

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-3910

Appeal MA18-00834

Township of Southgate

March 4, 2020

**Summary:** The Township of Southgate (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the township's general ledgers for 2015, 2016, and 2017. The township issued a decision providing partial access to the records. Access to the withheld information was denied under the mandatory personal privacy exemption at section 14(1) of the *Act*. The requester appealed the township's decision. Following mediation, the only information at issue is the name of an individual withheld on one page of one record. In this order, the adjudicator upholds the township's decision and dismisses the appeal.

**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)(a), 14(1)(c), 14(1)(d), 14(1)(f), and 14(3)(f).

### OVERVIEW:

[1] The Township of Southgate (the township) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the township's general ledgers for 2015, 2016, and 2017.

[2] The township located responsive records and issued a decision providing partial access to the records. Some information was withheld under the mandatory personal privacy exemption at section 14(1) of the *Act*.

[3] The requester, now the appellant, appealed the township's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC, or this office).

[4] During mediation, the mediator had discussions with both the township and the appellant about the records and issues on appeal. As part of this process, upon the appellant's request, the mediator notified an affected party and attempted to obtain their consent to disclose their name appearing on one page of one of the ledgers. However, the mediator could not obtain the affected party's consent. The appellant advised that she continued to seek access to the redacted name, and wanted to proceed to adjudication on only that issue. Accordingly, the file was referred to adjudication, where a written inquiry may occur.

[5] In conducting an inquiry under the *Act*, I sought and received representations from the township and the appellant. Representations were shared between the parties in accordance with this office's confidentiality criteria.<sup>1</sup> I also sought representations from the affected party but did not receive a response.

[6] For the reasons that follow, I uphold the township's decision and dismiss the appeal.

## **RECORD:**

[7] The information remaining at issue is the affected party's name appearing on a specified page of the township's general ledger of a specified year (the 4<sup>th</sup> entry from the bottom of the page).

## **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 mandatory exemption at section 14(1) apply to the information at issue?

## **DISCUSSION:**

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

[8] The appellant's position is that the information at issue is not "personal information" as defined under section 2(1) of the *Act*, but below, I will explain why it is.

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<sup>1</sup> *Practice Direction 7 of the IPC's Code of Procedure.*

[9] In order to determine whether the section 14(1) personal privacy exemption applies, it is necessary to first decide whether the record contains “personal information” and, if so, to whom it relates. That term is defined, in part, in section 2(1) as follows:

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

(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, [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[.]

[10] 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>

[11] Sections (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.

[12] 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.<sup>4</sup> 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

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

something of a personal nature about the individual.<sup>5</sup>

[13] In this case, neither party takes the position that the record contains the appellant's own "personal information," and I find no basis for questioning that.

[14] The dispute between the parties is about whether the information withheld is the "personal information" of the affected party rather than "information relating to an individual in a professional, business, or official capacity."

[15] The appellant alleges that the affected party's name appears in their professional or business capacity, on behalf of their company. However, I find that position to be unsubstantiated by the evidence before me. As the appellant acknowledges, there is no documentary evidence that the documented transaction was in a professional or business context. The township confirmed with the affected party that the financial transaction on the general ledger, which includes the affected party's name, was personal in nature. In the absence of evidence that the transaction was made in a professional, business, or official capacity, I do not accept that it was.

[16] The township submits that the information at issue is the "personal information" of the affected party, under paragraphs (b) and (h) of the definition of that term section 2(1). I find that to be the case because the individual's withheld name appears with information relating to a financial transaction in which that individual was involved. I accept that the individual would be identifiable if the information were disclosed in the circumstances of this case.

[17] Since the record contains the personal information of the affected party but not the appellant, I must consider any right of access that the appellant may have to it under section 14(1) of the *Act*.

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

[18] The township relies on the mandatory personal privacy exemption section 14(1) to withhold the information at issue, and I find that the exemption applies for the reasons set out below.

