

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3426

Appeal MA15-409

City of Toronto

April 11, 2017

Summary: The appellant submitted a request to the City of Toronto under the *Municipal Freedom of Information and Protection of Privacy Act* for records relating to any complaints received regarding his property. The city located responsive records and granted the appellant partial access to the records claiming that disclosure of most of the information would constitute an unjustified invasion of personal privacy under section 14(1). The city also claimed that portions of the records qualify for exemption under the discretionary law enforcement provision under section 8(1)(d) (confidential source of information). In this order, the adjudicator finds that information that could identify the complainant or contain "personal information" qualifies for exemption under section 14(1). However, the adjudicator orders the city to disclose the remaining information at issue on the basis that this information either does not meet the definition of "personal information" or could not reasonably disclose the identity of a confidential source.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, ss.2(1) definition of "personal information", 8(1)(d) and 14(2)(h).

OVERVIEW:

[1] The appellant submitted a request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records generated by the city in reviewing an application for a permit to landscape his front yard "including all records of verbal and written complaints, comments, objections and the like with names not redacted" (emphasis in original). The appellant advised that he sought records for the period from January 1, 2015 to the date of the request.

[2] The city granted the appellant partial access to the responsive records. The city claims that disclosure of most of the withheld information would constitute an unjustified invasion of personal privacy under the mandatory exemption at section 14(1). The city also claims that the remaining withheld portions qualify for exemption under the discretionary law enforcement exemption under section 8(1)(d) (confidential source).

[3] The appellant appealed the city's decision to this office and a mediator was assigned to the appeal. During mediation, the city confirmed that the only information removed from the photographs at issue (pages 84, 86, 88, 89, 90, 92 and 93) are the visible licence plate numbers. The city also confirmed it continues to rely on the discretionary exemption under section 8(1)(d) and mandatory exemption under section 14(1) to withhold access to responsive records.

[4] The parties were unable to resolve the appeal and the file was transferred to adjudication, in which an adjudicator conducts an inquiry. During the inquiry stage, the appellant and the city provided representations to this office. The parties were invited to provide submissions as to whether the records contain the personal information of the appellant, which would make the city's access decision regarding the applications of the exemptions a discretionary decision under Part II of the *Act*. In addition, this office invited the complainant to submit representations. The complainant's submissions indicate they do not consent to the release of any information which may relate to them to the appellant.

[5] The file was subsequently transferred to me for completion. In this order, I find that disclosure of the complainant's information, including their name, address and contact information in addition to other personal information contained in the record about them would constitute an unjustified invasion of personal privacy under section 14(1). However, I order the city to disclose the portions of the record which I found would not reveal a confidential source under section 8(1)(d) or does not contain information that meets the definition of "personal information".

RECORDS:

[6] The records at issue consist of a number of emails (some with attachments), email meeting invitations exchanged between the city's employees and a number of photographs.

Page Number	Description of Record	Withheld	Exemption
5-7	Email chain, dated April –May 2015	Partial Access Granted	Section 8(1)(d) and 14(1)
8	Photograph of subject property attached to May 26,	Withheld	Section 8(1)(d)

	2015 email		
9-10	Email chain, dated May 2015	Partial Access Granted	Section 8(1)(d) and 14(1)
11-12	Survey and schedule attached to May 26, 2015 email	Withheld	Section 8(1)(d) and 14(1)
13-14	Email, dated June 3, 2015	Partial Access Granted	Section 14(1)
16-17	Email meeting invitation sent to city employees on June 2015	Partial Access Granted	Section 14(1)
35	Email, dated June 25, 2015	Partial Access Granted	Section 14(1)
39-40	Email, dated June 26, 2015	Partial Access Granted	Section 14(1)
41-42	Email, dated June 29, 2015	Partial Access Granted	Section 8(1)(d) and 14(1)
43	Email, dated July 7, 2015	Partial Access Granted	Section 14(1)
70-71	Email, dated July 16, 2015 forwarding the complaint without attachments	Partial Access Granted	Section 14(1)
84,86,88,89- 90, and 92- 93	Photographs of subject property and a vehicle, with licence plates of vehicles severed.	Partial Access Granted	Section 14(1)

[7] Throughout the appeal, the appellant has maintained that he is entitled to obtain particulars about the complaint that was made against his property, including confirmation of the identity of the individual who filed a complaint. In reviewing the records, I note that the withheld information in the email invitations found at pages 35 and 43 contains the personal information¹ of one of the city employees invited to the

¹ Though this information relates to the city employee in their professional capacity, I find that it constitutes "personal information" as defined in paragraph (h) in section 2(1) of the definition and that disclosure would reveal something of a personal nature about this individual.

meeting. Given that this information relates solely to the city employee and not the complainant or the subject of the request, I have removed pages 35 and 43 from the scope of this appeal.

