

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3458

Appeal MA15-87

Town of Caledon

June 20, 2017

Summary: The Town of Caledon (the town) received a request, which was later revised to include all records from 1998 to present related to fill for four specified addresses. The town located 32 records, and provided partial access to them, withholding some information under section 14(1) (personal privacy) and section 8(1)(b) (law enforcement investigation) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). During mediation, the town conducted a further search, and located an additional 10 records. Subsequently, it issued a supplemental access decision, where it disclosed some of the records in full and in part, citing section 14(1) to withhold some information. In this order, the adjudicator finds that the withheld portions in the records (except for two withheld portions) qualify for exemption under section 14(1). She also found that the town conducted a reasonable search for records.

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), and 17(1).

BACKGROUND:

[1] The appellant submitted a detailed request to the Town of Caledon (the town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all records from 1998 to present related to "fill" for specified addresses in Caledon.

[2] The town spoke with the appellant regarding his request. The appellant advised

that he was only interested in fill records (no other activity). His request was clarified as:

All records from 1998 to present related to fill for [four specified addresses] including:

- Permits, letters, invoices, complaints and emails, etc.
- Records to and from CAO, Mayor, Town staff, other governing bodies, TRCA and the Ministry of the Environment

[3] The town located 32 responsive records and issued an access decision to the appellant, disclosing records in full and in part. Information was withheld under the mandatory personal privacy exemption in section 14(1) and the discretionary law enforcement exemption in section 8(1)(b).

[4] The town indicated that it had not located "fill" records for two of the specified addresses and "fill" records sent between the CAO and the Mayor. The town further indicated that there were no "fill" records after 2013 for any of the addresses.

[5] During mediation, the appellant advised that he believes the search was incomplete. He believes that town staff would have been responsible for monitoring fill removal and that additional records must exist relating to the removal of fill, particularly:

- How many loads were taken out
- Where the loads were taken
- Whether the load was properly disposed of
- Name of the company
- Copy of the bill of lading
- Copy of invoices

[6] Once this information was conveyed to the town, it advised that fill records are retained indefinitely in property files and that a search was conducted of paper records and databases. The town agreed to conduct a further search for responsive records.

[7] Subsequently, the town issued a supplemental access decision indicating that it had located an additional 10 records and these records related to fill but not the removal of fill. It disclosed some of the records in full and in part, citing section 14(1) of the *Act* to withhold information. The town also provided responses to the questions raised by the appellant as set out above.

[8] As no further mediation was possible, the file was moved to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. The adjudicator initially assigned to this appeal sought and received representations from the town and the appellant. Pursuant to *Practice Direction Number 7*, a copy of the town's representations was shared with the appellant. This file was subsequently transferred to me for disposition.

[9] I note that the town's representations indicate that it is no longer relying on the discretionary exemption at section 8(1)(b) (law enforcement investigation). As such, I have removed this issue.

[10] In this order, I find that the withheld portions in the records (except for two withheld portions) qualify for exemption under section 14(1) of the *Act*. I also find that the town conducted a reasonable search for records.

RECORDS:

[11] Initial Index of Records

Record Number	Description	Date
1	Fill permit application	
2	Fill permit [identified number]	April 9, 1999
3	Drawing for proposed driveway culvert	April 9, 1999
5	Letter from [named company]	May 23, 2000
6	Fill permit	November 15, 2000
8	Fill permit application	September 20, 2001
10	Fax transmittal with attachments	October 9, 2002
11	Fax transmittal with attachments	October 10, 2002
12	Letter	October 15, 2002

13	Fill permit	October 31, 2002
14	Fill Permit [identified number]	December 10, 2003
15	Property standards complaint [identified number]	August 31, 2012
16	SAS Property Database	
17	Initial inspection report	September 4, 2012
19	Email with 2 pictures	September 4, 2012
22	Initial inspection report	October 16, 2012
26	Aerial Map	
28	Property standards complaint [identified number]	September 5, 2013
29	Notes to file	September 20 and 24, 2013
30	Property standards complaint [identified number]	September 5, 2013
31	Initial inspection report	September 9, 2013
32	Email chain with 3 pictures	September 17, 2013

[12] Supplemental Index of Records

Record Number	Description	Date
2	Email	July 9, 2008
4	Property standards complaint [identified number]	June 16, 2010

5	Map	
7	Property standards complaint [identified number]	September 9, 2010
8	Inspection report	September 9, 2010
10	Inspection report	September 13, 2010

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?
- C. Did the institution conduct a reasonable search for records?

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 whether section 14(1) of the *Act* applies, it is necessary to decide whether the records contain “personal information” and, if so, to whom it relates.

[14] “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;

[15] 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

[16] 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.

