

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3906

Appeal MA18-450

Township of Russell

February 27, 2020

Summary: The appellant submitted an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Township of Russell (the township) for the evaluation grids for 20 properties that were evaluated by members of a subcommittee as part of an initiative to relocate the Embrun Branch Library. The township provided the appellant with access to some information from these records but withheld other information under the mandatory exemption in section 14(1) (personal privacy) of the *Act*. The appellant appealed the township's decision to this office. At adjudication, the only information remaining at issue was the names of the four evaluators who assigned scores to various properties as possible sites for the relocation of the library. In this order, the adjudicator finds that the evaluators' names, as they appear in the evaluation grids, do not constitute their "personal information." Because the section 14(1) exemption only applies to "personal information," these names cannot be exempt from disclosure under that provision. He orders the township to disclose the evaluation grids to the appellant in full, including the names of the four evaluators on all of the pages where these names appear.

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) and 14(1).

OVERVIEW:

[1] The mandatory personal privacy exemption in section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) only applies to "personal information." The issues to be resolved in this appeal are whether the names of four evaluators who assigned scores to various properties as possible sites for the relocation

of a library are the "personal information" of these individuals, as that term is defined in section 2(1) of the *Act*, and if so, whether these names are exempt from disclosure under section 14(1).

[2] By way of background, the Township of Russell (the township) issued a call for expressions of interest relating to the relocation of the Embrun Branch Library. Four members of an *ad hoc* committee established by the township known as the Joint Subcommittee on the Relocation of the Embrun Branch Library served as evaluators and assigned scores to various properties that were recorded on documents known as evaluation grids.

[3] This appeal arises from an access request that the appellant submitted under the *Act* to the township for the evaluation grids for 20 properties that were evaluated by members of the subcommittee.

[4] The township located the responsive records and granted the appellant partial access to them. It disclosed the blank evaluation grid and a table with the total scores for each of the properties evaluated. It further advised the appellant that it was withholding the remaining information in the records under section 14(1) of the *Act*.

[5] The appellant appealed the township's decision to this office, which assigned a mediator to assist the parties in resolving the issues in dispute. During mediation, the township disclosed additional information to the appellant. Specifically, it disclosed the completed evaluation grid sheet for each property but severed the evaluators' names on each grid under section 14(1) of the *Act*. The appellant confirmed his interest in pursuing access to the evaluators' names and raised the possible application of the public interest override in section 16 of the *Act* to the information at issue.

[6] This appeal was not resolved in mediation and was transferred to adjudication, where an adjudicator may conduct an inquiry. This appeal was initially assigned to another adjudicator but was transferred to me because some of the parties requested that they be communicated to in French. I solicited and received representations on the issues to be resolved from the township and the four evaluators. After reviewing these representations, I decided that it was not necessary to seek representations from the appellant.

[7] In this order, I find that the evaluators' names, as they appear in the evaluation grids, do not constitute their "personal information." These names identify the evaluators in a professional or official capacity, which means that this information is excluded from the definition of "personal information" by virtue of section 2(2.1) of the *Act*. In addition, the evaluators provided their opinions or views of various properties (through the scoring process) in a professional or official capacity, not in a personal capacity. Consequently, disclosing their names in conjunction with their opinions or views would not reveal anything of a personal nature about them.

[8] Because the mandatory personal privacy exemption in section 14(1) only applies

to "personal information," the four evaluators' names cannot be exempt from disclosure under that provision. I order the township to disclose the evaluation grids to the appellant in full, including the names of the four evaluators on all of the pages where these names appear.

RECORDS:

[9] There are 26 pages of evaluation grids. The only information at issue is the names of the evaluators at the top of each grid.

DISCUSSION:

Are the evaluators' names "personal information," as that term is defined in section 2(1) of the *Act*?

[10] The mandatory exemption in section 14(1) of the *Act* only applies to "personal information." Consequently, it must be determined whether the evaluators' names are their "personal information." 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;

[11] 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

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.²

[13] 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 dwelling and the contact information for the individual relates to that dwelling.

[14] 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.³

[15] 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.⁴

[16] For the reasons that follow, I find that the evaluators' names, as they appear in the evaluation grids, do not constitute their "personal information."

[17] In its representations, the township states that the evaluators' names, as they

¹ Order 11.

² Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

appear in the records, fall within paragraph (e) of the definition of "personal information" in section 2(1) of the *Act*, which states that personal information includes "the personal opinions or views of the individual except if they relate to another individual." In particular, the township states:

. . . When the name of each evaluator is disclosed and associated with their individual evaluation, their personal opinion and personal points of view on the examined proposals relate to other individuals. The exception set out in subsection 2(1) of the *Act* applies in this case within the meaning of subsection 2(1) of the *Act*: "(e) the personal opinions or views of the individual except if they relate to another individual." [translation]

[18] In their representations, the four evaluators agree with the township's claim that their names fall within paragraph (e) of the definition of "personal information" in section 2(1).

[19] I have reviewed the records at issue and considered the parties' representations. In my view, the evaluators' names, as they appear in the evaluation grids, do not constitute their "personal information."

[20] As noted above, section 2(2.1) of the *Act* states, in part, that personal information does not include the name of an individual that identifies the individual in a business, professional or official capacity. Consequently, it must be determined whether the evaluators' names, as they appear in the evaluation grids, identify them in a business, professional or official capacity. In their representations, neither the township nor the evaluators address whether the names are excluded from the definition of "personal information" by section 2(2.1).

[21] The Joint Subcommittee on the Relocation of the Embrun Branch Library was established by the township. The four evaluators who served on this subcommittee and assigned scores to various properties as possible sites for relocation of the library clearly did so in a professional or official capacity, not in a personal capacity. I find, therefore, that the names of the four evaluators, as they appear in the evaluation grids, identify them in a professional or official capacity, and these names are therefore excluded from the definition of "personal information" by virtue of section 2(2.1) of the *Act*.

[22] In addition, I am not persuaded that disclosing the evaluators' names in conjunction with the scores that each evaluator assigned to various properties would constitute the "personal opinions or views" of the evaluators, as contemplated by paragraph (e) of the definition of "personal information" in section 2(1). The evaluators provided their opinions or views (through the scoring process) in a professional or official capacity, not in a personal capacity. Consequently, I find that disclosing their names in conjunction with their opinions or views would not reveal anything of a personal nature about them.

[23] In these circumstances, I find that the evaluators' names do not constitute their "personal information," as that term is defined in section 2(1) of the *Act*. The mandatory personal privacy exemption in section 14(1) only applies to "personal information." Given that the four evaluators' names, as they appear in the evaluation grids, is not their "personal information," these names cannot be exempt from disclosure under section 14(1). I find, therefore, that these names cannot be redacted from the evaluation grids and must be disclosed to the appellant.

ORDER:

1. The appeal is allowed. I order the township to disclose the evaluation grids to the appellant in full, including the names of the four evaluators on all of the pages where these names appear.
2. The township must disclose these records to the appellant by **April 2, 2020** but not before **March 28, 2020**.
3. In order to verify that the township has complied with this order, I reserve the right to require it to provide me with a copy of the records that it discloses to the appellant.

Original signed by _____
Colin Bhattacharjee
Adjudicator

February 27, 2020 _____