[8] Given the concerns the appellant raised in his submissions, I have also removed from the scope of this appeal the withheld licence plate numbers contained in the photographs of the subject property found at pages 84, 86, 88, 89, 90 and 92-93. The city already disclosed the photographs to the appellant but removed the licence plate number from one of the vehicles visible in the photographs. Other vehicles appear in some of the photographs but their licence plate numbers are not visible.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Would disclosure of the personal information at issue constitute an unjustified invasion of personal privacy under section 14(1)?
- C. Does the discretionary exemption at section 8(1)(d) apply to the remaining 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?

[9] 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.

[10] 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

[11] 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

[12] To qualify as personal information, it must be reasonable to expect that an

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.

individual may be identified if the information is disclosed.⁴

[13] The city submits that the records contain "some personal information of the appellant" and states:

The information at issue includes the name and telephone number of an individual who made a complaint. The records also contain other information that was provided to the by-law enforcement officers, that, if revealed, would also reveal the identity of the complainant.

This is the personal information of an individual other than the appellant. If this information is disclosed, it is reasonable to expect that the individual would be identified.

[14] The appellant takes the position that the records contain his personal information and states:

The information I'm seeking in these records is essentially emails by an individual which do not contain any personal information about him within the definition for "personal information".

...

[I am the other individual identified in the records] as we are dealing with a neighbour who complained about my property, my right-of-way and attached a survey of my property. All of these documents were redacted even though the personal information and the person who was the subject matter of these emails was not my neighbour, but in fact me.

[15] I have reviewed the records, along with the representations of the parties and find that the withheld portions of pages 10, 13, 16, 17, 39-40, 41 and 43 contain the personal information of the complainant. Much of the information which relates to the complainant is contained in email chains which duplicate his or her name, address, home phone, cell phone and personal email address. In addition, small portions of pages 5- 7, 9, 14, 42 and 70 contain other personal information relating to the complainant. This information constitutes "personal information" as described in paragraph (d)[address and telephone number] and (h)[name appearing with other personal information] in section 2(1) of the definition of that term.

[16] However, I find that the records do not contain the personal information of the appellant. Previous decisions from this office have consistently held that information about a property is not "personal information" unless it reveals something of a personal nature about an individual.⁵

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

⁵ See for example Orders M-15, MO-188, MO-2053 and MO-2264.

[17] The appellant is not identified by name or any other identifier in the records. In addition, the records do not contain the complainant's views or opinions about the appellant. The "complaint" in this appeal relates to concerns about the property and the permit being considered by the city. Accordingly, the only information contained in the records which relates to the appellant is the address information relating to his property and I am satisfied that disclosing this information would not reveal anything of a personal nature about him or the complainant.

[18] Similarly, I find that the photograph of the front lawn of the subject property at page 8 along with the survey and attached schedule at pages 11 and 12 relates not to any individual but to the subject property. Given the orientation of the photograph and the fact the survey and schedule is available to the public at the province's land registry office, I reject the city's submission that disclosure of this information would identify the complainant.

[19] Furthermore, I find that portions of the email exchanges between the city and the complainant at pages 5-7, 9, 14, 42 and 70 do not constitute the personal information of any identifiable individual. Accordingly, the mandatory personal privacy exemption under section 14(1) cannot apply to this information. This information represents a very small portion of the records. As the city has not claimed that any other exemption applies to page 70, I will order the city to disclose this information to the appellant.

[20] However, as the city claims that the information I found does not meet the definition of "personal information" at pages 5-7, 9, 14 and 42 qualifies for exemption under the law enforcement provisions of the *Act*, I will go on to determine whether the discretionary exemption under section 8(1)(d) applies to this information along with the photograph, survey and schedule at pages 8, 11 and 12.

