclose, I find that they do not contain personal information of the third party appellants as it is about a property alone and it does not reveal something of a personal nature about any individual.

[25] I have carefully reviewed the third party appellants' representations, in which the third party appellants' comment about their concerns about the disclosure of the records at issue. I appreciate that the third party appellants would prefer not to have the records at issue disclosed; however, I am unable to withhold these records in circumstances where an exemption does not apply.

[26] Since records 2.6 (the portions that the city intends to disclose), 2.7, 2.8 and 3.1 (the portions that the city intends to disclose) do not contain personal information, the personal privacy exemption at section 14(1) cannot apply. As no other exemptions have been claimed for these records, I uphold the city's decision that they should be disclosed to the original requester.

B: Does the mandatory exemption at section 14(1) apply to the information at issue?

[27] Because the exemption at section 14(1) of the *Act* can only apply to "personal information", it has no application in the circumstances of this appeal and I do not need to consider its application to the records at issue.

ORDER:

1. I uphold the city's decision to disclose the records at issue.
2. I order the city to provide the original requester with a copy of records 2.7, 2.8, and the severed portions of 2.6 and 3.1 by **March 17, 2017** but not before **March 13, 2017**.
3. I reserve the right to require the city to provide me with a copy of the records disclosed to the original requester.

Original Signed by: _____
Lan An
Adjudicator

February 9, 2017 _____