

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3673

Appeals MA18-4, MA18-5, MA18-6, MA18-7

City of Hamilton

October 16, 2018

Summary: The City of Hamilton (the city) received four requests under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to specific taxi-cab license sale prices, the sale dates of the taxi-cabs licenses, and the taxi-cab license numbers associated with the sales. The city denied access, citing the mandatory exemptions in sections 10(1) (third party information) and 14(1) (personal privacy). This order finds the information at issue in the records is not exempt under these exemptions and orders disclosure of this information.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 2(2.1), and 2(2.2) (definition of "personal information"), and 10(1).

Orders Considered: Orders MO-1858, MO-1862, and PO-2225.

OVERVIEW:

[1] The City of Hamilton (the city) received four requests under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to the following information:

...copy of sale deed of taxi-cab License Plate [four specific numbers]
executed in 2017.

[2] The city issued a decision in each appeal indicating that it identified a one-page

record titled "Transfer of Taxi-Cab Plate(s)." The city denied access to the responsive records pursuant to the mandatory exemptions in sections 10(1) (third party information) and 14(1) (personal information) of the *Act*.

[3] The requester (now the appellant), appealed the city's decisions.

[4] During mediation, the mediator contacted the sellers and buyers of the taxi-cab licenses (the affected persons) for the purpose of obtaining consent to disclose the information to the appellant. However, consent was not obtained.

[5] As mediation did not resolve the issues in these appeals, the files proceeded to adjudication, where an adjudicator conducts an inquiry.

[6] Representations were sought and exchanged between the parties in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*.

[7] In his representations, the appellant states that he is only interested in receiving access to the taxi-cab license sale prices, the sale dates of the taxi-cab licenses, and the taxi-cab license numbers associated with the sale.

[8] The affected persons that responded to the Notice of Inquiry objected to disclosure of their information in the records.

[9] In this order, I order the city to disclose the taxi-cab license sale prices, the sale dates of the taxi-cab licenses, and the taxi-cab license numbers associated with the sales in the records to the appellant.

RECORD:

[10] The record at issue in each appeal consists of a one-page record titled "Transfer of Taxi-Cab Plate(s)". The only information at issue in each record is the taxi-cab license sale price, the sale date of the taxi-cab license, and the taxi-cab license numbers associated with the sale.

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 third party information exemption at section 10(1) apply to the record?

DISCUSSION:

A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[11] The city claim that the records are exempt from disclosure because the mandatory personal privacy exemption in section 14(1) applies.

[12] 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;

[13] 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

[14] 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.

[15] 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.²

[16] 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

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[18] The city states that each record contains the addresses and telephone numbers of two identifiable individuals, as well as information relating to their financial transactions. It further states that the records do not contain the personal information of the appellant.

[19] The appellant relies on section 2(2.1) noted above and also relies on the findings in Order MO-1862, where the City of London refused to disclose the name of a taxi-cab license holder. He points out that in the decision directing the City of London to disclose the information, the adjudicator relied on the findings in Order MO-1858, as follows:

...I find that the taxi-cab owner is similarly engaged in a profit motivated business activity, as opposed to an activity within his or her personal sphere. The holder of a taxi-cab license has also made a business

¹ Order 11.

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 (C.A.).

arrangement in order to realize income and/or capital appreciation in the asset, the license that he or she owns. Again, income and expenses incurred in the operation of that license fall within the provisions of the *Income Tax Act* as well. I find that, for the purposes of the first part of the test set forth in Order PO-2225, the taxi-cab license holder is carrying on a business activity.

[20] One affected person provided representations on this issue. In their representations, they state that the record at issue in the appeal associated with them contains details of their financial transactions.

Analysis/Findings

[21] The records contain the information of the affected persons and not that of the appellant.

[22] The information at issue in each record consists of the taxi-cabs license sale prices, the sale dates of the taxi-cabs licenses, and the taxi-cab license numbers associated with the sales. It is questionable whether the individuals are identifiable from this information, although I make no finding on that from the representations of the parties. Regardless, I find that this information is not personal information but information associated with the affected persons in their business capacity.

[23] I agree with the findings in Order MO-1862, where the adjudicator found that the holding of a taxi-cab license does not qualify as information that is inherently personal for the purposes of the approach set out in Order PO-2225. In Order PO-2225, Assistant Commissioner Tom Mitchinson found that in determining whether information is personal information:

...the first question to ask in a case such as this is: "in what context do the names of the individuals appear"? Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? ...

The analysis does not end here. I must go on to ask: "is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual"? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[24] In these appeals, in answer to the first question, I find that the taxi-cab license sale prices, the sale dates of the taxi-cabs licenses, and the taxi-cab license numbers associated with the sales, which is the information at issue, appear in the records in the business sphere. I agree with the findings in Order MO-1858, that:

...the taxi-cab owner is ...engaged in a profit motivated business activity, as opposed to an activity within his or her personal sphere. The holder of a taxi-cab license has also made a business arrangement in order to realize income and/or capital appreciation in the asset, the license that he or she owns...

[25] In answer to the second question, I find that there is nothing about the particular information at issue that, if disclosed, would reveal something of a personal nature about the taxi-cab owners.

[26] In making this finding about the second question, I rely on the findings in Order MO-1862. In that order, the City of London suggested that disclosure of the licence holder's name "may" reveal something of a personal nature about that individual, in particular, information about their personal financial circumstances. The adjudicator found that the city had failed to provide reasonable evidence in support of its position.