B. Would disclosure of the information at issue constitute an unjustified invasion of personal privacy under section 14(1)?

[21] As I have found that the records do not contain the personal information of the appellant, I will determine whether disclosure of the information which I found contains the personal information of the complainant would constitute an unjustified invasion of personal privacy under the mandatory exemption at section 14(1).⁶

[22] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1). Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

⁶ The possible application of sections 38(a) and (b) was canvassed in this appeal, which would make the city's access decision regarding the application of the exemptions under sections 8 and 14(1) a discretionary decision under Part II of the *Act*, which recognizes the special nature of requests for one's own personal information and the desire of the legislature to give institutions the power to grant requesters access to their personal information. As the records do not contain the appellant's personal information, sections 38(a) and (b) do not apply.

[23] 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. 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.⁷ The parties have not claimed that any of the exceptions in section 14(4) apply and I am satisfied that none apply.

[24] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy. Given that the complainant has not consented to the release of their information, the only exception that could apply is section 14(1)(f), which states:

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.

[25] The city takes the position that the presumption at section 14(3)(b)(investigation into a violation of law) applies in the circumstances of this appeal. During the inquiry, the appellant raised questions as to whether or not the city had investigated a violation of law in reviewing his permit application and the complaint. Given the appellant's questions I have decided to first review whether the factor at section 14(2)(h)(supplied in confidence) applies in the circumstances of this appeal.

14(2)(h): supplied in confidence

[26] This factor applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.⁸

[27] The city submits that the complainant's name, phone number, address and other personal information was compiled as part of their review of a complaint they received about the appellant's property. The city advises that individuals filing complaints with the city are assured that their personal information will be kept confidential. The city goes on to state:

It is the City's position that its complaints process has traditionally guaranteed the confidentiality of complainants. This ensures that members of the public, on whom the City relies to identify by-law infractions, will continue to do so, and that the disclosure of these names would deter others in [the] future from complaining and reporting possible by-law infractions.

[28] During the inquiry stage, this office contacted the complainant to make inquiries

⁷ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

⁸ Order PO-1670.

as to whether they were prepared to release their information to the appellant. The complainant sent in a response confirming that they do not consent and advised that their information was provided to the city in confidence.

[29] The appellant takes the position that disclosure of the emails in question to him would not constitute an unjustified invasion of personal privacy. In support of this argument, the appellant states:

The author of a complaint can have no expectation of privacy. To the contrary he or she should reasonably expect that the complaint would be brought to the attention of the person who is the subject of the complaint.

[30] The appellant also raised concerns about the city's complaint process and submits that the city encourages individuals to file complaints in "complete anonymity and immunity". The appellant submits that in the circumstances of this appeal, the city investigated a frivolous complaint without giving him an opportunity to provide a response. As a result, his permit application was substantially delayed and he was required to provide additional documentation not normally required without having the benefit of knowing the details of the complaint. The appellant states:

The facts of this case are a perfect example of why fairness and due process require the City to disclose complaints about an application for a permit when the City received the complaint. It is analogous to a Committee of Adjustment hearing. Letters and emails from neighbours objecting to a variance are available to the applicant so the tribunal can receive input from the applicant on complaints. This secret culture at the City of withholding knowledge of neighbour objections to permits is a violation of our right to due process and is unfair.

Decision and Analysis

[31] Having regard to the submissions of the parties, I am satisfied that the personal information at issue contained in the records provided by the complainant to the city was provided in confidence. In making my decision, I accept the city's advice that it has a long established practice of protecting the privacy of individuals who file complaints. I also note that the city's website identifies a number of avenues available to individuals who wish to file a complaint with the city. Individuals can file complaints online, telephone the city's 311 number, contact relevant departments directly or attend one of the city's offices.

[32] Though I do not have before me the details of how the complainant filed their complaint about the appellant's property, I note that the city's website contains a statement advising individuals that its collection of any personal information is subject to the *Act*. In addition, the city's website states that any webpage, such as its online complaint form, which asks individuals to enter their personal information will contain a notice outlining the city's legal authority to collect the information and include:

- The purpose for collecting the personal information;
- How it will be used and who will have access to it; and
- Who to contact if individuals have any questions about these practices.

