Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-3686

Appeal MA18-189

City of Toronto

November 14, 2018

Summary: The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*) for access to information relating to complaints made regarding a specific apartment building. The city located the responsive records and provided the appellant with partial access to them. The city denied access to the information in the records that identified the complainants, applying the mandatory personal privacy exemption in section 14(1).

The appellant appealed the city's decision to apply section 14(1) to the information that identified the complainants. The appellant also claimed that the city's search for responsive records and its preparation fee for severing the records was unreasonable.

In this order, the adjudicator upholds the city's decision that the information that identifies the complainants is exempt under section 14(1). She also find that the city's search for responsive records was reasonable and further finds that the city's $65.00 preparation fee for severing the records was reasonable.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, paragraphs (d) and (h) of section 2(1) (definition of "personal information"), sections 14(1), 14(1)(c), 14(3)(b), 17(1) and 45(1)(b).

OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to the following records:

> All information requested pertains to: [a named address] from Toronto Building [Services (TBS)] - all permits and building code violations from Municipal Licensing & Standards [MLS] – infractions/violations/investigations from [Toronto] Fire Services [TFS]– infractions/violations/investigations…[dated from January 1, 2014 to January 31, 2018].

[2] The city issued a decision granting full access to records located by staff of TBS and granting access in part to records located by staff of MLS and TFS. Access to the withheld information was denied pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*. The city further stated that in accordance with TFS' Routine Disclosure Policy, access was denied to pages 4 through 8 of the records obtained from TFS. Some information was also withheld on the basis that it was non-responsive to the request.

[3] The city subsequently conducted a follow-up search at the request of the requester and located additional records. The city granted access in full to additional records in a subsequent decision letter.

[4] The city then issued a revised decision and advised that page 22 of the document obtained from MLS was now withheld as non-responsive to the request and that section 14(1) of the *Act* had been applied in error to that page. The city further stated that it declined to provide continuous access to the records pursuant to section 17(3) of the *Act*.

[5] The requester, now the appellant, appealed the city's decision.

[6] During the course of mediation, the appellant expressed that he was seeking all information relating to complaints made regarding a specific apartment building. The appellant stated that he believes that additional information from the city regarding the complaint process exists and, therefore, was not satisfied that he had been provided with all of the records regarding these complaints. In response to the Mediator's Report, the appellant wrote to this office, as follows:

> …it was impossible to conclude whether or not a complete or reasonable search had been conducted, without knowledge of the methodology used in classifying and storing records and files...

[7] As a result, the issue of whether the city has conducted a reasonable search was added to this appeal.

[8] In addition, in that letter, the appellant outlined a previous discussion with the mediator, wherein the appellant had specifically set out the following with regard to the remaining issues under appeal:

1. Details of the City of Toronto's methodology used in classifying and storing records and files (section 4.1 and section 25(1) of the *Act*).

2. The unlawful severing of complainant information from the investigative reports, contrary to section 14(1)(c) and section 27 of the *Act*.

3. Return of the fee assessed for the unlawful severing of complainant information from the investigative reports.

[9] The appellant stated that records responsive to his request should not be limited to documents from TBS, MLS, and TFS. As such, scope of the request was added as an issue in this appeal.

[10] As the appellant stated that he disagreed with the portion of the fee related to the severing of the records, the issue of the reasonableness of the preparation fee was also added as an issue in this appeal.

[11] The appellant stated that he was not seeking access to the incident report held by TFS as the document could be obtained by the Routine Disclosure Policy. In addition, the appellant advised that he was neither pursuing access to information withheld on the basis that it was non-responsive to the request, nor appealing the city's decision regarding continuous access.

[12] Further mediation was not possible, and the appellant advised the mediator that he would like to have this appeal proceed to adjudication, where an adjudicator conducts an inquiry.

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

[14] The city then disclosed pages 114, 116, 117, 119 to 121 of the records to the appellant. Therefore, these pages are no longer at issue in this appeal.

[15] In his representations, the appellant did not dispute the city's representations as to the scope of the request. Therefore, the scope of the appellant's request is no longer an issue in this appeal.

[16] In this order, I uphold the city's decision and dismiss the appeal.

