

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3870

Appeal MA18-00871

The Corporation of the Township of South Glengarry

December 3, 2019

Summary: The Corporation of the Township of South Glengarry (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a property standards complaint registered against the appellant's commercial property. The township denied access to the record, the complaint form, relying on the mandatory personal privacy exemption in section 14(1).

In this order, the adjudicator finds that other than a home phone number, the record does not contain the personal information of the complainant. She orders the township to disclose the record to the appellant, except for the home phone number of the complainant. She upholds the township's decision that this home phone number is exempt under section 14(1).

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"), 2(2.1), 2(2.2), 14(1), and 14(3)(b).

OVERVIEW:

[1] The Corporation of the Township of South Glengarry (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for access to a property standards complaint registered against the requester's commercial property.

[2] After notifying the complainant (the affected person) pursuant to section 21 of

the *Act*, the township issued a decision and withheld access to the record in full, under the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] The requester, now the appellant, appealed the township's decision.

[4] During the course of mediation, the mediator contacted the affected person to determine if consent could be obtained for disclosure of the information at issue. The affected person did not provide consent.

[5] As no further mediation was possible, the appellant advised that he wished to proceed to adjudication, where an adjudicator conducts an inquiry. I sought the representations of the township and the affected person initially. Only the township provided representations, which were shared with the appellant. Portions of the township's representations were withheld from the appellant due to confidentiality concerns. The appellant provided representations in response.

[6] In this order, I find that other than a home phone number, the record does not contain the personal information of the affected person. I order the township to disclose the record to the appellant, except for the home phone number of the affected person. I uphold the township's decision that this home phone number is exempt under section 14(1) of *MFIPPA*.

RECORD:

[7] The record at issue is a complaint form with three photographs attached to it. The township is only opposing disclosure of the complaint form, not the attached three photographs.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the personal privacy mandatory exemption at section 14(1) apply to the home phone number in the record?

DISCUSSION:

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

[8] 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 township relies on paragraphs (d), (f)

and (h) of the definition of personal information in section 2(1), which read as follows:

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

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

(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;

[9] 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

[10] Sections 2(2.1) and 2(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.

[11] 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

[12] 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

¹ Order 11.

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

of a personal nature about the individual.³

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

Representations

[14] The township states that the record is a complaint form that contains the complainant's (the affected person's) name, home address, phone numbers and e-mail address.

[15] The township has indicated that disclosure of the three photographs attached to the complaint form could not reasonably be expected to identify the complainant, the affected person. In its representations, the township is agreeable to the disclosure of these three photographs to the appellant.

[16] The township submits that when an individual files a property standards or by-law complaint with it, they do so with the understanding that the information will remain confidential.

[17] The township points out that its by-law complaint form specifically states:

Personal information contained on this form will be kept confidential. It is understood that if required, the complainant will provide or present evidence in support of this complaint at any hearings of the Property Standards Committee or a court of Law of Ontario.

[18] The township states that it is a small community and identifying the affected person's name would reveal other personal information about them.

[19] The appellant states that the issue of the complaint under the township's property standards by-law arose shortly after the owner of commercial property at the rear of his commercial property made an offer to purchase his land. He states that the complaint set out in the record arose after he refused this offer to purchase his commercial property. The appellant states that the complaint in the record relates to the condition of a building on his commercial property.

Analysis/Findings

[20] The appellant sought access to a property standards complaint registered against

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.).

his commercial property. The record, the complaint form and attached three pictures, does not contain the personal information of the appellant.

[21] The affected person was contacted both in writing and by telephone by this office and was asked to provide representations in this appeal. The affected person declined to provide representations.

[22] The record is a completed township complaint form with three attached pictures. The record is a different form than that attached to and referred to in the township's representations.⁵ The record that is at issue does not contain the clause referred to by the township as being part of its by-law complaint form, which states, again, that:

Personal information contained on this form will be kept confidential. It is understood that if required, the complainant will provide or present evidence in support of this complaint at any hearings of the Property Standards Committee or a court of Law of Ontario.

[23] The record that is before me contains no reference to either personal information or confidentiality.

[24] The complaint set out in the record is about a commercial property owned by the appellant. The pictures attached to the complaint form are pictures of an abandoned building owned by the appellant on his commercial property.

[25] The record is a form completed by the affected person. It contains the affected person's name, business address, business and home phone numbers and business email, as well as a description of the complaint.

[26] I find that the address in the record is a business address, not a home address, based on my review of the township's and the appellant's representations, as well as the record itself.

[27] Based on my review of the record and the township and the appellant's representations, I find that, other than a home phone number, the record does not contain the personal information of the affected person. In making this finding, I have taken into account sections 2(2.1) and 2(2.2), set out above, which relate to business identity information and are exceptions to the personal information definition in section 2(1).

[28] I find that, other than the home phone number of the affected person, the remaining information in the record identifies the affected person in a business capacity

⁵ The township provided a blank "By-law Complaint Form" as Appendix A to its representations. Appendix A is a different form than the record at issue.

and does not reveal anything of a personal nature about the affected person.

[29] Therefore, given my finding that the information in the record, other than the home phone number, is not personal information, the personal privacy exemption in section 14(1) cannot apply to this information. As no other mandatory exemptions apply to this information and no discretionary exemptions have been claimed for this information, I will order the information in the record (other than the home phone number) disclosed.

[30] I will consider, below, whether the personal privacy exemption in section 14(1) applies to the home phone number in the record.

Issue B: Does the personal privacy mandatory exemption at section 14(1) apply to the home phone number in the record?

[31] 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.

[32] 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.

[33] If the information fits within any of paragraphs (a) to (e) of section 14(1) or paragraphs (a) to (c) of section 14(4), it is not exempt from disclosure. The information at issue, the affected person's home phone number, does not fit within these paragraphs.

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

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

[36] 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.⁶

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

Representations

[37] The township relies on the presumption in section 14(3)(b). This section reads:

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;

[38] The township states that after it received the record at issue, the by-law complaint form completed by the affected person, it initiated an investigation into the alleged by-law contravention set out in the record. Accordingly, the township submits that the information in the record was compiled and is identifiable as part of an investigation into a possible violation of the township's by-law. This by-law prescribes the standards for maintenance and occupancy of property within the township.

[39] The appellant did not provide representations on this issue.

Analysis/Findings

[40] I find that the personal information at issue, the affected person's home phone number, was compiled and is identifiable as part of an investigation into a possible violation of law under section 14(3)(b). The presumption in section 14(3)(b) can apply to a variety of investigations, including those relating to by-law enforcement.⁷ This violation of law being investigated in this situation relates to an alleged violation of the township's property standards by-law.

[41] 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

[42] As stated above, if section 14(3)(b) applies, 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.¹⁰ In this appeal, section 14(4) does not apply and section 16 has not been

⁷ Order MO-2147.

⁸ Orders P-242 and MO-2235.

⁹ Orders MO-2213, PO-1849 and PO-2608.

¹⁰ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

raised by the appellant.

[43] Therefore, I find that the information at issue, the affected person's home phone number, is exempt under the mandatory personal privacy exemption in section 14(1) by reason of the application of section 14(3)(b) to this information.

ORDER:

1. I uphold the township's decision to deny access to the affected person's home phone number in the record.
2. I order the township to disclose the record to the appellant, except for the affected person's home phone number, **by January 13, 2020** but not **before January 6, 2020**.

Original signed by _____
Diane Smith
Adjudicator

December 3, 2019 _____