

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3602

Appeal MA16-517

City of Hamilton

April 30, 2018

Summary: The city received a request relating to a specified property and building permit. The city disclosed some of the records, and withheld two records, in part, relying upon the mandatory personal privacy exemption at section 14(1) of the *Act*. In this order, the adjudicator upholds the city's decision, in part. She orders the city to disclose part of one record.

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: Order MO-3215.

BACKGROUND:

[1] The City of Hamilton (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The request related to a specified property and building permit.

[2] The city decided to disclose the responsive records, in full, except for two records (records 77 and 78). The city withheld these records, in part, on the basis that they contained the personal information of an identifiable individual that is exempt from disclosure pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act*. In addition, the city withheld some information in Record 77 that was not responsive.

[3] The requester, now the appellant, filed an appeal of the city's decision.

[4] During the course of mediation, the city confirmed that an error was made in its decision and it was Record 78 that contained information that was not responsive to the request, not Record 77 as mentioned in the decision.

[5] The appellant continues to seek full access to the records including the information that was severed pursuant to section 14(1) of the *Act* and the information deemed non-responsive.

[6] As no further mediation was possible, this appeal was moved to the adjudication stage where an adjudicator conducts an inquiry under the *Act*.

[7] I invited the parties to submit representations on the issues in this appeal. I received representations from the appellant and the city but not from the affected party. In accordance with this office's *Code of Procedure* and *Practice Direction Number 7*, a non-confidential copy of the city's representations was shared with the appellant.

[8] In this order, I uphold the city's decision, in part. I order the city to disclose Record 78 with the exception of the portion I find to be not responsive to the request.

RECORDS:

[9] The records at issue consist of inspection notes, specifically Records 77 and 78.

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. Are any portions of the records non-responsive to the request?

DISCUSSION:

A: Do the records 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 records contains "personal information" and, if so, to whom it relates.

[11] Paragraphs 2(1)(d) and (g) of the *Act* states:

“personal information” means recorded information about an identifiable individual, including,

(d) the address, telephone number, fingerprints or blood type of the individual,

(g) the views or opinions of another individual about the individual, and

[12] 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.

[13] 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.¹

[14] 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.²

[15] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

[16] The city submits that the records at issue contain personal information of identifiable individuals. It submits that Record 77 contains personal information that falls under paragraph (g) of the definition of that term in section 2(1). Record 78 contains personal information that falls under paragraph (d) of the definition of that term in section 2(1).

¹ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

² Orders P-1409, R-980015, PO-2225 and MO-2344.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[17] The appellant submits that the records at issue do not contain personal information. He submits that Record 77 contains the personal information of his sister. He points out that she has consented to the release of her personal information to him, and, as such, there is no invasion of personal privacy.

[18] With respect to Record 78, the appellant submits that the phone number in question is of the affected party's contractor/site representative. He also points out that this phone number is the number in which he or his sister contacted the named contractor/site representative on. He, therefore, submits that this phone number is not the personal information of the contractor/site representative but a business phone number.

[19] Based on my review of the records, I am satisfied that Record 77 contains the personal information of an identifiable individual as contemplated by paragraph (g) of the definition of that term in section 2(1) of the *Act*.

[20] With respect to Record 78, I am satisfied that the phone number in question is not the personal information of the named contractor/site representative. Record 78 indicates that the inspector received a phone call from the named contractor/site representative on this number. As well, I accept the appellant's evidence that this is the number in which the named contractor/site representative provided to him or his sister to contact him. As this does not contain personal information, I will order this information to be disclosed.

[21] In sum, I find that Record 77 contains personal information of an identifiable individual. As such, I must consider whether section 14(1) applies to exempt the personal information in Record 77.

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). 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.⁴ Section 14(4) does not apply in the circumstances of this appeal and the appellant has not raised the application of section 16.

[27] The city submits that the presumption under section 14(3)(b) applies to the records. It submits that the City of Hamilton Fire Inspector compiled the records as part of an investigation into a possible violation of law.

Analysis and findings

[28] I note that the information in Record 77 does not fit within the exceptions set out in sections 14(1)(a) to (e) nor section 14(4) of the *Act*. As such, I will turn to discuss whether any of the presumptions under section 14(3) or any of the section 14(2) factors apply to the personal information at issue.

[29] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁵ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁶

[30] Section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.⁷

[31] The presumption can apply to a variety of investigations, including those relating to by-law enforcement⁸ and violations of environmental laws or occupational health and safety laws.⁹

[32] On my review of Record 77 and the representations of the parties, I am satisfied that the presumption in section 14(3)(b) applies to the personal information contained in that record. I am satisfied that the personal information was compiled by the city in

⁴ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

⁵ Orders P-242 and MO-2235.

⁶ Orders MO-2213, PO-1849 and PO-2608.

⁷ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

⁸ Order MO-2147.

⁹ Orders PO-1706 and PO-2716.

the course of its investigation of a possible violation of law (a possible by-law infraction). This information therefore fits within the presumption in section 14(3)(b). Accordingly, I find that the disclosure of the personal information contained in Record 77 is presumed to constitute an unjustified invasion of the personal privacy of an identifiable individual under section 14(3)(b) of the *Act*.

[33] Although the appellant provided representations, his representations did not address this issue. Given the application of the presumption in section 14(3)(b), and the fact that no factors favouring disclosure in section 14(2) were established, I am satisfied that the disclosure of the individual's personal information would constitute an unjustified invasion of his/her personal privacy. Accordingly, I find that this personal information is exempt from disclosure under section 14(1) of the *Act*.

C: Are any portions of the records non-responsive to the request?

[34] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

- (1) A person seeking access to a record shall,
 - (a) make a request in writing to the institution that the person believes has custody or control of the record;
 - (b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

- (2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[35] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹⁰

[36] To be considered responsive to the request, records must "reasonably relate" to the request.¹¹

[37] The city submits that Record 78 contains information about another specified property. As such, the city submits that this information is not responsive to the

¹⁰ Orders P-134 and P-880.

¹¹ Orders P-880 and PO-2661.

request.

[38] On my review of Record 78, I find that a portion of this record is not responsive to the request. The appellant's request relates to a specified property. The portion in question relates to a different specified property than the one stated in the request. I note that the appellant submits that he and his sister are also the owners of this other specified property. Regardless of ownership, the appellant's request specified the address for the building permit. The property and information relating to a different address does not reasonably relate to the appellant's request.

ORDER:

1. I uphold the city's decision, in part. I order the city 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 city's copy of the order. To be clear, only the highlighted information should **not** be disclosed to the appellant.
2. I order that the city make the disclosure referred to in paragraph 1 of this order by **June 5, 2018** but not before **May 29, 2018**.
3. I reserve the right to require the city to provide me with a copy of the information disclosed to the appellant.

Original Signed by: _____
Lan An
Adjudicator

_____ April 30, 2018