

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3571

Appeal MA16-460

Town of Richmond Hill

March 1, 2018

Summary: The Town of Richmond Hill (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for information about the purchase of a laneway from the town. The requesters narrowed their request at adjudication to information that reveals who bought the laneway, for what price, and whether the requesters' right of way was included in the sale.

In this order, the adjudicator finds that the responsive registered deeds already disclosed to the requesters reveal who bought the lane and for what price. The adjudicator also finds that the Agreement of Purchase and Sale does not include the requesters' personal information, and that this addresses the sole remaining issue in this appeal.

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

OVERVIEW:

[1] The Town of Richmond Hill (the town) received the following joint request from two requesters under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*):

All information on North-South laneway relating to legal file [#].

[2] The town issued a decision to the first requester only granting partial access to

the records responsive to the request. Access to the withheld information was denied pursuant to sections 6(1)(b) (closed meeting), 7(1) (advice or recommendations), 10(1) (third party information), 11 (economic and other interests), 12 (solicitor-client privilege) and 14(1) (personal privacy) of the *Act*.

[3] The first requester appealed the decision of the town.¹

[4] During mediation, the mediator raised the possible application of sections 38(a) and 38(b) with the town, as the personal information withheld in some of the records may relate to the requesters. The town agreed and sections 38(a) and 38(b) were added.

[5] The town subsequently issued a revised decision to the first requester granting further access to records previously withheld.

[6] The town then issued a second revised decision to the first requester granting further access to responsive records previously withheld due to consents obtained from some affected persons. The town continued to deny access to the remaining information pursuant to sections 6(1)(b), 10(1), 11, 12, 14(1), 38(a) and 38(b) of the *Act*. The town also noted that certain information was withheld as it was deemed non-responsive to the request.

[7] The second requester provided the mediator with his consent to the disclosure of his information to the appellant by the town.

[8] The first requester advised the mediator that both requesters wanted to pursue access to the following records withheld by the town, some of which were deemed to be non-responsive to the request:

Records 60, 67, 80, 85, 87, 91, 97, 103, 104, 114, 116, 117, 121, 134-139, 142, 146, 147, 160, 161, 163, 164, 218-244, 249-290, 322, 326, 329, and 331.

[9] As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry.

[10] I sent a Notice of Inquiry to the town initially on all of the issues in this appeal.

[11] I also sent a Notice of Inquiry to the parties whose third party information may

¹ There were two requesters in this appeal, as set out in the Request form. The town only sent decision letters to one of the requesters (identified as the first requester in this order). Therefore, only this requester was in a position to appeal the town's decision. The second requester could not appeal the town's decision as he was not included in the decision letter. As there were two requesters in this appeal, and both authorized each other to act as appellants in this appeal, I will consider both requesters as the appellants.

be in the records and another Notice of Inquiry to the affected persons whose personal information may be in the records.

[12] In response, one party whose third party information was contained in Record 136 consented to disclosure of its information.

[13] Most of the affected persons provided representations objecting to the disclosure of their personal information in the records. These representations were withheld from the appellants due to confidentiality concerns.

[14] In response to the Notice of Inquiry, the town agreed to the disclosure of certain publicly available registered property documents, consisting of deeds or transfers, a mortgage, a survivor application, and affidavits of residence.

[15] The town then issued a supplementary decision letter dated February 2, 2017 to the first requester disclosing Records 136, 218 to 244 and 250 to 289. As well, it had disclosed Record 103, as the third party whose information is in Record 103 had consented to disclosure of this record. Therefore, these records are no longer at issue.

[16] The February 2, 2017 supplementary decision letter included disclosure of all of the responsive publicly registered documents on title for the laneway, including the deed or transfer documents for the laneway.

[17] In response to the non-confidential portions of the town's representations, both appellants confirmed for this office that they are co-requesters, they share information about this appeal with each other and that they speak on behalf of each other in this appeal.

[18] The only written submission I received was from the second requester, the contents of which the first requester adopted.

[19] The second requester's written submission, which was adopted by the first requester, significantly narrowed the scope of the request to receiving access to information that reveals who bought portions of the laneway, what price did the purchasers pay, and whether the appellants' right of way was included in the sale. Specifically, this submission read:

I am appeal MA16-460. File No. [#].

I have not received what I want to know.

