

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3902

Appeal MA18-279

The Corporation of the City of Oshawa

February 13, 2020

Summary: The city received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* for specific information relating to a specified address. The city granted access, in part, and relied on the mandatory exemption at section 14(1) (personal privacy) to withhold information. It also withheld information that it found was not responsive to the request. The requester appealed and, during mediation, raised the issue of reasonable search. In this order, the adjudicator finds that some of the records contain the personal information of other identifiable individuals. She upholds the city's application of section 14(1). She also finds that the city conducted a reasonable search.

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"), 14(1), 17, and 38(b).

Orders and Investigation Reports Considered: Orders MO-1483, MO-2081, MO-3100 and MO-3485.

BACKGROUND:

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

Bylaw enforcement, building permits, survey for [a specified address],
2014 to present.

[2] The city located a number of records, and partially disclosed them, relying on the

mandatory personal privacy exemption at section 14(1) of the *Act* to deny access to the remaining portions.

[3] The requester, now the appellant, appealed that decision to this office.

[4] During mediation, the appellant disputed the city's decision that the withheld information is not responsive or contains personal information. The appellant also indicated to the mediator that additional records ought to exist, specifically a building permit that predates the backyard deck for the specified address on file.

[5] In response, the city provided a revised access decision in which it disclosed the withheld portions that were marked as not responsive (excluding any portions containing personal information). It also confirmed that no additional records exist. Upon receiving this decision, the appellant continues to maintain his position about responsiveness and that additional records ought to exist.

[6] As further mediation was not possible, this appeal was moved to the next stage, where an adjudicator conducts a written inquiry under the *Act*.

[7] During the inquiry, I sought and received representations from the parties. Pursuant to section 7 of this office's *Code of Procedure* and *Practice Direction Number 7*, copies of the parties' representations were shared with the other party.

[8] In this order, I find that some of the records contain the personal information of identifiable individuals other than the appellant. I uphold the city's application of section 14(1). I also find that the city conducted a reasonable search.

RECORDS:

[9] The records at issue consist of building permit applications, municipal law enforcement and licensing officer notes (by-law officer) and a photograph.

ISSUES:

Preliminary Issue: What records are responsive to the request?

- 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) apply to the information at issue?
- C. Did the institution conduct a reasonable search for records?

DISCUSSION:

Preliminary Issue: What records are responsive to the request?

[10] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

(1) A person seeking access to a record shall,

(a) make a request in writing to the institution that the person believes has custody or control of the record;

(b) provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

(2) If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[11] Institutions should adopt a liberal interpretation of a request, in order to best serve the purpose and spirit of the *Act*. Generally, ambiguity in the request should be resolved in the requester's favour.¹

[12] To be considered responsive to the request, records must "reasonably relate" to the request.²

[13] In its initial access decision, the city marked portions of the handwritten records prepared by the city staff members, which did not directly relate to the specified address, as "not responsive" to the appellant's request.

[14] During mediation, the city issued a revised access decision in which it, nevertheless, disclosed the non-responsive portions of the handwritten notes (excluding the small portions in Record 37 that contain personal information).

[15] Based on my review of Record 37, I find that the portions marked as non-responsive to the appellant's request was not responsive to his request. These portions concern a property other than the property listed in the appellant's request and

¹ Orders P-134 and P-880.

² Orders P-880 and PO-2661.

activities unrelated to the specified address and thus do not reasonably relate to his request.

[16] As the city has provided the portions of the handwritten records marked as "not responsive" to the appellant, I will not consider this issue any further.

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

[17] In order to determine whether section 14(1) of the *Act* applies, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates.

[18] Relevant paragraphs of the definition of "personal information" are the following:

"personal information" means recorded information about an identifiable individual, including,

(c) any identifying number, symbol or other particular assigned to 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;

[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.³

[20] Sections 2(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

³ Order 11.

dwelling and the contact information for the individual relates to that dwelling.