RECORDS:

[17] The city has applied section 14(1) to the information at issue in the following records:

- Investigation Cards - MLS page 10, 15, 52, 59, 62, 68, 69, 90, 102

- Investigation Notes - MLS page 12, 17, 54, 61, 70-71, 92, 104-105
- Computer Logs - MLS pages 13-14, 18-20, 24, 37, 51, 55-57, 63-66, 72-74, 78, 83, 93-94, 106-107
- Photographs - MLS page 58, 124
- Orders - MLS page 75-77, 123
- Investigation Records - MLS pages 95-101, 108-113
- Fire Inspection Report - TFS page 37
- Fire Chronology - TFS page 39, 49

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 personal privacy exemption at section 14(1) apply to the information at issue?

C. Should the $65.00 preparation fee be upheld?

D. Did the city conduct a reasonable search for records?

DISCUSSION:

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

[18] 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). The city relies on paragraphs (d) and (h) of the definition of personal information as follows:

> "personal information" means recorded information about an identifiable individual, including,
>
> > (d) the address, telephone number, fingerprints or blood type of the individual;
> >
> > (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;

[19] 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]

[20] 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]

[21] 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]

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

[23] The city states that the information at issue includes the names, addresses and telephone numbers of complainants and that this is the personal information of an identifiable individual other than the appellant.

[24] The appellant did not respond directly to this issue.

Analysis/Findings

[25] I agree with the city that the information remaining at issue consists of information that would identify individuals who made complaints about the conditions of their residential apartment building and/or the unit they occupy in this building.

[26] I find that the identifiable individuals in the record made their complaints in their personal capacity. This information includes the complainants' addresses and telephone numbers, and their names which appear with other personal information relating to them in accordance with paragraphs (d) and (h) of the definition of personal information in section 2(1).

[27] As the records contain the personal information of identifiable individuals and do not contain the appellant's personal information, I will consider whether the mandatory personal privacy exemption in section 14(1) applies to exempt this information.

---

[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.).

Issue B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

[28] 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.

[29] 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.

[30] If the information fits within any of paragraphs (a) to (e) of section 14(1), it is not exempt from disclosure. As well, if paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1). In this appeal, none of these paragraphs in section 14(1) or 14(4) apply.

[31] In making this finding, I have taken into account the appellant's assertion that under section 27, the personal information has been maintained by the city for the purpose of creating a record that is available to the general public. He states, therefore, that the exception in section 14(1)(c) applies. This section reads:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
>
> > personal information collected and maintained specifically for the purpose of creating a record available to the general public;

[32] I disagree with the appellant that complaints about a private property were compiled by the city for the purpose of creating a record available to the general public. From my review of the records and previous orders dealing with similar information, I find that the information is maintained for internal administrative purposes, and was not created for the purpose of publication.[5]

[33] Under section 14(1)(f), if disclosure would not be an unjustified invasion of personal privacy, it is not exempt from disclosure.

[34] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy.

[35] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the

---

[5] Order PO-2065.

information is presumed to be an unjustified invasion of personal privacy under section 14. 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.[6]

[36] The city submits that the presumption in section 14(3)(b) applies. This section states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information
>
> > was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[37] The city relies on Order M-382, where the adjudicator stated that:

> It has been previously established that personal information relating to investigations of alleged violations of municipal by-laws falls within the scope of the presumption provided by section 14(3)(b) of the *Act.*

[38] The city also relies on Order MO-1496, where the adjudicator found that section 14(3)(b) applied to information compiled by the City of Toronto as part of its investigation into a possible violation of the Building Code and the city's zoning by-law.

[39] The city submits that the personal information at issue, i.e., the name, address and telephone number of several individuals who filed complaints concerning a number of issues at their apartment building, was compiled by it as part of its investigation into violations of various municipal by-laws (Toronto Municipal Code), such as:

- Chapter 629 - Property Standards
- Chapter 354 - Apartment Buildings
- Chapter 497 - Heating
- Chapter 903 - Parking for Persons with Disabilities.

[40] The city states that these complaints cover a range of issues such as lack of heat, lack of sufficient accessible parking, waste removal, structural and electrical problems, and violations of the Ontario Building Code and Ontario Fire Code.

---

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

[41] Furthermore, the city states that it advises complainants that their personal information will be kept confidential and therefore, they have an expectation of this confidentiality.