[19] 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.

[20] 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.

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<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

***Do any of paragraphs (a) to (e) of section 14(1) apply?***

[21] If the information fits within any of paragraphs (a) to (e) of section 14(1), it is not exempt from disclosure.

[22] The appellant submits that three exceptions apply to the exemption at section 14(1): the exceptions found at paragraphs 14(1)(a) (consent), 14(1)(c) (public record), and 14(1)(d) (another Act). However, the affected party has not consented to the disclosure of their personal information in the context of the access request,<sup>6</sup> so section 14(1)(a) does not apply. There is also no evidence that the township collected and maintained the personal information at issue for the purpose of creating a record available to the public, as required under section 14(1)(c). Regarding the exception at section 14(1)(d), the appellant submits that other legislation “may be applicable” to compel disclosure of the information at issue. However, she did not identify either a specific authorization in a statute for the disclosure of the type of personal information at issue, or a general reference to the possibility of such disclosure in a statute together with a specific reference to the type of personal information to be disclosed in a regulation.<sup>7</sup> Therefore, none of the exceptions claimed by the appellant apply.

***14(1)(f): disclosure not an unjustified invasion of personal privacy***

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

[24] Sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

***Do any of the presumptions in paragraphs (a) to (h) of section 14(3) apply?***

[25] 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. 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.<sup>8</sup>

***14(3)(f): finances***

[26] The appellant argues that the presumption at section 14(3)(f) does not apply, and the township did not argue that it did. Nevertheless, I find that the presumption applies.

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<sup>6</sup> Order PO-1723.

<sup>7</sup> Orders M-292, MO-2030, PO-2641 and MO-2344.

<sup>8</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

[27] Under section 14(3)(f), consideration is given to whether the personal information describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. To qualify under this section, information about an asset must be specific and must reveal, for example, its dollar value or size.<sup>9</sup>

[28] I find that, while the information at issue is the name of an individual, given the disclosure of other information on that line of the general ledger, disclosing the name would describe the individual's financial history or activity.

[29] Accordingly, section 14(3)(f) applies. Once a presumed unjustified invasion of personal privacy is established under section 14(3), it cannot be rebutted by one or more factors or circumstances under section 14(2).<sup>10</sup>

***Does section 14(4) apply?***

[30] Even if a presumption at section 14(3) applies, if any of the paragraphs in section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14(1).

[31] The appellant at one point submitted that section 14(4)(b) applies, and at another, appeared to indicate that it did not. Section 14(4)(b) applies to financial and other details of contracts for personal services between an institution and a consultant or independent contractor, if that information is found to qualify as personal information.<sup>11</sup> However, in this case, there is no such contract before me. In any event, it has not been established that the personal information at issue relates to the affected party as a consultant or an independent contractor. Therefore, the exception at section 14(4)(b) does not apply.

[32] Based on the evidence before me, I find that none of the other circumstances in section 14(4) are relevant in this appeal.

[33] Since section 14(3)(f) applies, the information at issue is exempt from disclosure under section 14(1).

***Does section 16 apply?***

[34] A section 14(3) presumption may be rebutted by the application of section 16 (public interest override), which the appellant raised briefly in her representations. She asserted that "[t]he simple information at issue in this matter represents a larger, more important issue," and made what I find to be generalized submissions in a similar vein under section 14(2)(a) (public scrutiny). The evidence before me is insufficiently

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<sup>9</sup> Order PO-2011.

<sup>10</sup> *John Doe*, cited above.

<sup>11</sup> Orders MO-1361 and PO-2435.

detailed to persuade me that section 16 is relevant in this appeal, and it is not evident to me from the record itself or the surrounding circumstances that it is.

**ORDER:**

I uphold the township's decision, and dismiss the appeal.

Original signed by: \_\_\_\_\_  
Marian Sami  
Adjudicator

\_\_\_\_\_ March 4, 2020