

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4049

Appeal MA20-00028

City of Vaughan

May 12, 2021

Summary: The appellant made a request to the City of Vaughan (the city) under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for access to the city's investigative records as they pertain to an incident in which she was bitten by a dog.

The city denied access to the dog owners' and the dog walker's names, contact information, sex, dates of birth and family status, as well as a photo of the dog, relying on the personal privacy exemptions in sections 14(1) or 38(b).

In this order, the adjudicator finds that the photo of the dog, as well as the dog owners' names and address in the records that also contain the appellant's personal information, are not exempt under the discretionary personal privacy exemption in section 38(b). She finds that the remaining information at issue in the records is exempt under section 38(b) or 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), 14(1), 14(2)(b), 14(2)(d), 14(2)(e), 14(3)(b) and 38(b); *Dog Owners' Liability Act*, R.S.O. 1990, c. D.16, as amended.

Orders Considered: Orders MO-2980, MO-3088, MO-3370 and MO-3911.

OVERVIEW:

[1] The requester was bitten by a dog and sought access to information about the dog's owners and the person who was walking the dog at the time she was bitten (the dog walker) in order to sue these individuals for her dog bite injuries.

[2] The requester made a request to the City of Vaughan (the city) under the *Municipal Freedom of Information and Protection of Privacy Act (MFIPPA or the Act)* for access to the city's investigative records relating to the dog bite incident.

[3] The city issued a decision granting partial access to the records. Access to the withheld information was denied under the mandatory personal privacy exemption in section 14(1) of the *Act*. The city also withheld some information as not responsive to the request.

[4] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] A mediator was appointed to explore the possibility of resolution. During the course of mediation, the appellant requested that the mediator notify the affected persons and attempt to obtain the affected persons' consent to disclose the information in the records relating to them.

[6] The mediator notified the affected persons, who are the two dog owners and the dog walker who was walking the dog at the time the appellant was bitten. The mediator was unable to obtain the consent of the affected persons. The city had also notified the dog owners and was unable to obtain their consent.

[7] The appellant advised the mediator that she did not wish to pursue access to the portions of the records withheld by the city as not responsive to the request.

[8] It was determined during mediation that the discretionary exemption at section 38(b) (personal privacy) of the *Act* might apply, as the records at issue appear to contain information about the appellant, as well as other identifiable individuals. As a result, this exemption was added as an issue on appeal.

[9] The appellant advised the mediator that she was seeking access to the remaining information in the records relating to the dog owners and the dog walker that was denied by the city. As the parties were unable to resolve the appeal through mediation, the appellant advised the mediator that she wished to proceed to adjudication, where an adjudicator may conduct an inquiry, to try to obtain access to the records at issue.

[10] Accordingly, the file was moved to adjudication and I decided to conduct an inquiry. I sought the representations of the city and the affected persons initially. The affected persons objected to disclosure of their personal information. The city provided representations, which I shared with the appellant. The appellant provided representations in response.

[11] In this order, I find that the photo of the dog and the dog owners' names and address are not exempt under section 38(b). I find that the remaining information at issue in the records, which includes the affected persons' phone numbers, sex, dates of birth and their family status, as well as the dog walker's name and address, is exempt

under section 38(b) or section 14(1).

RECORDS:

[12] The records at issue in this appeal are contained in a 25-page file from Vaughan Animal Services. There are 12 pages remaining at issue in this appeal consisting of Animal Services reports, correspondence, and officer notes, as described in this chart:

Record #	Page(s) at issue	Description of Record
1	2, 3, 5, 6	Field Service Activity Report
2	7	Bite Investigation Report
3	8 and 11	2 Letters to dog owners
4	15	Photo of dog
5	20, 22, 23, 25	Field notes

[13] At issue in these records are the names, phone numbers and addresses of the three affected persons, their family status, dates of births and sexes and a photo of the dog that bit the appellant.

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 personal privacy exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

DISCUSSION:

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

[14] 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 city submits that the records contain personal information in accordance with paragraphs (d) and (h) of the definition of personal information in section 2(1), which reads, in part, 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,

...

(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;

[15] The city maintains that the records contain the names and contact information of identifiable individuals, specifically the dog owners and the dog walker. It states that the information is about these individuals in a personal capacity and includes their personal contact information not related to any business or professional capacity.

