

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-3479

Appeal MA16-755

Town of South Bruce Peninsula

August 4, 2017

**Summary:** The town received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the identity and address of an individual who had made an earlier access request under the *Act*. In this order, the adjudicator upholds the town's decision to withhold the identity and address of the individual pursuant to the personal privacy exemption in section 14(1).

**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-2488, PO-2764, PO-3295, and PO-3695.

### BACKGROUND:

[1] An individual (the requester/affected party) made a request to the Town of South Bruce Peninsula (the town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for all the municipal expense reports of a named councilor for a specified time period.

[2] Subsequently, the appellant made a request to the town under the *Act* for the identity and address of the requester/affected party who had made the initial request.

[3] The town denied access to the responsive information pursuant to the

mandatory personal privacy exemption at section 14(1) of the *Act*. The town takes the position that the information was supplied in confidence by the requester/affected party, it contains the personal information of the requester/affected party and the town has not received permission from the requester/affected party to release the personal information.

[4] The appellant appealed the town's decision to this office.

[5] During mediation, the mediator contacted the requester/affected party to determine whether they would consent to disclose the information at issue in this appeal to the appellant. The requester/affected party did not consent to the disclosure of information.

[6] As mediation did not resolve the appeal, the file was moved to the next stage of the process, where an adjudicator conducts an inquiry under the *Act*.

[7] I invited the parties to submit representations, but only the town submitted representations. Pursuant to the IPC's *Code of Procedure* and *Practice Direction Number 7*, a non-confidential copy of the town's representations was shared with the appellant.

[8] In this order, I uphold the town's decision to withhold the identity and address of the requester/affected party pursuant to section 14(1).

## **RECORD:**

[9] The information at issue in this appeal is the identity and address of an individual, which is contained within a Freedom of Information request made to the town.

## **ISSUES:**

- A. Does the record 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: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[10] In order to determine whether 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.

[11] "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;

[12] The list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.<sup>1</sup>

[13] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

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<sup>1</sup> Order 11.

(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.

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

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

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

[17] In their representations, the town submit that the record at issue contains personal information. They point out that the information is not the name and address of a person in a professional capacity nor of a business. They also point out that it is the name and address of an individual. As such, the town conclude that it falls under section 2(1)(c) of the *Act*.

[18] As noted above, the appellant and requester/affected party were invited to submit representations, but they did not submit any.

### ***Analysis and findings***

[19] In this appeal, the record in question contains the name and address of an individual, connected with the fact that the individual has submitted an access request.

[20] Previous orders and Privacy Complaint Reports issued by this office have taken the position that an individual's identity as a requester under the *Act* qualifies as that individual's personal information under section 2(1) of the *Act* (Orders P-27, PO-2488, M-32, P-370; Privacy Complaints MC-040012-1, MC-05005-1, MC-050034-1), unless the request is made in a professional context (Orders PO-2764, PO-3295, PO-3695).

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

<sup>3</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

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

[21] On my review of the information at issue and the town's representations, I find that the requester/affected party's name and address contained in the record at issue qualify as that individual's personal information under both paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the *Act*. Under paragraph (h), disclosing the individual's name reveals the fact that they made a request under the *Act*. The details of the request are then also associated with the individual, with the result that disclosing the name reveals "other personal information" about the affected party. I have also not been provided with any evidence to suggest that the request was made in a professional or business context. I find, therefore, that the record at issue contains the personal information of the requester/affected party.

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

[22] 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.

[23] 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.

[24] 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.

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

[26] 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). I do not have evidence that any of the presumptions in section 14(3) applies.

[27] Section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy.

[28] In order to find that disclosure does not constitute an unjustified invasion of personal privacy under section 14(1), one or more factors and/or circumstances favouring disclosure in section 14(2) must be present. In the absence of such a finding,

the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.<sup>5</sup>

[29] In their representations, the town submit that the requester/affected party has not given their consent, nor had the reasonable expectation that upon making a request their identity would be revealed. The town also submit that public scrutiny is not necessary in the circumstances as disclosure of the information “may mean that the public would lose faith in their ability to make a request under the Act and have their information protected.”

[30] As mentioned above, the other two parties to the appeal have not 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 contained in the record at issue.

**ORDER:**

I uphold the town’s decision to withhold the identity and address of the requester/affected party under section 14(1) of the *Act*, and dismiss the appeal.

Original Signed by: \_\_\_\_\_  
Lan An  
Adjudicator

\_\_\_\_\_ August 4, 2017

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<sup>5</sup> Orders PO-2267 and PO-2733.