

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3565

Appeal MA16-450

Niagara Peninsula Conservation Authority

February 22, 2018

Summary: The appellant made a request to the NPCA under the *Act* for records relating to an identified company. The NPCA issued an access decision and disclosed a number of records to the appellant. The appellant appealed the NPCA's decision claiming that additional records ought to exist. During mediation, the NPCA located another record and granted the appellant partial access to it, claiming that portions are exempt under the personal privacy exemption in section 14(1). In this order, the adjudicator upholds the NPCA's search as reasonable. However, she orders the NPCA to disclose the record to the appellant, in full, as it does not contain *personal information* and cannot be exempt under section 14(1).

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 2(1) (definition of *personal information*) and 17.

Orders and Investigation Reports Considered: MO-1194 and PO-2632

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Niagara Peninsula Conservation Authority (the NPCA) for access to the following records:

1. Procurement and/or tendering policy in place on October 17, 2013
2. Tendering documents related to a contract with [named company]
3. Signed and executed contract between the NPCA and [named company]

4. Competitive tender selection scorecard and justification for selecting [named company], and
5. Sole source justification/documentation signed by the Board of Directors.

[2] The NPCA issued a decision granting the appellant partial access to the records responsive to the request. Specifically, the NPCA granted the appellant complete access to the tendering and purchasing policies in place on October 17, 2013. However, the NPCA stated that it denied the appellant access to all other records under the mandatory exemption in section 10(1) (third party commercial information). In addition, with regard to the records responsive to Items 3-5 of the request, the NPCA stated that they are exempt under the discretionary exemption in section 6(1) (draft by-law/private bill or closed meeting).

[3] The appellant appealed the NPCA's decision to this office.

[4] During mediation, the appellant confirmed his interest in the records withheld from disclosure. Subsequently, the NPCA issued a revised access decision to the appellant advising,

On July 29, we granted access to both tendering and purchasing policies that were in place on October 17, 2013 (item #1 listed [in the appellant's request] above).

A search was conducted for items 2-5 and no records were found. A fulsome search was conducted on shared network storage, personal hard drive storage and email systems. After no records were found, I [the Freedom of Information and Privacy Coordinator] consulted with administrative and financial staff to search their files. I was then notified that no documents exist other than the Board of Directors Resolution. I have attached those documents for your convenience, and they are also available on our website as part of our Board of Directors agendas and minutes.

The appellant advised the mediator that he believes additional responsive records should exist. The appellant specifically stated that certain cheques ought to exist relating to the named company.

[5] The mediator relayed the appellant's concerns to the NPCA. The NPCA located a single cheque and notified an affected party to seek their views regarding disclosure of it under section 21 of the *Act*. The affected party did not consent to the disclosure of any information relating to them.

[6] The NPCA then issued a revised decision, granting the appellant partial access to the cheque. The NPCA withheld portions of the cheque under the mandatory personal privacy exemption in section 14(1) of the *Act*.

[7] The appellant confirmed his interest in pursuing access to the withheld portions of the record. Further, the appellant confirmed his belief that additional responsive records should exist.

[8] The appeal could not be resolved at mediation and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry into the issues under appeal. I began my inquiry by inviting the NPCA and affected party to submit representations in response to a Notice of Inquiry, which outlines the facts and issues in the appeal. The NPCA and the affected party submitted representations. In his representations, the affected party consented to the disclosure of his name on the front of the cheque, but did not consent to the disclosure of the other portion of the record at issue. The affected party submits that the information at issue on the back of the cheque contains his personal information and should not be disclosed. I note that the affected party identified other issues in his representations with respect to the appellant's request. However, these issues are not within the scope of this appeal and I will not address them further.

[9] I then sought and received representations from the appellant in response to the NPCA's representations, which were shared in accordance with *Practice Direction Number 7* of the IPC's *Code of Procedure*. I did not share the affected party's representations with the appellant due to confidentiality concerns. The appellant submitted representations.