[27] In Order MO-1862, the adjudicator found that the holder of the licence would be in the best position to present this argument about disclosure revealing their personal financial circumstances and they had chosen not to do so. Secondly, he found that while there may be a "private market" for the sale or lease of taxi-cab licenses, the adjudicator found it did not necessarily follow that someone with knowledge of an owner's name would gain meaningful insight into that individual's personal financial information. Thirdly, he found that if ownership of a taxi-cab licence is by its nature a business venture (as he determined above under the first part of the test), he had not been provided with evidence or argument to support a finding that the holding of that licence would allow the information to "cross-over" into the personal realm.

[28] Similarly, in the circumstances of this appeal, I find that someone with knowledge of the taxi-cab license numbers, taxi-cab license sale prices and the dates of sales would not gain meaningful insight into the affected persons' personal financial information.

[29] As I have found that the information at issue, the taxi-cab license sale prices, the sale dates of the taxi-cabs licenses, and the taxi-cab license numbers associated with the sales, is not personal information, the mandatory personal privacy exemption in section 14(1) cannot apply to it.

[30] I will now consider whether the mandatory third party information exemption applies to the information at issue in the records.

B. Does the mandatory third party information exemption at section 10(1) apply to the record?

[31] Section 10(1) states:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[32] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.⁵ Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.⁶

[33] For section 10(1) to apply, the institution and/or the third party must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; and
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and
3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

Part 1: type of information

[34] Concerning this exemption, the city describes the records as including the

⁵ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).

⁶ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

following information:

...the name of a transferor and transferee, a taxi-cab plate number, information about whether or not the taxi-cab transferor and taxi-cab transferee are on the city's priority list; whether or not there is an existing lease; a stamp indicating license fees paid to the city; method of payment...; the signature of the transferor; and, whether or not the lessee has been given 15 days written notice of the termination of the lease.

[35] The city merely states that it has classified the information in the records as business information.

[36] The appellant states that the city has not met any of the three parts of the test.

[37] The affected person that provided representations did not provide representations on this exemption, other than to say that the information was supplied in confidence.

Analysis/Findings re part 1

[38] Concerning part 1 of the test, the information at issue appears to be commercial information related to the sale of the taxi-cab licenses. This type of information listed in section 10(1) has been discussed in prior orders:

Commercial information is information that relates solely to the buying, selling or exchange of merchandise or services. This term can apply to both profit-making enterprises and non-profit organizations, and has equal application to both large and small enterprises.⁷ The fact that a record might have monetary value or potential monetary value does not necessarily mean that the record itself contains commercial information.⁸

[39] Therefore, I find that part 1 of the test under section 10(1) has been met.

Part 2: supplied in confidence

[40] The city did not provide representations on part 2 of the test under section 10(1). As noted above, the one affected person that did provide representations in this appeal merely stated that the information was supplied in confidence.

[41] Concerning part 2 of the test, whether the information was supplied in confidence, the requirement that the information was "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third

⁷ Order PO-2010.

⁸ Order P-1621.

parties.⁹

[42] Information may qualify as “supplied” if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.¹⁰

[43] In order to satisfy the “in confidence” component of part two, the parties resisting disclosure must establish that the supplier of the information had a reasonable expectation of confidentiality, implicit or explicit, at the time the information was provided. This expectation must have an objective basis.¹¹

[44] In determining whether an expectation of confidentiality is based on reasonable and objective grounds, all the circumstances are considered, including whether the information was:

- communicated to the institution on the basis that it was confidential and that it was to be kept confidential
- treated consistently by the third party in a manner that indicates a concern for confidentiality
- not otherwise disclosed or available from sources to which the public has access
- prepared for a purpose that would not entail disclosure¹²

Analysis/Findings re part 2

[45] Based on my review of the records, I cannot find that the information was supplied to the city by the affected persons in confidence. The record in each appeal is a form created by the city that has some details about the sale of the taxi-cab licenses. The records do not reveal that this information:

- was communicated to the city on the basis that it was confidential and that it was to be kept confidential, and
- not otherwise disclosed or available from sources to which the public has access,
- prepared for a purpose that would not entail disclosure.

[46] I find that part 2 of the test has not been met for the information at issue in the

⁹ Order MO-1706.

¹⁰ Orders PO-2020 and PO-2043.

¹¹ Order PO-2020.

¹² Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC); 298 DLR (4th) 134; 88 Admin LR (4th) 68; 241 OAC 346.

records. For the sake of completeness, I will also consider whether part 3 of the test has been met.

Part 3: harms

[47] The city did not provide representations on part 3 of the test under section 10(1). The one affected person that did provide representations in this appeal did not provide representations on part 3 of the test under section 10(1).

[48] The party resisting disclosure must provide evidence about the potential for harm. It must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.¹³

[49] The failure of a party resisting disclosure to provide sufficient evidence will not necessarily defeat the claim for exemption where harm can be inferred from the surrounding circumstances. However, parties should not assume that the harms under section 10(1) are self-evident or can be proven simply by repeating the description of harms in the *Act*.¹⁴

Analysis/Findings re part 3

[50] The city merely stated that the records contain business information. Taking into account the contents of the records, I do not have sufficient evidence to find that disclosure of the information at issue could reasonably be expected to cause the harms set out in section 10(1).

[51] I find that part 3 of the three-part test under section 10(1) has not been met and that the information at issue in the records is not exempt under section 10(1).

[52] The city has not claimed the application of any discretionary exemptions to the information at issue in the records. As the mandatory exemptions claimed by the city do not apply and as no other mandatory exemptions apply, I will order this information disclosed.

ORDER:

I order the city to disclose the taxi-cab license sale prices, the sale dates of the taxi-cabs licenses, and the taxi-cab license numbers associated with the sales in the records to the appellant by **November 22, 2018** but not before **November 19, 2018**.

¹³ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

¹⁴ Order PO-2435.

Original Signed by: _____
Diane Smith
Adjudicator

October 16, 2018 _____