[16] The appellant agrees that the records contain personal information in accordance with paragraphs (d) and (h) of the definition of personal information in section 2(1). The appellant believes that the records at issue contain the address, contact information, and names of the dog owners, the dog walker and the appellant.

Analysis/Findings

[17] 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

[18] 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

[19] 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.³

¹ Order 11.

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

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

[21] I agree with the parties that the records, except for Records 3 and 4, contain the names, addresses and other contact information of the dog owners, the dog walker and the appellant, in accordance with paragraphs (d) and (h) of the definition of the personal information in section 2(1). The records also contain information about the dog owners' and dog walker's sex, dates of birth and family status in accordance with paragraph (a) of the definition of personal information in section 2(1).

[22] This information is about the dog owners, dog walker and the appellant in their personal capacity. With respect to the dog walker in particular, the records reveal that this individual was walking the dog in their personal not business capacity.

[23] As the records, except for Records 3 and 4, contain the personal information of the appellant and other identifiable individuals, I will consider whether the discretionary personal privacy exemption in section 38(b) applies.

[24] Record 3 contains the personal information of the affected persons only, not the appellant; therefore, I will consider whether the mandatory personal privacy exemption in section 14(1) applies to this information.

[25] I do not agree with the city that the photo of the dog found on pages 7 (Record 2) and 15 (Record 4) contain the personal information of identifiable individuals. As the photo of the dog does not contain personal information, sections 14(1) or 38(b) cannot apply, as these sections can only apply to personal information. Therefore, I find that the photo is not exempt under sections 14(1) or 38(b). As no mandatory exemptions apply to this information and no other discretionary exemptions have been claimed for this information, I will order the city to disclose the photo of the dog, found on pages 7 and 15 of the records, to the appellant. As the photo of the dog is the only information in Record 4, this record must be disclosed in its entirety.

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

[26] 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.

[27] Under section 38(b), where a record contains personal information of both the

⁴ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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.

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

[29] If any of paragraphs (a) to (e) of section 14(1) or paragraphs (a) to (c) of section 14(4) apply, neither the section 14(1) exemption nor the section 38(b) exemption applies. In this appeal, none of these paragraphs apply.

[30] 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.

[31] 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.

[32] 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.⁵

[33] 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.⁶

[34] For records claimed to be exempt under section 38(b) (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 an unjustified invasion of personal privacy.⁷

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

⁶ Order P-239.

⁷ Order MO-2954.

Representations

[35] The city submits that the presumption in section 14(3)(b) applies to the records as the personal information in them was compiled as part of a law enforcement investigation into a possible violation of law under the city's Animal Services By-law 53-2002 relating to a vicious dog investigation. Section 14(3)(b) 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.

[36] The appellant submits that the vast majority of the records at issue in this appeal contain her personal information and that the records could be subject to the discretionary exemption under section 38(b) of the *Act*, as opposed to the mandatory section 14(1) exemption.

[37] The appellant submits that the factors in sections 14(2)(b), (d) and (e) of the *Act*, which favour disclosure, apply. These sections read as follows:

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

(b) access to the personal information may promote public health and safety;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm.

[38] The appellant states that the dog, suddenly and without warning, bit her while she was walking in a park. She submits that it is impossible for her to proceed with a claim against the dog owners and the dog walker to determine whether they will be found liable for their actions and the actions of their dog without the requested information.

[39] The appellant submits that the *Act* should not be used in a way that prevents

individuals from exercising their legal rights.⁸

[40] The appellant further submits that a judge will likely grant full release of the information at issue pursuant to Rule 30.10 of the *Rules of Civil Procedure*.⁹ She states that not releasing the information at issue is a waste of the government's and the appellant's time, costs and resources.

[41] The affected persons all object to disclosure of their personal information and appear to be raising the factor in section 14(2)(e), as they are concerned about being exposed to pecuniary or emotional harm if civil proceedings relating to the dog bite incident are brought against them by the appellant.

Analysis/Findings

[42] Remaining at issue are the names, addresses and phone numbers of the two dog owners and the dog walker. As well, there are severances to the records indicating the sex, dates of birth and the family status of the affected persons. The city has disclosed the appellant's own personal information to her already.

Section 14(3)(b) - investigation into violation of law

[43] I agree with the city that the records were compiled as part of an investigation into a violation of law; that is, a violation of the city's By-law 53-2002. The disclosed portions of the letters to the dog owners (Record 3) indicate:

This letter is to inform you that Vaughan Animal Services has completed a thorough investigation of an incident involving your dog [name of dog], which occurred on [date]. Your dog, [name of dog], did proceed to bite a person, which did result in injury, in the City of Vaughan.

