

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-3647

Appeal MA17-255

Corporation of the Township of Muskoka Lakes

August 14, 2018

**Summary:** A request was made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Corporation of the Township of Muskoka Lakes for various records including records relating to an affected party. Following notification to the affected party, the township issued an access decision withholding portions of the records citing sections 12 (solicitor client privilege), 14 (personal privacy), 6(1)(b) (closed meeting) of the *Act* and identifying portions of the records as not responsive to the request. The requester did not appeal this decision. The affected party appealed the township's decision taking the position that the portion of the records that the township decided to disclose included his personal information and that the requester's request was vexatious under section 20.1 of the *Act*. In this order, the adjudicator finds that the portion of the records the township decided to disclose does not contain the appellant's personal information. In addition, the adjudicator finds that the affected party is not entitled to raise the frivolous or vexatious provision in section 20.1. The appeal is dismissed.

**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 20.1 (frivolous request).

**Orders and Investigation Reports Considered:** Orders PO-2050 and PO-3738-I.

### BACKGROUND:

[1] A request was made to the Township of Muskoka Lakes (the township) pursuant to the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The

request was for various records, including records relating to an affected party.

[2] The township notified the affected party with respect to disclosure of records 1, 4, 7, 10, 12, 13, 18-24, 26-33, which pertained to items #2, 3 and 6 of the request. The affected party objected to disclosure, on the basis that the request was vexatious. Following consideration of the affected party's representation, the township issued its decision, indicating it would be granting partial access, citing sections 12 (solicitor-client privilege), 14 (personal privacy), 6(1)(b) (closed meeting) and non-responsive to the request as the basis to withhold some information.

[3] The requester did not appeal the township's decision to withhold information. However, the affected party (now the appellant) appealed the township's access decision.

[4] During the mediation stage, it was clarified that the township's decision regarding these records is full access to records 7, 26, 30, 32; partial access to records 1, 4, 10, 12-13, 18-20, 22-24, 27, 29, 31, 33; and full denial of access with regard to records 21 and 28. During mediation the appellant advised that he objects to disclosure of any information, on the basis that the request is vexatious under section 20.1 of the *Act* and that disclosure would constitute an unjustified invasion of personal privacy under section 14 of the *Act*.

[5] Mediation did not resolve the appeal and it was transferred to the adjudication stage of the appeal process where an adjudicator conducts an inquiry under the *Act*. As the adjudicator, I invited representations from the appellant. In the Notice of Inquiry, I noted the preliminary issue being whether the appellant was entitled to rely on section 20.1 (frivolous request) of the *Act*. The appellant was also specifically asked to address Order PO-3738-I where Adjudicator Loukidelis confirmed that the frivolous or vexatious provisions are not intended to be available to outside parties objecting to disclosure of records. After a review of the appellant's representations, no other party was invited to submit representations.

[6] In this order, I find that the appellant is not entitled to rely on the frivolous or vexatious provisions in the *Act* and that the information in dispute is not personal information and I, therefore, dismiss the appeal.

## **RECORDS:**

[7] The records at issue are emails including records 1, 4, 7, 10, 12, 13, 18, 19, 20, 22, 23, 24, 26, 27, 29, 30, 31, 32, 33.

## **ISSUES:**

- A. Is the appellant entitled to invoke the frivolous or vexatious provisions in the *Act* when the head of an institution does not?
- B. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

## **DISCUSSION:**

### **A: Is the appellant entitled to invoke the frivolous or vexatious provisions in the *Act* when the head of an institution does not?**

[8] The appellant provided representations in this appeal which mostly focused on why the request was vexatious. The appellant failed to address the preliminary issue, being whether or not he is entitled to rely on section 4(1)(b) and 20.1 of the *Act* to support his position that the request is vexatious when the township has not made this claim.

[9] As noted, I provided the appellant with a copy of Order PO-3738-I during the inquiry of this appeal. In that order, Adjudicator Loukidelis confirmed that the frivolous and vexatious provisions in the *Act* exist "to protect the interests of a government institution in administering the access scheme, not the interests of other parties outside government." The appellant was asked specifically to comment on this order in relation to his attempt to rely on the frivolous and vexatious provisions of the *Act*.

[10] In his representations, the appellant referred to Order PO-3738-I. However, the appellant simply noted that he found very little similarity between Order PO-3738-I and this appeal and that he agreed that the request in that appeal was not in bad faith, vexatious or frivolous. However, as noted in the Notice of Inquiry, the appellant was invited to speak to whether he was entitled to rely on the frivolous or vexatious provisions in the *Act* when the township did not raise this issue. The appellant does not address this issue in his representations.