[21] 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.⁴

[22] 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.⁵

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

[24] The city submits that the records contain the personal information of identifiable individuals, including their name, address, telephone numbers, address and signature, which qualifies as their personal information as defined in section 2(1) of the *Act*.

[25] The appellant states that he understands that the name of property owners is a matter of public record. As such, he submits that the previous and current names of the property owners should be disclosed.

Analysis and findings

[26] On my review of the records, I find that they contain the personal information of a number of identifiable individuals. This information includes their name (as it appears with other personal information relating to the individual), address, telephone numbers, and email address, which falls within paragraphs (d) and (h) of the definition of personal information in section 2(1) of the *Act*.

[27] I also find that the severance made to the licence plate number in Record 44 qualify as “personal information” in accordance with previous orders issued by this office.⁷ The licence plate number can be described as an “identifying number ... assigned to the individual” as contemplated by paragraph (c) of the definition of “personal information”.

[28] However, I find that some portions of the withheld information in records 18 and

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

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

⁷ Orders MO-1863 and MO-1917.

19 are not personal information. The withheld information relates to a named company, along with its address and phone number. As only personal information can be withheld under section 14(1) and the city has not claimed any other exemptions, I will order these withheld portions disclosed.

[29] In addition, the city withheld signatures of individuals in records 2, 4, 16, 17, 20, 21 and 22. In Order MO-1194, former Assistant Commissioner Tom Mitchinson discussed this office's treatment of handwriting and signatures appearing in a number of different contexts, as follows:

In cases where the signature is contained on records created in a professional or official government context, it is generally not "about the individual" in a personal sense, and would not normally fall within the scope of the definition...

In situations where identity is an issue, handwriting style has been found to qualify as personal information. (See, for example, Order P-940, which found that even when personal identifiers of candidates in a job competition were severed, their handwriting could identify them, thereby bringing the records within the scope of the definition of personal information).

...

In my view, whether or not a signature or handwriting style is personal information is dependent on context and circumstances.

[30] I agree with the reasoning in the above-noted order, and will apply this approach to the circumstances in this appeal.

[31] The signatures in records 20, 21 and 22 are linked to the name of two individuals, who are the owners of a business named as the house designer or HVAC designer on the application for a permit to construct or demolish. In that context, I am satisfied that these signatures are not personal information as they do not reveal something of a personal nature about these individuals. Accordingly, as only personal information can be withheld under section 14(1) and the city has not claimed any other exemptions, I will order these withheld portions disclosed.

[32] However, I find that the signatures contained in records 2, 4, 16 and 17 are personal information as those signatures were made in a personal context.

[33] Lastly, the withheld portion in Record 33 refers to a municipal address. In Order MO-2081, Adjudicator Catherine Corban points out that information relating to property alone has been found not to be about an "individual", even if owned by an individual. Other previous orders of this office have found that, generally speaking, information about a property is not "personal information" unless it reveals something of a personal

nature about an individual.⁸ As such, I do not find that the withheld portion reveals something of a personal nature about an identifiable individual. Accordingly, as only personal information can be withheld under section 14(1) and the city has not claimed any other discretionary exemptions, I will order this small withheld portion disclosed.

[34] I confirm that the records do not contain the appellant's personal information.

[35] Having found that the records contain the personal information of other identifiable individuals, I will now determine whether the mandatory exemption in section 14(1) applies to the portions of the records the city withheld from disclosure.

B: Does the mandatory exemption at section 14(1) apply to the information at issue?

[36] 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. In the circumstances, it appears that the only exception that could apply is section 14(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy. Based on my review, none of the exceptions in section 14(4) apply to the personal information at issue.

[37] The factors and presumptions in section 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f).

[38] 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), it cannot be rebutted by one or more factors or circumstances under section 14(2).⁹

[39] If no section 14(3) presumption applies and no exception in section 14(4) apply, section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy.¹⁰ 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)

⁸ See, for example, Orders MO-2081 and PO-3656.

⁹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 OR (3d) 767 (Div.Ct.).

