

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3485

Appeal MA15-86

Toronto and Region Conservation Authority

August 17, 2017

Summary: The TRCA received an access request about fill relating to two specified addresses. It disclosed some records, but withheld some records under section 14(1) (personal privacy) of the *Act*. In this order, the adjudicator upholds the TRCA's decision, in part. She orders the TRCA to disclose the withheld information that she found was not "personal information." She also finds that the TRCA conducted a reasonable search.

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).

Orders and Investigation Reports Considered: Orders PO-2965, MO-1194, PO-2632, MO-3340, and MO-2125.

BACKGROUND:

[1] The appellant submitted an access request to the Toronto and Region Conservation Authority (TRCA), pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request related to two specified addresses, and specified the following:

A copy of all documents, proof of removal of all illegal contaminated fill dump on [two specified addresses]. A copy of all letters, invoices, dates, how many loads have been taken off the properties, where it was taken,

and how and if it was disposed of properly! from 1998 to present, which company did the removal and how long it took, number of trucks, etc...All faxes, emails related to these two properties, all illegal activity, et. Fill in the flood plain, putting in culverts, bridges, etc...

Correspondence between elected officials all town councilors, [named CEO] and [named Mayor], town staff and employees. All correspondence between Ministry of Environment, and staff, all other governing bodies and staff.

[2] The TRCA advised the appellant that it was notifying parties whose interests may be affected by disclosure of the records (affected parties) under section 21 of the *Act*. The TRCA also advised the appellant that, in the interim, it was prepared to release all the other records not affected by third party interests, except portions of the records exempt under sections 8(1) (law enforcement), 11 (economic and other interests) or 14(1) (personal privacy). The TRCA advised the appellant of the DVD fee and that the records ready for release included 410 pages and 29 oversize plans.

[3] The appellant subsequently paid the fee and the TRCA disclosed the DVD and granted access to the responsive records with some of the information withheld under sections 8(1)(a), 8(3) (refusal to confirm/deny), 11(a), 14(1) of the *Act*.

[4] During mediation, the appellant advised the mediator that he believes that additional responsive records should exist relating to the removal of the fill including:

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

[5] The mediator conveyed the appellant's concerns to the TRCA, who agreed to conduct a further search. The TRCA then issued a supplemental access decision, revising parts of its earlier decision and issuing an access decision for the additional records it had located.

[6] The supplemental decision set out the following relevant details:

Parcel Maps

The TRCA revised its decision regarding certain maps. It indicated it would be granting access [contain records] (pages 30, 31), indicating that these

maps had initially been withheld as they had been identified as parcel fabric maps, but it was later realized these maps display data layers to generate the TRCA regulation limits. With respect to the remaining maps, the TRCA indicated it was claiming section 9(1)(b) (relations with other governments), and not section 11.

Closed Violation [identified file #1]

The TRCA stated that at the time of its initial access decision, the violation file was an open file, but it has subsequently resolved and is now a closed file. The TRCA revised its decision to grant access to the violation notices, violation reports and a synopsis of a violation and to sever out certain personal information on the basis of section 14(1), and certain other information on the basis of section 8(2)(a). The TRCA also indicated that it is no longer claiming section 8(3).¹

Closed Violation [identified file #2]

The TRCA advised that as a result of its further search, it has now identified an earlier violation file (identified file #2) as a responsive record. It advised that this file had not been part of the original search, as there was no municipal address or cross reference associated with this file and therefore had not been identified as responsive. The responsive records for this file are indicated in the index of records as Records 10 – 88. The TRCA's decision regarding this file is to grant access to Record 22 and to withhold/sever the remaining records, on the basis of section 14(1) and 8(2)(a) (law enforcement report).

