

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-3801

Appeal MA18-172

City of Mississauga

July 10, 2019

**Summary:** The appellant made a request to the City of Mississauga (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a specified rooming house. The city issued a decision granting partial access to the responsive records with severances pursuant to sections 8(1)(d) and 14(1) of the *Act*. Subsequently, the city issued a revised decision followed by a supplementary decision disclosing additional information and responsive records. In this order, the adjudicator upholds the city's decision to withhold information pursuant to sections 14(1) and 38(b) of the *Act*, and dismisses the appeal.

**Statutes Considered:** The *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1), 14(1) and 38(b).

### OVERVIEW:

[1] The City of Mississauga (the city) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following records:

- Licence [that] legalises operation of [a specified] rooming house
- Official report by property standards that was carried out recently

[2] The city issued a decision granting partial access to the responsive records withholding information pursuant to sections 8(1)(d) (confidential source of information) and 14(1) (personal privacy) of the *Act*.

[3] The requester, now the appellant, appealed the city's decision to this office.

[4] During the course of mediation, the city issued a revised decision continuing to withhold information pursuant to section 14(1), but disclosing additional information to the appellant with respect to Records 1[A], 2, 5, 6 and 10. The appellant advised that he is pursuing access to all the severed information in the records. The appellant also raised the issue of reasonable search, because he had called the city with a complaint regarding this property, and he believes there should be records relating to his complaint.

[5] Upon receipt of the Mediator's Report, the city indicated it would conduct another search for records, specifically for the appellant's complaint regarding the property. Subsequently, the city issued a supplementary decision granting partial access to additional responsive records with severances pursuant to sections 8(1)(d), 14(1), and 38(a) (discretion to refuse requester's own information) and 38(b) (personal privacy) of the *Act*.

[6] The appellant confirmed reasonable search is no longer an issue, but he is still pursuing access to certain severances.

[7] As no further mediation was possible, the appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced the inquiry by inviting representations from the city, initially. Representations were received from the city and shared with the appellant in accordance with this office's *Practice Direction 7: Sharing of Representations*. Although I invited the appellant to submit representations, he declined to submit any.

[8] In this order, I uphold the city's decision to withhold the information at issue, and dismiss the appeal.

## **RECORDS:**

[9] With respect to the records that were the subject of the revised decision, the appellant is only pursuing the severance at the bottom of Record 1A<sup>1</sup> (Complaint Report), the severance on Record 5 (Email dated Jan. 23, 2018) and the severance on Record 10 (Notice of Contravention dated Jan. 31, 2018).

[10] With respect to the records that were the subject of the supplementary access decision, the appellant confirmed he is pursuing the severance on Record 1B (Property

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<sup>1</sup> Since the city's supplementary decision identified a second record it labelled as Record 1, I will refer to the Record 1 from the initial/revised decision as Record 1A and the Record 1 from the supplementary decision as Record 1B.

Standards Order By-Law) and Record 36 (Note dated Jan. 31, 2018).

[11] Therefore, the information remaining at issue in this appeal consists of the severances contained within the following records:

Initial and Revised Decision

- Record 1A – Complaint Report dated Jan. 16, 2018
- Record 5 – Email dated Jan. 23, 2018
- Record 10 – Notice of Contravention dated Jan. 31, 2018

Supplementary Decision

- Record 1B – Property Standards Order By-law 654-98
- Record 36 – Note dated Jan. 31, 2018

**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) or the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?

**DISCUSSION:**

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

[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), which states in part:

“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,

(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;

[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.<sup>2</sup> To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>3</sup>

[14] The city submits that the withheld records contain personal information as defined in paragraph (d) of section 2(1), with the exception of Record 36 which contains personal information as defined in paragraphs (a) and (h) of section 2(1).

[15] As noted above, the appellant did not submit any representations.

[16] After reviewing the records and the representations, I find that the information at issue contains personal information, specifically phone numbers, addresses and names of individuals pursuant to paragraphs (a), (d) and (h) of section 2(1) the *Act*.

**Issue B: Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?**

[17] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[18] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.<sup>4</sup>

[19] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing

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<sup>2</sup> Order 11.

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

<sup>4</sup> See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's discretion under section 38(b).

that information unless one of the exceptions in paragraphs (a) to (e) applies, or unless the section 14(1)(f) exception applies.

[20] If any of paragraphs (a) to (e) of section 14(1) apply, neither the section 14(1) exemption nor the section 38(b) exemption applies. The section 14(1)(a) to (e) exceptions are relatively straightforward.

[21] In applying either the section 38(b) exemption or the section 14(1)(f) exception to the section 14(1) exemption, sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[22] 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.

[23] For records claimed to be exempt under section 14(1) (i.e., records that do not contain the requester's personal information), a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if a section 14(4) exception or the "public interest override" at section 16 applies.<sup>5</sup>

[24] If no section 14(3) presumption applies and the exception in section 14(4) does not apply, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>6</sup> In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring *disclosure* in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.<sup>7</sup>

[25] If the records are not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy, and the information will be exempt unless the circumstances favour disclosure.<sup>8</sup>

[26] For records claimed to be exempt under section 38(b) (i.e., records that contain the requester's personal information), this office will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties in determining whether the disclosure of the personal information in the records would be

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<sup>5</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

<sup>6</sup> Order P-239.