Based on the evidence obtained during investigation, the City of Vaughan has determined that your dog, [name of dog], meets the criteria of Vicious Dog, as per City of Vaughan By-law 53-2002, as amended.

The following is the legal definition of a "Vicious Dog", as defined in By-law 53-2002, as amended:

⁸ The appellant relies on Order MO-3370.

⁹ Rule 30.10 of the Rules of Civil Procedure, reads in part:

(1) The court may, on motion by a party, order production for inspection of a document that is in the possession, control or power of a person not a party and is not privileged where the court is satisfied that,

(a) the document is relevant to a material issue in the action; and

(b) it would be unfair to require the moving party to proceed to trial without having discovery of the document.

"Means a dog which, without provocation, has attacked, bitten, or caused physical injury to a person or a domestic animal."

[44] Therefore, I find that the presumption in section 14(3)(b) applies as the records were compiled and are identifiable as part of an investigation into a possible violation of law.

[45] The presumption in section 14(3)(b) only requires that there be an investigation into a possible violation of law.¹⁰

[46] The presumption can apply to a variety of investigations, including those relating to by-law enforcement, as is the case in this appeal.¹¹

[47] As section 14(3)(b) applies, disclosure of the affected persons' personal information is presumed to be an unjustified invasion of personal privacy.

[48] In this appeal, Record 3, from which the dog owners' names and address at pages 8 and 11 were severed, does not contain the personal information of the appellant. As I noted above, section 38(b) cannot apply to the information at issue in this record and the relevant personal privacy exemption is the mandatory one in section 14(1).

[49] As set out above, for records claimed to be exempt under section 14(1) (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.¹² In this case, neither section 14(4) nor section 16 applies.

[50] As section 14(3)(b) applies, I find that the personal information at issue on pages 8 and 11 of Record 3 is exempt under the mandatory personal privacy exemption in section 14(1) and I uphold the city's decision to withhold it.

[51] The remaining information at issue in the records is claimed to be exempt under section 38(b), because it is in records that contain the requester's personal information. I will consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties to determine whether the disclosure of this personal information in the records would be an unjustified invasion of personal privacy.¹³

[52] The appellant relies on the factors that favour disclosure in sections 14(2)(b) and

¹⁰ Orders P-242 and MO-2235.

¹¹ Order MO-2147.

¹² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

¹³ Order MO-2954.

(d). She also relies on the factor in section 14(2)(e), which favours privacy protection. 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).¹⁴

Section 14(2)(b) - public health and safety

[53] I recognize that the potential for a dog to bite an individual or another animal may be a public safety issue; however, in this case the city has taken steps, as outlined in the records, to minimize this risk. The city has designated the dog in the records as a vicious dog and has advised the dog owners that they are required to follow the restrictions outlined in By-law 53-2002 for vicious and menacing dogs. These restrictions are quite detailed and are intended to restrict the dog from coming into contact with the public.

[54] Based on my review of the information at issue in the records, I am not satisfied that its disclosure "may promote public health and safety" because the city has already addressed the public health and safety issues the dog poses to the public. Therefore, I find that the factor in section 14(2)(b) does not weigh in favour of disclosure in the circumstance of this appeal.

Section 14(2)(d) - fair determination of rights

[55] The appellant has also raised the application of the factor in section 14(2)(d). For section 14(2)(d) to apply, the appellant must establish that:

1. the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
2. the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
3. the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
4. the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing¹⁵

¹⁴ Order P-99.

¹⁵ Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

[56] The *Dog Owners' Liability Act (DOLA)*¹⁶ provides that the owner of a dog is liable for civil damages resulting from a bite or attack by the dog on another person or domestic animal. In this case, there are two owners of the dog. Under *DOLA*, each of these owners are jointly and severally liable for damages.

[57] Under *DOLA*, an owner who is liable to pay damages under this statute is entitled to recover contribution and indemnity from any other person in proportion to the degree to which the other person's fault or negligence caused or contributed to the damages. In effect, the dog walker may be liable to the dog owners for damages arising out of the dog bite, as the dog walker may be sued by the dog owners for damages that the dog owners must pay if they are found liable.