[7] Regarding the TRCA's additional search for records following the appellant's discussion with the mediator, the TRCA stated the following:

- Violation File [identified file #1] indicates that approximately 2 loads of fill had been dumped at the top of the stream slope (Record 1 of the index of records – July 9, 2015)
- Violation File [identified file #2] indicates the company who was involved in the placement of the fill (Record 17 of the index of records - July 9, 2015)

[8] The TRCA further stated that staff completing the review included the Associate Director, Development Planning and Regulations and Manager of Enforcement. It notes that apart from the violation files, there are no records which contain the fill information requested by the appellant. The TRCA further advised that it cannot compel landowners

¹ TRCA advised the mediator that [identified file #1] – Records A and B from its initial decision are the same as records Records 1 – 9 on the index of records dated July 9, 2015.

to disclose information on the locations to which fill being removed from a site is being taken, the number of loads being removed or bills of lading. It noted that it may collect this information when it is provided voluntarily by the landowner.

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

[10] The adjudicator initially assigned to this appeal sought and received representations from the TRCA and the appellant. Pursuant to *Practice Direction Number 7*, she shared a non-confidential copy of the TRCA's representations with the appellant. This file was subsequently transferred to me.

[11] In its representations, the TRCA confirms that it is no longer relying on the application of the discretionary exemption in section 8(2)(a) to the records. It has also not provided representations on the possible application of the other discretionary exemptions it referenced in its earlier decision and, in the absence of representations, I will not consider the possible application of those exemptions. Lastly, the TRCA indicates that it is no longer relying on the exemption in section 9(1)(b) to the records for which it was initially claimed. As a result, the only exemption remaining at issue is the possible application of the personal privacy exemption in section 14(1) to the portions of the records for which it is claimed. I will address this exemption claim below.

[12] In this order, I uphold the TRCA's decision, in part. I order the TRCA to disclose the withheld information that I found was not "personal information." I also find that the TRCA conducted a reasonable search.

RECORDS:

[13] The records at issue are email chains, permit applications relating to planning and development, and violation notices.

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

DISCUSSION:

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

[14] 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.

“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.²

[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.³

[18] 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.⁴

[19] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[20] In their representations, the TRCA submit that the records at issue contain personal information of a number of individuals. They point out that the records contain the names, an email address, phone numbers, bank account numbers, and signatures of individuals.

[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

Email address and phone number

[22] With respect to the withheld email address and phone number, I find that they

² Order 11.

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

are not personal information as they are the email address and phone number of a business as confirmed by the other information in the email chains. (Records A, B, C and D of identified file #4).

Phone numbers and names

[23] I find that the individuals' names (records 1, 2 and 3 of identified file #1; record 14 and records 18, 19 and 23 of identified file #2) and phone numbers (record 14 of identified file #2; record B (page 6) and record C (page 5) of identified file #4) fall within paragraphs (d) and (h) of section 2(1) of the *Act*, and that they constitute the personal information of these individuals.

Signatures

[24] In Order MO-1194, former Assistant Commissioner Tom Mitchinson discussed this office's treatment of handwriting and signatures appearing in a number of different contexts, as follows:

In cases where the signature is contained on records created in a professional or official government context, it is generally not "about the individual" in a personal sense, and would not normally fall within the scope of the definition. (See, for example, Order P-773, which dealt with the identities of job competition interviewers, and Order P-194 where handwritten comments from trainers were found not to qualify as their personal information.)

In situations where identity is an issue, handwriting style has been found to qualify as personal information. (See, for example, Order P-940, which found that even when personal identifiers of candidates in a job competition were severed, their handwriting could identify them, thereby bringing the records within the scope of the definition of personal information).

...

In my view, whether or not a signature or handwriting style is personal information is dependent on context and circumstances.

[25] In Order PO-2632, Adjudicator Daphne Loukidelis applied the above-noted context-driven approach to the circumstances in Order PO-2632, finding that the signatures of corporate officers of Ontario Power Generation (OPG) would not reveal something that is inherently personal in nature or that disclosure of the signature of the former Minister of Energy, Science and Technology (as that position was then known) would not reveal something of an inherently personal nature. Adjudicator Loukidelis concluded that the signatures appeared in records created in an official government context, that is, the signing of contracts between OPG and third parties for the

provision of information technology services. In the circumstances of that appeal, Adjudicator Loukidelis found that the signatures contained in the records did not fall within the definition of personal information in section 2(1) of the *Act* and that, accordingly, the signatures could not be exempt under the personal privacy exemption in section 21(1).