¹⁰ Order P-239.

exemption applies.¹¹

Representations

[40] The city submits that the presumption under section 14(3)(b) applies to the records, which reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(b) was compiled and is identified 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;

[41] The city submits that its Municipal Law Enforcement and Licensing Services (MLELS) staff compiled the personal information in the records as part of an investigation into a possible violation of law, namely the alleged violations of the city's boulevard by-law, noise by-law, zoning by-law and traffic by-law. The city also submits that the records largely consist of handwritten notes documenting the findings of the MLELS officers assigned to investigate the alleged violations, including their observations and interactions with individuals encountered during these activities.

[42] In addition, the city submits that the factor at section 14(2)(h) applies, which states:

A head, in determining whether a disclosure of personal information constitute an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether

the personal information has been supplied by the individual to whom the information relates in confidence; and

[43] The city states that its practice is to provide an explicit expectation of confidentiality when filing by-law complaints with it to foster full information sharing with city staff and to ensure the fullest protection of a complainant's identity.

[44] Although the appellant provided representations, his representations did not address this issue.

¹¹ Orders PO-2267 and PO-2733.

Analysis and findings

[45] As stated earlier, the city relies on the presumption at section 14(3)(b).

[46] Section 14(3)(b) may still apply even if no criminal proceedings were commenced against any individuals. The presumption only requires that there be an investigation into a possible violation of law.¹² The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹³

[47] The presumption can apply to a variety of investigations, including those relating to by-law enforcement¹⁴ and violations of environmental laws or occupational health and safety laws.¹⁵

[48] On my review of the personal information contained in records 25, 27, 28, 29, 30, 32, 33, 38 and 39, I am satisfied that the presumption in section 14(3)(b) applies to the personal information contained in these records. I am satisfied that the personal information was compiled by the city in the course of its investigation of a possible violation of law (possible by-law infractions) and is identifiable as such. This information therefore fits within the presumption in section 14(3)(b).

[49] As stated above, for personal information withheld under section 14(1), no one factor, or combination of factors, in section 14(2) can overcome a section 14(3) presumption, so I do not need to consider the possible application of the considerations in section 14(2) for the personal information contained in records 25, 27, 28, 29, 30, 32, 33, and 38. Accordingly, I find that disclosing the personal information in these records to which section 14(3)(b) apply would constitute an unjustified invasion of personal privacy. The exception to the section 14(1) exemption in section 14(1)(f) therefore does not apply, and the personal information in these records is exempt under section 14(1).

[50] With respect to the remaining personal information (which is contained in records 2, 3, 4, 16, 17, 18, 19, 20, 21, and 22), I find that it was not compiled as part of an investigation into a possible violation of law. It is contained in building permit and inspection services permit applications. As such, the presumption at section 14(3)(b) does not apply, nor does the factor at section 14(2)(h) (the personal information has been supplied by the individual to whom the information relates in confidence).

[51] In any case, I am satisfied that the remaining personal information is exempt

¹² Orders P-242 and MO-2235.

¹³ Orders MO-2213, PO-1849 and PO-2608.

¹⁴ Order MO-2147.

¹⁵ Orders PO-1706 and PO-2716.

from disclosure under section 14(1) of the *Act*. I reviewed the factors and circumstances favouring disclosure in section 14(2), including any unlisted factor, and find that none apply. As such, I find that the exception in section 14(1)(f) is not established. Consequently, I find that the remaining personal information at issue is exempt from disclosure under section 14(1) of the *Act*.

C: Did the institution conduct a reasonable search for records?

[52] 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 17.¹⁶ 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.

[53] 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.¹⁷ To be responsive, a record must be "reasonably related" to the request.¹⁸

[54] 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.¹⁹

[55] 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.²⁰

[56] 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.²¹

[57] The city asserts that it conducted a reasonable search. In support of its assertion, it attached three affidavits sworn by the records information analyst, the file clerk, and the administrative assistant for MLELS.