[17] 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

[18] Even if information relates to an individual in a professional, official or business

¹ Order 11.

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

capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.³

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

[20] In its representations, the town submits that all the records at issue contain personal information of individuals (other than the appellant). It points out that the information consists of the names, phone and/or fax numbers of individuals. The town also submits that if this information was released collectively, it would reveal personal information of an identifiable individual.

[21] Although the appellant provided representations with numerous attachments, his representations did not directly address whether the withheld information is personal information.

Analysis and findings

[22] Having reviewed all the records at issue, I find that they contain the personal information of a number of individuals (including the appellant). Specifically, the information is the names, phone numbers, mobile numbers, a facsimile number and an address, which all falls within the definition of 2(1) of the *Act*. I also find that the financial information in record #16 of the initial index is personal information as it reveals something of a personal nature of the owners of the property.

[23] Although I find that record #2, identified on the supplemental index, contains personal information (the name and address of an individual) in the second bullet point, I do not find that the remaining information in the second bullet point is personal information because it is simply information about a fill permit. As such, only the name and address of the individual in the second bullet point should be withheld.

[24] As stated earlier, the general rule is that information about an individual in their business capacity is not considered to be personal information unless it reveals something of a personal nature of the individual. With that rule in mind, I note that the town did not disclose the business number for an identified company in record #13. I also note that, in its representations, the town pointed out that it could not reasonably confirm what information was related to a business entity and what was related to an individual. After careful consideration, I find that the business number in this record is personal information as it reveals something of a personal nature of an individual, specifically the personal phone number of an individual.

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.).

[25] However, I do not find that the first severance in record #31 is personal information. As stated earlier, to qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed. In this case, I do not find that an individual could be identified by the information in this severance.

[26] As the mandatory personal privacy exemption in section 14(1) can only apply to personal information, I find the information in records #2 and #31 are not exempt under section 14(1). As no other mandatory exemptions apply, I order that the information in these records be disclosed.

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

[27] 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.

[28] 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.

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

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

[31] 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.⁵ Section 14(4) does not apply in the circumstances of this appeal and the appellant has not raised the application of section 16. Further, I do not have evidence that any of the presumptions in section 14(3) applies.

⁵ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

[32] 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.⁶

[33] 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.⁷

[34] In this appeal, none of the parties have provided any evidence with respect to the factors and/or circumstances favouring or not favouring disclosure. Moreover, there is no evidence that any of the factors favouring disclosure in section 14(2) apply. Accordingly, I find that the mandatory exemption in section 14(1) applies to exempt the personal information in the records at issue.

C: Did the institution conduct a reasonable search for records?

[35] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.⁸ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[36] The *Act* does not require the town to prove with absolute certainty that further records do not exist. However, the town must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.⁹ To be responsive, a record must be "reasonably related" to the request.¹⁰

[37] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.¹¹

[38] A further search will be ordered if the town does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the

⁶ Order P-239.

⁷ Orders PO-2267 and PO-2733.

⁸ Orders P-85, P-221 and PO-1954-I.

⁹ Orders P-624 and PO-2559.

¹⁰ Order PO-2554.

¹¹ Orders M-909, PO-2469 and PO-2592.

responsive records within its custody or control.¹²

[39] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.¹³

[40] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.¹⁴

[41] In its representations, the town submits that it conducted a reasonable search for records responsive to the request. It submits that staff in the Regulatory Services section of Public Works are experienced and knowledgeable in the subject matter of the request. It also submits that staff conducted searches on the Access and Amanda database programs, as well as requesting the relevant property files from the Records Centre. The town points out that, during mediation, it conducted a further search for responsive records and identified 10 additional records, which had not been transferred to the Records Centre for permanent retention in the property file. Furthermore, the town points out that it provided responses to the appellant's questions regarding "the removal of fill."

[42] Although the appellant provided representations with numerous attachments, his representations did not address whether the town conducted a reasonable search for records. Furthermore, I am unable to find any reasonable basis for the appellant's position that additional responsive records exist.

[43] Accordingly, I find that the town has established that it conducted a reasonable search for responsive records.

ORDER:

1. I uphold the town's decision, in part. I order the town to disclose to the appellant the information that I have found is not personal information in accordance with the highlighted records I have enclosed with the town's copy of the order. To be clear, only the highlighted information should **not** be disclosed.
2. I order the town to make the disclosure referred to in paragraph 1 of this order by **July 26, 2017** but not before **July 19, 2017**.

¹² Order MO-2185.

¹³ Order MO-2246.

¹⁴ Order MO-2213.

3. I reserve the right to require the town to provide me with a copy of the records disclosed to the appellant.

Original Signed by: _____

Lan An
Adjudicator

_____ June 20, 2017