[11] In Order PO-3738-I, the adjudicator noted that the appellant conceded that it could not itself claim the frivolous or vexatious provision and instead submitted a concern with the institution's exercise of discretion regarding same. In that appeal, the appellant argued that the institution's exercise of discretion was reviewable. The adjudicator referred to Order PO-2050 where Adjudicator Cropley stated:

... [P]revious orders of this office have consistently held that the application of the frivolous and vexatious provisions is only relevant to the use of the "processes" of the *Act* (see, for example: Order MO-1488). Essentially, once it is determined that a request has been made for the purpose of obtaining access (or for legitimate reasons), this purpose is not

contradicted by the possibility that the requester may also intend to use the documents against the institution (or any other party) (see: Orders MO-1269, P-1534 and MO-1488, for example). In my view, the frivolous and vexatious provisions of the *Act* were enacted to provide institutions with a tool to enable them to address abuses of the processes of the *Act*. I cannot see how such abuses would impact on affected persons in a way that would trigger the application of this provision.

...

Moreover, the frivolous and vexatious provisions were not intended to be used by institutions or individuals to prevent disclosure of records that would otherwise be available under the *Act* because these parties do not like the nature of the request or the person requesting the information. As I noted above, the focus of the affected person's concerns is the use to which the requester may put the records if they are disclosed. In my view, this concern is more appropriately dealt with under the "harms" provisions of various exemptions set out in the *Act*.

[12] I agree with the conclusions of the adjudicators who have previously considered the issue before me. The frivolous or vexatious provisions are not intended to be available to outside parties objecting to disclosure of records that would be otherwise subject to the *Act* simply because they are suspicious of the requester's motives or the nature of the request.<sup>1</sup> As Adjudicator Loukidelis noted, this office has consistently held that the identity of a requester is generally not relevant to the decision-making process of the head. Further, I agree with Adjudicator Loukidelis that if the Legislature intended for the frivolous or vexatious provisions to be available for non-government parties to invoke, it would have stated so through express language similar to that used in the third party information and personal privacy exemptions in the *Act*.

[13] In addition, I am not persuaded that there is any basis upon which to review the township's decision not to determine the request frivolous or vexatious based on the principles associated with exercise of discretion. No evidence was offered to persuade me that the township considered irrelevant factors or that it otherwise exercised its discretion improperly. In the circumstances, therefore, I find that the appellant is neither entitled to claim that the request is frivolous or vexatious himself; nor is he entitled to substitute his own view of the request for that of the head.

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

[14] At mediation, the appellant also took the position that disclosure of the information that the township agreed to disclose would constitute an unjustified

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<sup>1</sup> Order PO-2688.

invasion of his personal privacy. The appellant was therefore invited to provide comment on whether the information that he seeks to be withheld constitutes personal information under the *Act*.<sup>2</sup>

“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

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<sup>2</sup> In order for the personal privacy exemption under section 14 to apply, the information at issue must be “personal information”.

personal information.<sup>3</sup>

[16] Sections (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.<sup>4</sup>

[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.<sup>5</sup>

[19] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>6</sup>

### ***Analysis and finding***

[20] In his representations, the appellant did not address whether the information at issue constitutes "personal information" as defined by the *Act*. Instead, he refers only to the factor at section 14(2)(i) (unfair damage to reputation) and submits that the use of the information in bad faith would be harmful and could erode public confidence in the effective governance of the institution.

[21] However, the factor at section 14(2)(i) only applies to information that is considered personal information as defined above. In the township's access decision, it withheld information in the records citing section 14 (personal privacy) and this was not appealed by the requester. Accordingly, those portions of the records withheld by the township pursuant to section 14 are not at issue before me.

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<sup>3</sup> Order 11.

<sup>4</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>6</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[22] I have reviewed the relevant portions of the records, which the appellant objects to the township disclosing, and I find that these portions do not include the personal information of the appellant or any individual as defined in section 2(1) of the *Act*. As such, I will not consider whether section 14(1) applies to exempt any personal information in the portion of the records at dispute in this appeal.

**ORDER:**

I uphold the township's decision and dismiss the appeal. The township is ordered to disclose the information at issue to the requester by **September 19, 2018** but not before **September 14, 2018**.

Original Signed by: \_\_\_\_\_

Alec Fadel  
Adjudicator

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August 14, 2018