[58] In her affidavit, the records information analyst states that the responsive records were sourced from Building Permit and Inspection Services (BPIS) and

¹⁶ Orders P-85, P-221 and PO-1954-I.

¹⁷ Orders P-624 and PO-2559.

¹⁸ Order PO-2554.

¹⁹ Orders M-909, PO-2469 and PO-2592.

²⁰ Order MO-2185.

²¹ Order MO-2246.

Municipal Law Enforcement (MLE). She then partially disclosed the responsive records to the appellant. Subsequently, she received an email from the requester regarding records relating to an additional building permit for a deck. Consequently, she contacted the BPIS then emailed the requester. In her email, she indicated the following:

- a. When the deck was originally built, it was only logged as a step out from the basement.
- b. When the inspector visited based on a complaint, the deck was removed and a permit was requested to rebuild the deck.
 - i. The above permit to rebuild is the permit received by the requester.

[59] In her affidavit, the file clerk states she searched for the specified address in the Oshawa Land Information (OLI) software application under Building Discipline Viewer, Address Viewer and Municipal Viewer. Her search resulted in two permits for 2017 and none for 2014, 2015 and 2016. The file clerk also states that she conducted a physical search in the 2014 storage boxes and found no further records.

[60] In her affidavit, the administrative assistant for MLELS states she searched the MLELS hard copy filing system. She also states that she searched for the specified address in the OLI software application, which resulted in seven complaints relevant to the request. The administrative assistant further states that she searched the (P:) drive for photos using the file numbers found during the search of the OLI then emailed the officers assigned to each complaint to request further information.

[61] In response, the appellant states that, in her affidavit, the records information analyst stated there was another permit providing permission for a walk out from the basement. He submits that this record has not been provided to him pursuant to his request.

[62] In reply, the city submits that the permit providing permission for a walk out from the basement was provided to the appellant as part of the disclosure of records. It points out that this permit is Record 1 on the Index of Record.

[63] On sur-reply, the appellant states that he was only provided with the final approval after October 2017. He states that there was a previous approval, which he has not been provided with. The appellant points out:

This is even mentioned in both the Municipal Law Enforcement officer's notes and [the records information analyst's] affidavit. If the city doesn't have them they must have illegally destroyed the public record.

[64] Based on my review of the city's evidence and the appellant's evidence, I find that the city has conducted a reasonable search for responsive records.

[65] It is clear that there is confusion about the permits due to terminology used to

describe various permits. There are two permits listed in the Index of Record: (1) Record 13 (201700078) for an accessory basement apartment dated February 21, 2017; and (2) Record 1 (201701488) for a rear yard deck dated October 13, 2017.²² My understanding of the records information analyst's email is that the "deck" (which was logged as a step out from the basement) is Record 13. Due to a complaint, the inspector visited the address/property and the "deck" was removed and a permit was requested to rebuild the deck, which would be Record 1.²³

[66] As such, I find that the appellant has not provided me with a reasonable basis for concluding that additional records exist. I acknowledge that the appellant believes additional records should exist for a previous approval (earlier than October 2017). However, the city provided him with the previous approval, which would be the permit for the accessory basement apartment – Record 13. In the circumstances, I am satisfied that the city provided sufficient evidence to demonstrate that it made a reasonable effort to address the appellant's request and locate all records reasonably related to the request. Therefore, I uphold the city's search for responsive records.

ORDER:

1. I order the city to disclose the information that the city withheld under section 14(1) that is not "personal information" to the appellant by **March 20, 2020** but not before **March 13, 2020** in accordance with the highlighted records I have enclosed with the city's copy of this order. To be clear, the highlighted information should be disclosed to the appellant.
2. I uphold the city's application of section 14(1) to the personal information in the records.
3. I also uphold the city's search for records as reasonable.

Original Signed By _____

Lan An
Adjudicator

February 13, 2020 _____

²² Both these permits have been fully disclosed to the appellant.

²³ In its reply representations, the city refers to Record 1 as the permit providing permission for a walk out from the basement.