[33] In my view, the city's long standing practice of not revealing the identities of individuals filing complaints combined with the city's notices to the public regarding its collection of personal information demonstrates that both the city and the complainant had a reasonably held expectation that the personal information at issue would be kept in confidence.

[34] Throughout the appeal, the appellant raised concerns about the city's complaint process. However, my review is limited to whether or not the complainant and city had a reasonably held expectation that the information at issue would be kept confidential at the time it was provided. Furthermore, this is not a factor favouring disclosure of information at issue.

[35] Having regard to the above, I find that the factor at section 14(2)(h) weighing against disclosure is relevant in the circumstances of this appeal.

[36] As I have found that the factor at section 14(2)(h) applies and no factors favouring disclosure apply, it is not necessary that I also determine whether the presumption at section 14(3)(b) applies.

[37] Having regard to the above, I find that disclosure of the personal information at issue relating to the complainant would constitute an unjustified invasion of personal privacy taking into account the factor at section 14(2)(h) and I uphold the city's decision to withhold this information.

C. Does the discretionary exemption at section 8(1)(d) apply to remaining information at issue?

[38] The remaining information at issue consists of the photograph of the subject property at page 8 along with the survey and schedule found at pages 11 and 12. Also at issue are small portions of pages 5-7, 9, 14 and 42 contained in emails exchanged between the city and the complainant. The city claims that this information qualifies for exemption under section 8(1)(d), which states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source

[39] Previous decisions from this office have found that the term "law enforcement" matter includes a municipality's investigation into a possible violation of a municipal by-

law.⁹

[40] For section 8(1)(d) to apply in the circumstances of this appeal, the city must establish a reasonable expectation that the information at issue provided by the complainant would remain confidential in the circumstances.¹⁰

[41] The city submits that disclosure of the remaining information at issue could reasonably reveal information provided only by the confidential source. The city also submits that its complaint process has traditionally guaranteed the confidentiality of complainants in by-law infraction complaints.

[42] The appellant's submissions raised questions about whether the complaint investigated by the city give rise to a law enforcement matter and states:

... the actual subject matter of the complaint was not a by-law infraction but an application for a permit to landscape my front lawn. There is nothing in the productions that I have received that makes any reference to a by-law infraction. There is no by-law mentioned, much less any investigation into a by-law infraction. The contact person at the City who apparently handled the complaint was not a by-law enforcement officer.

[43] The appellant also states:

A neighbour contacting the City to file a complaint about a landscaping permit is hardly a confidential source. If a neighbour wants to report unlawful activity such as constructing a house without a permit that may be different.

Decision and Analysis

[44] The identity and contact information of the complainant along with other incidental personal information of the complainant is no longer at issue. I found that disclosure of this information to the appellant would constitute an unjustified invasion of personal privacy under section 14(1). What remains at issue is a photograph of the subject property, copies of the survey and schedule along with small portions of the email exchange between the city and the complainant.

[45] For the same reasons I found that this information did not constitute the "personal information" of the complainant or any other individual, I find that disclosure of this information to the appellant could not reasonably be expected to disclose the identity of the complainant. The survey and schedule found at pages 11 and 12 are available to the public. In my view, this information cannot be said to have been furnished only by the complainant.

[46] In addition, I find that disclosure of the remaining information at issue contained

⁹ Orders M-16 and MO-1245.

¹⁰ Order MO-1416.

in the emails or the photograph of the subject property could not reasonably be expected to disclose the identity of the complainant. None of the complainant's personal identifiers are contained in these records.

[47] As the city has not claimed that any other exemption applies to this information, I will order the city to disclose the remaining information at issue contained in pages 5-7, 9, 11-12, 14 and 42 in their entirety to the appellant.

ORDER:

1. I uphold the city's decision to withhold the complainant's personal information contained in the records.
2. I order the city to disclose the remaining information at issue to the appellant by **May 18, 2017** but not before **May 12, 2017**. For the sake of clarity, in the copy of the records enclosed with the order sent to the city, I have highlighted the portions of the records which **should not** be disclosed to the appellant.
3. In order to verify compliance with order provisions 1 and 2, I reserve the right to require a copy of the records disclosed by the city to be provided to me.

Original Signed by: _____
Jennifer James
Adjudicator

_____ April 11, 2017