[42] Although the appellant does not dispute that the personal information was compiled as part of law enforcement investigations into possible violations of law, the appellant takes the position that the exception in section 14(3)(b) applies because disclosure is necessary for him to continue the investigations into the by-law complaints and to ensure that the violators are successfully prosecuted.

Analysis/Findings

[43] In this appeal, I agree with the city that the presumption in section 14(3)(b) applies as the personal information was compiled and is identifiable as part of investigations into possible violations of city by-laws. This presumption has been found to apply to a variety of investigations, including those relating to by-law enforcement.[7]

[44] 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.[8] The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.[9]

[45] I find that the exception in section 14(3)(b) relied upon by the appellant does not apply. This office has found that a requester's own investigation does not constitute the continuation of the investigation for the purpose of the exception referred to in section 14(3)(b). The investigation referred to in section 14(3)(b) is the initial one in which the information at issue was compiled.[10]

[46] As noted above, as paragraph (b) of section 14(3) applies, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14(1). Once established, this 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.[11]

[47] As noted above, section 14(4) does not apply in this appeal. As well, the public interest override in section 16 was not identified as an issue in this appeal. I note, however, that the appellant concluded his representations by stating that "…there is a compelling public interest in the full disclosure of the record, including complainant

---

[7] Order MO-2147.
[8] Orders P-242 and MO-2235.
[9] Orders MO-2213, PO-1849 and PO-2608.
[10] Order PO-2236.
[11] *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

information, under section 16 of the Act."

[48] Section 16 reads:

> An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[49] The records concern by-law infraction complaints to the city about a specific apartment building. The appellant has received access to the entirety of each complaint, other than the information that would reveal the identity of the complainant, such as the complainant's name and unit number.

[50] I find that a significant amount of information has already been disclosed and I am satisfied that this is adequate to address any public interest considerations.[12]

[51] Based on my review of the records and the appellant's submissions, I find that there is not a compelling public interest under section 16 in the disclosure of the information at issue in the records, namely the information that identifies the complainants.

[52] Accordingly, I find that the information at issue in the records is exempt under the mandatory personal privacy exemption in section 14(1) by reason of the application of the presumption in section 14(3)(b).

Issue C. Should the $65.00 preparation fee be upheld?

[53] The city charged the appellant $71.00 for a preparation fee for severing the records. It is refunding the appellant $6.00 as a result of disclosing additional unsevered records at adjudication. Therefore, the city's preparation fee is $65.00.

[54] Concerning the preparation fee, the city states that the fee charged for severing the documents was arrived at in accordance with section 45(1)(b) of the *Act* and section 6(1) of Regulation 823 at $7.50 for each 15 minutes spent by any person. It calculates the severing at 2 minutes per page, which is $1.00 per page severing fee.

[55] The appellant did not provide representations on the preparation fee charged by the city.

Analysis/Findings

[56] Section 45(1) requires an institution to charge fees for requests under the *Act*.

---

[12] Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

That section reads:

> A head shall require the person who makes a request for access to a record to pay fees in the amounts prescribed by the regulations for,
>
> (a) the costs of every hour of manual search required to locate a record;
>
> (b) the costs of preparing the record for disclosure;
>
> (c) computer and other costs incurred in locating, retrieving, processing and copying a record;
>
> (d) shipping costs; and
>
> (e) any other costs incurred in responding to a request for access to a record.

[57] More specific provisions regarding fees are found in section 6 of Regulation 823, which reads:

> 6. The following are the fees that shall be charged for the purposes of subsection 45(1) of the *Act* for access to a record:
>
> 1. For photocopies and computer printouts, 20 cents per page.
>
> 2. For records provided on CD-ROMs, $10 for each CD-ROM.
>
> 3. For manually searching a record, $7.50 for each 15 minutes spent by any person.
>
> 4. For preparing a record for disclosure, including severing a part of the record, $7.50 for each 15 minutes spent by any person.
>
> 5. For developing a computer program or other method of producing a record from machine readable record, $15 for each 15 minutes spent by any person.
>
> 6. The costs, including computer costs, that the institution incurs in locating, retrieving, processing and copying the record if those costs are specified in an invoice that the institution has received.

[58] The preparation fee in section 45(1)(b) includes time for severing a record.[13]

---

[13] Order P-4.