[10] In the discussion that follows, I order the NPCA to disclose the information at issue because it does not contain the affected party's *personal information* as that term is defined in section 2(1). I uphold the NPCA's search as reasonable.

RECORD:

[11] The information at issue consists of the withheld portions of a cheque.

PRELIMINARY ISSUES

NPCA's decision regarding records responsive to Items 2-5 of the request

[12] In its original decision letter, the NPCA provided the appellant with copies of records responsive to Item 1 of his request. The NPCA then stated, "access to all other documents is denied as per section 10(1)... Furthermore, access to items 3-5, are denied under section 6." However, in its revised access decision, the NPCA advised the appellant that it could not locate any records responsive to Items 2-5 of the appellant's request. I asked the NPCA to address this discrepancy in my Notice of Inquiry.

[13] The NPCA advised that it did not locate any records responsive to Items 2-5 of the appellant's request. However, it initially concluded that the exemptions in sections 6(1) and 10(1) would protect any information responsive to Items 2-5 of the request,

and that it did not conduct a search for the records. I shared the NPCA's representations with the appellant, in full. He did not raise any concerns with the NPCA's explanation regarding its searches. I find, below, that the NPCA's searches for records responsive to the appellant's request were reasonable. However, I refer the NPCA to section 22(1) of the *Act* which states, in part,

Notice of Refusal to give access to a record or part under section 19 shall set out,

(a) **where there is no such record,**

(i) that there is no such record,

...

(b) **where there is such a record,**

(i) the specific provision of this Act under which access is refused,

(ii) the reason the provision applies to the record... [Emphasis added].

[14] Clearly, the *Act* requires an institution to provide notice of its refusal to grant access to a record or portion thereof *where there is such a record*. If an institution does *not* locate a record, the *Act* requires an institution to advise the requester that it did not locate any records responsive to the request. The NPCA should refer to its statutory obligations in the future and issue access decisions on records it locates rather than records that could potentially be responsive.

ISSUES:

- A. Does the record contain *personal information* as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Did the NPCA conduct a reasonable search for records?

DISCUSSION:

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

[15] 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. *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;

[16] 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

[17] 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

¹ Order 11.

dwelling and the contact information for the individual relates to that dwelling.

[18] To qualify as personal information, the information must be about the individual in a personal capacity. Generally, the IPC does not consider information associated with an individual in a professional, official or business capacity to be *about* the individual.² However, 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

[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] The NPCA states that it issued the cheque to the affected party personally rather than to his company at his request. The NPCA confirms that the affected party did not perform services for the NPCA in his own name, but in the name of his company. The NPCA states that the Board resolution authorizing the NPCA to obtain services from the affected party's company named the affected party personally. However, the NPCA states that the invoices were issued in the company's name.

[21] The affected party confirms that he does not object to the disclosure of his name on the front of the cheque. However, he submits that his signature at the back of the cheque is his personal information because it relates to him and the banking institution.

[22] The appellant did not address whether the information at issue contains *personal information* within the meaning of section 2(1).

[23] Based on my review of the information at issue and the circumstances of this appeal, I find that the record does not contain *personal information* within the meaning of section 2(1) of the *Act*. It is clear from the face of the record that the NPCA issued the cheque to the affected party for "Consulting Services". Therefore, the NPCA paid the affected party for his professional services, regardless of whether the original arrangement was with his company or himself. Given these circumstances, the information contained in the record relates to the affected party in a professional, business or official capacity and not in a personal capacity. Accordingly, I find that the record does not contain the affected party's *personal information* within the meaning of that term in section 2(1) of the *Act*.

[24] As stated above, the affected party consents to the disclosure of his name, but not his signature. In Order MO-1194, the adjudicator discussed the IPC's treatment of handwriting and signatures appearing in a number of different contexts:

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 (CA).

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.... In situations where identity is an issue, handwriting style has been found to qualify as personal information.... In my view, whether or not a signature or handwriting style is personal information is dependent on context and circumstances.