<sup>7</sup> Orders PO-2267 and PO-2733.

<sup>8</sup> Order P-239.

an unjustified invasion of personal privacy.<sup>9</sup> The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).<sup>10</sup>

### ***Representations***

[27] The city submits that the mandatory exemption in section 14(1) applies to the severances in all the information at issue, except for the information at issue in Record 36 as noted below. The city submits that the information at issue (addresses and phone numbers) does not relate to the appellant, and, as such, disclosure of that information would constitute an unjustifiable invasion of privacy.

[28] The city submits that the discretionary exemption in section 38(b) has only been applied to Record 36 and disclosure of the withheld information would be an unjustified invasion of another person's privacy.

### ***Analysis and findings***

[29] With respect to the information being withheld pursuant to section 14(1) of the *Act*, the parties did not argue that any of the exceptions at sections (a) to (e) of 14(1) apply, and I find that none of the exceptions apply to the information at issue. The parties also did not argue that any of the exceptions in section 14(4) apply, and I find that none of them apply in the circumstances of this appeal. The parties also did not argue that any of the presumptions in section 14(3) apply, and I also find that none apply in this appeal.

[30] Since I found that no section 14(3) presumption applies and the exception in section 14(4) does not apply, I must consider if there are any section 14(2) factors that may weigh in favour or against disclosure of the information at issue. The parties did not argue any factors that may weigh in favour of disclosure, and from my own review of the records, I do not find that there are any.

[31] In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors favouring disclosure in section 14(2) must be established. In the absence of factors favouring disclosure, the exception in section 14(1)(f) is not established, and the mandatory section 14(1) exemption applies.<sup>11</sup> Since I have found that there are no factors favouring disclosure of the information at issue, I find that the exception in section 14(1)(f) does not apply and the mandatory section 14(1) exemption applies to the information at issue.

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<sup>9</sup> Order MO-2954.

<sup>10</sup> Order P-99.

<sup>11</sup> Orders PO-2267 and PO-2733.

*Record 36*

[32] Record 36 is the only record that the city claims the section 38(b) exemption applies to. The parties did not argue any factors favouring disclosure, and I find that there are none. It appears that the information at issue in Record 36 may have been supplied in confidence, which would weigh in favour of non-disclosure of this information. In any event, since the appellant is only mentioned tangentially in the record, and balancing the interests of the parties, I find that the disclosure of the information at issue in Record 36 would be an unjustified invasion of the personal privacy of the individual to whom this information relates. Therefore, I find that the information at issue in Record 36 is exempt from disclosure pursuant to the discretionary exemption at section 38(b) of the *Act*, subject to my findings below with respect to the city's exercise of discretion.

**Issue C: Did the institution exercise its discretion under section 38(b)? If so, should this office uphold the exercise of discretion?**

[33] The section 38(b) exemption is discretionary, and permits an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[34] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose
- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[35] In either case, this office may send the matter back to the institution for an exercise of discretion based on proper considerations.<sup>12</sup> This office may not, however, substitute its own discretion for that of the institution.<sup>13</sup>

[36] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:<sup>14</sup>

- the purposes of the *Act*, including the principles that

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<sup>12</sup> Order MO-1573.

<sup>13</sup> Section 43(2).

<sup>14</sup> Orders P-344 and MO-1573.

- information should be available to the public
- individuals should have a right of access to their own personal information
- exemptions from the right of access should be limited and specific
- the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

[37] The city submits that it exercised its discretion under section 38(b) with respect to the application of the exemption to Record 36. The city submits that this office should uphold this exemption, because disclosure of the information (names and family status) would constitute an unreasonable invasion of another individual's personal privacy. Furthermore, the city argues that after careful consideration of all information contained within the records in this matter, the city disclosed as much information as can be reasonably severed in accordance with section 4(2), without disclosing the information that falls under the exemptions claimed.

### ***Analysis and findings***

[38] After considering the representations of the city and the circumstances of this appeal, I find that the city has not erred in its exercise of discretion with respect to its application of section 38(b) of the *Act*. I am satisfied that they did not exercise their discretion in bad faith or for an improper purpose. I am also satisfied that the city did not take into account irrelevant factors in the exercise of its discretion. Accordingly, I find that the city exercised its discretion in an appropriate manner, and I uphold its exercise of discretion in this appeal.



[39] Since I find that the mandatory section 14(1) exemption and the discretionary section 38(b) exemption apply to the information at issue, and I uphold the city's exercise of discretion, I do not need to decide if the discretionary exemption at section 38(a) in conjunction with the section 8(1)(a) exemption applies to the information at issue.

**ORDER:**

I uphold the city's decision to withhold the information at issue, and dismiss the appeal.

Original signed by \_\_\_\_\_

Anna Truong  
Adjudicator

July 10, 2019 \_\_\_\_\_