[26] I agree with Adjudicator Loukidelis' analysis and apply it to the circumstances of this case. As in Order PO-2632, the signatures, in record D of identified file #6 (pages 6 and 7), are linked to the name of an individual, who is the owner of the business named. The business is submitting a permit re-issuance application. In that context, I am satisfied that these signatures are not personal information as they do not reveal something of a personal nature about the individual.

[27] However, I find that the signatures (contained on pages 5 to 6 of record E of identified file #4, pages 6 to 9 of record A of identified file #5, and pages 5 and 7 of record B of identified file #8) are personal information as those signatures were made in a personal context.

Bank account numbers

[28] With respect to bank account numbers, I find that the information that was withheld from record C of identified file #8 (page 8) and record F of identified file #4 (page 2) is personal information. In both cases, the bank account numbers and accompanying signatures are information about individuals as they fall within paragraphs (c) and (h) of section 2(1) of the *Act*.

[29] I note that some bank account numbers appear to be for businesses. Previous orders of this office have consistently found that these numbers qualify for exemption under the mandatory exemption in section 10(1) of the *Act*.⁶ In the absence of representations on this issue, I will not order disclosure of these bank account numbers.

Summary

[30] Since the withheld information about the email address (records A, B, C and D of identified file #4), and the signatures (record D of identified file #6 (pages 6 and 7) are not personal information, the personal privacy exemption at section 14(1) cannot apply to them. The TRCA has not claimed any other exemption for this information, therefore I will order them to be disclosed to the appellant.

[31] I will now consider whether section 14(1) of the *Act* applies to the information that I have found to be personal information.

⁶ See, for example, Order MO-2125.

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

[32] 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.

[33] 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.

[34] 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.

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

[36] 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.⁷ 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.

[37] 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.⁸

[38] 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)

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

⁸ Order P-239.

exemption applies.⁹

[39] 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.

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

[40] 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 17.¹⁰ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the TRCA's decision. If I am not satisfied, I may order further searches.

[41] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.¹¹ To be responsive, a record must be "reasonably related" to the request.¹²

[42] 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.¹³

[43] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.¹⁴

[44] 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.¹⁵

[45] In their representations, the TRCA submit that they conducted a reasonable search. The TRCA point out that they responded to the request literally as it was a straight forward request. They point out that they searched the Corporate Records database for the two specified addresses named in the request, which resulted in seven files in total for both addresses. They also point out that the staff involved in these files

⁹ Orders PO-2267 and PO-2733.

¹⁰ Orders P-85, P-221 and PO-1954-I.

¹¹ Orders P-624 and PO-2559.

¹² Order PO-2554.

¹³ Orders M-909, PO-2469 and PO-2592.

¹⁴ Order MO-2185.

¹⁵ Order MO-2246.

were asked to confirm if there may be any other records, whether paper or electronic including any relevant emails, personal notes or records on computers/drives, that were not in the files catalogued in the Corporate Records database. Further, the TRCA point out that, upon a further search, they discovered two additional files, specifically violation files, which were initially open files but now closed files.

[46] Although the appellant provided representations with numerous attachments, his representations did not address whether the TRCA conducted a reasonable search for records.

Analysis and findings

[47] Based on my review of the TRCA's representations and evidence, I find that the TRCA has conducted a reasonable search for responsive records. I find that the appellant has not provided me with a reasonable basis for concluding that additional records exist. As stated above, the *Act* does not require the TRCA to prove with absolute certainty that further records do not exist. In the circumstances, I am satisfied that the TRCA provided sufficient evidence to demonstrate that they made a reasonable effort to address the appellant's request and locate all records reasonably related to the request. Therefore, I uphold the TRCA's search for responsive records.

ORDER:

1. I uphold the TRCA's decision, in part. I order the TRCA 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 TRCA's copy of the order. To be clear, only the highlighted information should **not** be disclosed to the appellant.
2. I order that the TRCA make the disclosure referred to in paragraph 1 of this order by **September 22, 2017** but not before **September 15, 2017**.
3. I find that the TRCA conducted a reasonable search.
4. I reserve the right to require the TRCA to provide me with a copy of the information disclosed to the appellant.

Original Signed by: _____

Lan An
Adjudicator

August 17, 2017