[25] The adjudicator in Order PO-2632 applied this context-driven approach to the circumstances before her. The adjudicator in Order PO-2632 found that signatures of corporate officers of Ontario Power Generation (OPG) would not reveal something that is inherently personal in nature. In addition, she found that disclosure of the signature of the former Minister of Energy, Science and Technology would not reveal something of an inherently personal nature. The adjudicator concluded that the signatures appeared in the 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, the adjudicator 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.

[26] I agree with the analysis in Order PO-2632 and apply it to the circumstances of this case.⁵ As in Order PO-2632, the signature is linked to the name of the affected party, who is the owner of the named company and performed professional consulting services for the NPCA. Given this context, I am satisfied that the affected party’s name and signature are not personal information as they do not reveal something of a personal nature about him. Accordingly, the affected party’s name and signature cannot be exempt from disclosure under the personal privacy exemption in section 14(1) and I will order the NPCA to disclose the record to the appellant, in full.

Issue B: Did the NPCA conduct a reasonable search for records?

[27] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution conducted a reasonable search for records as required by section 17.⁶ Where an adjudicator is satisfied that the search carried out was reasonable in the circumstances, the institution’s decision will be upheld. Otherwise, further searches may be ordered.

[28] 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 made a reasonable effort to identify and locate responsive records.⁷ 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

⁵ The approach in PO-2632 was also adopted in Order MO-3485.

⁶ Orders P-85, P-221 and PO-1954-I.

⁷ Orders P-624 and PO-2559.

reasonably related to the request.⁸

[29] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it made a reasonable effort to identify and locate all of the responsive records within its custody or control.⁹

[30] Although a requester will rarely be in a position to indicate precisely which records the institution did not identify, the requester must provide a reasonable basis for concluding that such records exist.¹⁰

[31] The NPCA submits that it conducted a reasonable and diligent search for additional responsive records, but did not locate any. The NPCA submits that its Communications Specialist conducted a fulsome computerized search that captured the entirety of the NPCA's electronic systems consisting of shared network storage, personal hard drive storage and email systems. The NPCA submits that, after no records were located, the Communications Specialist consulted with the NPCA's administrative and financial staff to search their files. The administrative and financial staff confirmed that no documents existed other than the Board of Directors resolution, which the NPCA disclosed to the appellant.

[32] The NPCA submits that the appellant altered the scope of his request during mediation to include cheques relating to the named company. The NPCA submits that the Communications Specialist conducted the same type of search as described above but failed to locate any responsive records. However, the Communications Specialist located a copy of the record from a bank's online banking system. The NPCA submits that no additional responsive records exist.

[33] The NPCA provided an affidavit sworn by the Communications Specialist that describes the searches he conducted.

[34] The appellant did not make submissions on the NPCA's search nor did he identify any additional responsive records that he believes ought to exist. Given these circumstances, I find that the appellant did not provide a reasonable basis for his claim that further responsive records exist.

[35] Based on my review of the NPCA's representations, I am satisfied that the individuals who carried out the searches (the Communications Specialist, the administrative and financial staff) are employees who would be expected to be knowledgeable in the subject matter of the request. Further, from my review of the representations and affidavit setting out the steps taken to locate responsive records, I am satisfied that the NPCA made a reasonable effort to identify and locate all of the responsive records.

[36] Therefore, I uphold the NPCA's search as reasonable.

⁸ Orders M-909, PO-2469 and PO-2592.

⁹ Order MO-2185.

¹⁰ Order MO-2246.

ORDER:

1. I order the NPCA to disclose the record, in full, to the appellant by **March 29, 2018** but not before **March 23, 2018**.
2. I uphold the NPCA's search as reasonable.
3. I reserve the right to require the NPCA to provide me with a copy of the information order to be disclosed.

Original Signed By: _____

Justine Wai
Adjudicator

February 22, 2018 _____