Generally, this office has accepted that it takes two minutes to sever a page that requires multiple severances.[14] This is equal to $1.00 a page at the rate of $7.50 for every 15 minutes of preparation fee set out in section 6 of Regulation 823.

[59] In this appeal, there are 68 pages of responsive records that required severing to remove the information that identified the complainants. Based on my review of the city's representations and the number of pages that required severing, and taking into account this office acceptance of a preparation fee of $1.00 per page, I am upholding the city's preparation fee of $65.00 as reasonable.

Issue D. Did the city conduct a reasonable search for records?

[60] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.[15] If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[61] 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 has made a reasonable effort to identify and locate responsive records.[16] To be responsive, a record must be "reasonably related" to the request.[17]

[62] 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 reasonably related to the request.[18]

[63] A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.[19]

[64] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.[20]

[65] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken

---

[14] Orders MO-1169, PO-1721, PO-1834 and PO-1990.
[15] Orders P-85, P-221 and PO-1954-I.
[16] Orders P-624 and PO-2559.
[17] Order PO-2554.
[18] Orders M-909, PO-2469 and PO-2592.
[19] Order MO-2185.
[20] Order MO-2246.

by the institution to respond to the request were reasonable.[21]

[66] The city states that the appellant was seeking information about the apartment building in which he lives with respect to violations of the city's various by-laws. It states that the three divisions noted in the appellant's request; TFS, TB, and MLS are the three divisions that enforce by-laws with respect to the proper maintenance (structural, property standards and fire safety) of apartment buildings and that there was no indication or necessity that any other city division be searched. The city states that:

> Both Toronto Building and MLS divisions utilize the same database – Integrated Business Management System ("IBMS"). For several years now, all information is kept within the database itself including all notes, reports, violations, permits, and correspondence related to a specific property. Staff in Toronto Building and MLS enter the subject address into the system and simply download an electronic copy of all information on file and submit to the Access & Privacy Unit. It is highly improbable that responsive information would not be located. In this case all responsive records were located.
>
> The Toronto Fire Services records search was conducted by a Captain in the Fire Prevention Division of Toronto Fire Services. Some records were retrieved from Fire Services' system called "One Step". Other records were obtained from the City's offsite records centre as well as onsite filing cabinets located at Fire Services' offices in the North York Civic Centre.
>
> Active files that have not been cleared remain locked in the assigned inspector's office.
>
> It is not possible that records once existed but no longer exist…

[67] The appellant states that it is not possible to conclude whether a complete or reasonable search had been conducted by the city without knowledge of the methodology used by it in classifying and storing its records and files.

Analysis/Findings

[68] The issue before me is whether the city conducted a reasonable search for records responsive to the request. The city has provided detailed representations on how it has classified and stored the records responsive to the request, as well as how it retrieved these records in conducting its search.

---

[21] Order MO-2213.

[69] The appellant has raised the issue of how the city classifies and stores all of its records and files in accordance with sections 4.1 and 25(1) of *MFIPPA*. These sections read:

> 4.1 Every head of an institution shall ensure that reasonable measures respecting the records in the custody or under the control of the institution are developed, documented and put into place to preserve the records in accordance with any recordkeeping or records retention requirements, rules or policies, whether established under an Act or otherwise, that apply to the institution.
>
> 25(1) A head shall cause to be made available for inspection and copying by the public information containing,
>
> > (a) a description of the organization and responsibilities of the institution;
> >
> > (b) a list of the general classes or types of records in the custody or control of the institution;
> >
> > (c) the title, business telephone and business address of the head; and
> >
> > (d) the address to which a request under this Act should be made.

[70] I find that the application of sections 4.1 and 25(1) to all of the city's records is not the issue before me.

[71] In this appeal, I am only concerned as to how the requested records are kept and maintained by the city for the purpose of assessing the reasonableness of its actions to locate them.

[72] Based on my review of the wording of the appellant's request, the city's representations and the responsive records already located by the city, I find that the city provided sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.

[73] I find that the appellant has not provided a reasonable basis for concluding that additional responsive records exist.

[74] Accordingly, I am upholding the city's search as reasonable.

ORDER:

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

Original Signed by: November 14, 2018

Diane Smith
Adjudicator