1. Who bought the lane
2. For what price?
3. Is my Right of Way included in the sale?

[20] The laneway at issue in this appeal abutted the residential properties of several of the affected persons. The town sold portions of the laneway in 2016 to a number of the affected persons and has disclosed the publicly available registered deeds for the transfer of the laneway to these purchasers.

[21] The deeds² for the sale of the portions of the laneway to the affected persons who were purchasers are found among the registered deeds disclosed by the town at Records 250 to 289 and reveal who bought the laneway in 2016 and for what price. These deeds are included in the town's disclosure of February 2, 2017 and respond to the appellants' first two questions as to who bought the laneway and for what price.

[22] The remaining question, which is the only issue to be adjudicated upon in this appeal, is whether the appellants' personal information, namely their right of way, is included in the sale. This information can be inferred from the agreement of purchase and sale entered into between the town and the affected person purchasers, found at Record 326. This record sets out the terms of the sale of the portions of the laneway, which is the subject matter of the request.

[23] In this order, I find that Record 326 does not include the appellants' personal information, and that this addresses the appellants' final question as to whether their "Right of Way [is] included in the sale". Therefore, I uphold the town's decision to withhold access to this record.

RECORDS:

[24] At issue is Record 326, which is the agreement of purchase and sale entered into between the town and the individuals who purchased portions of the laneway.

[25] The town had originally applied the exemptions in sections 10(1), 11³ and 14(1) to Record 326. It has withdrawn its section 10(1) claim for this record.⁴

[26] Furthermore, the responsiveness of certain records is no longer at issue, as the responsiveness of Record 326 to the original request was not an issue in this appeal.

[27] Therefore, only the mandatory personal privacy exemption in section 14(1) and the discretionary economic and other interests exemption at section 11(c) and (d) as they apply to Record 326 are at issue.

[28] As the personal privacy exemption in section 14(1) applies to exempt personal information of other individuals, I will first determine whether Record 326 contains

² Also known as transfers.

³ The town only claims the application of sections 11(c) and (d) for Record 326.

⁴ Sections 6(1)(b) and 12 have not been claimed for Record 326

personal information, and, if so, to whom it relates.

DISCUSSION:

The sole issue is whether Record 326 contains “personal information” as defined in section 2(1) and, if so, to whom it relates.

[29] 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. That term 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;

[30] 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.⁵

[31] 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.⁶

[32] 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.⁷

[33] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁸

[34] The town provided representations on the records for which it had claimed the application of section 14(1). It states that these records contain information relating to financial transactions in which individuals have been involved, the address of these individuals, correspondence sent to an institution by individuals 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 and the individuals’ names which appears with other personal information relating to these individuals or where the disclosure of the names would reveal other personal information about the individuals.

[35] The town further states that the North-South Laneway file constituted the sale of the laneway to the property owners who had properties attached to the laneway. It states that it is reasonable to expect that the release of these records it has applied section 14(1) to would provide enough information for someone to determine the identities of the individuals whose personal information is contained within the records.

[36] The affected persons did not directly address this issue.

Analysis/Findings

[37] Several orders have found that the name and address of an individual property owner together with the purchase price paid for a residential property is personal information as they relate to a financial transaction.⁹

[38] In this appeal, the affected persons who are named in the agreement of

⁵ Order 11.

⁶ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁷ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁸ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁹ See Orders MO-1392, PO-1786-I and MO-2053.

purchase of sale at Record 326, purchased the portion of the laneway that abutted their residential property in their personal capacity. Therefore, I find that Record 326 contains the personal information of the affected persons who are purchasers of the laneway as it reveals their financial transactions, in accordance with paragraph (b) of the definition of personal information in section 2(1).

[39] Record 326 does not contain the personal information of the appellants, including any reference to their right of way.

[40] During adjudication the appellants narrowed their request as set out above, and also confirmed that they are only interested in Record 326 if it concerns them (i.e.: their right of way). My finding that the appellants' personal information is not contained in Record 326 means that the appellants are no longer seeking access to this record, which is the sole record remaining at issue in this appeal. Because of this finding, it is not necessary for me to determine whether the sections 11 or 14(1) exemptions apply to this record, and I dismiss this appeal.

ORDER:

I uphold the town's decision and dismiss the appeal.

Original Signed by: _____
Diane Smith
Adjudicator

_____ March 1, 2018