[58] Concerning section 14(2)(d), I adopt in this order, as I did in Orders MO-3088 and MO-3370, the findings of Adjudicator Colin Bhattacharjee in Order MO-2980, where he stated:

The appellant is seeking the dog owner's name for the purpose of ensuring that her right to sue and seek damages from him under the *DOLA* is fairly determined. In my view, she has established that the four-part for section 14(2)(d) is applicable to this information because:

- (1) her right to sue and seek damages from the dog owner is drawn from statutory law (the *DOLA*);
- (2) this right is related to a contemplated proceeding against the dog owner under the *DOLA*;
- (3) the personal information she is seeking (i.e., the dog owner's name) has some bearing to her right to sue, because she needs to identify the defendant to bring a successful action; and
- (4) she requires the dog owner's name to prepare for the proceeding under the *DOLA*.

[59] I find, therefore, that disclosing the dog owners' names to the appellant in this particular appeal is relevant to a fair determination of her rights under section 14(2)(d). Consequently, this factor weighs in favour of disclosing the dog owners' names to her.

[60] In my view, the existence of other possible methods of access, such as the *Rules of Civil Procedure*, does not preclude the appellant from exercising her access rights under the *Act* to seek the dog owners' names before she files a civil claim. As the victim of a dog attack, she has a right to seek the information in the most efficient, cost-

¹⁶ *Dog Owners' Liability Act*, R.S.O. 1990, Chapter D.16.

effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would enable her to exercise her legal right to seek redress.¹⁷

[61] However, the existence of other possible methods of access reduces the weight that should be accorded to the section 14(2)(d) factor.

[62] I find, however, considering *DOLA*, that disclosure of the dog walker's name to the appellant is not relevant to the fair determination of her rights under section 14(2)(d).

[63] I also find that the personal information in the records about the affected persons' sex, dates of birth and family status is not relevant to a fair determination of the appellant's rights under *DOLA*. This information is not necessary for the appellant to pursue her right to sue under *DOLA*.

Unlisted factor in section 14(2) - individuals exercising their legal rights

[64] In Order MO-3088, I also found that the unlisted factor favouring disclosure referred to in Order MO-2980 applies. In Order MO-2980, Adjudicator Bhattacharjee described this unlisted factor, as follows:

In Order MO-2954, Adjudicator [Laurel] Cropley stated that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. She found that this is an unlisted factor favouring disclosure and gave significant weight to this unlisted factor.

The facts in the appeal before me are different than those before Adjudicator Cropley in Order MO-2954, but the same general principle applies. The appellant was knocked down and bitten by a pit bull dog on a public street. In my view, the police's refusal to provide the appellant with the dog owner's name is fettering her right to bring civil proceedings under the *DOLA* to hold the dog owner accountable and seek redress for her injuries.

In the particular circumstances of this appeal, I give significant weight to this unlisted factor but only with respect to the dog owner's name. In my view, there is insufficient evidence before me to find that this unlisted factor would apply to the dog owner's other personal information or the personal information of the other possible dog owner and the witness.

[65] I adopt this finding in Order MO-2980. I also give significant weight to this

¹⁷ Order MO-2980.

unlisted factor, which I find favours disclosure of the names of the dog owners.

[66] I also find that disclosure of the dog owners' address in the circumstances of this appeal is relevant to the appellant's right to exercise her legal rights. Being able to locate the dog owners in order to serve them is relevant to her ability to commence a civil claim against them.¹⁸

[67] Previous orders have found that disclosure of the address is relevant to the exercise of an individual's legal rights and that this is an unlisted section 14(2) factor that favours disclosure. For example, in Order MO-3911, Adjudicator Lan An stated:

I agree that the *Act* should not be used in a way that prevents individuals from exercising their legal rights, and find that the non-disclosure of the affected party's name and address unduly impairs the appellant's ability to pursue his right to seek damages. Therefore, I find that this unlisted factor weighs in favour of disclosure.

Section 14(2)(e) - pecuniary or other harm

[68] I have considered the factor in section 14(2)(e), which appears to be relied upon by the affected persons. This factor favours privacy protection and applies where the person to whom the information relates, namely the affected persons, would be unfairly exposed by disclosure to pecuniary or other harm. I find that this factor does not weigh in favour of privacy protection in the circumstances of this appeal.

[69] In Order MO-3088, I stated that in order for section 14(2)(e) to apply, the evidence must demonstrate that the damage or harm envisioned by the clause is present or foreseeable, and that this damage or harm would be "unfair" to the individual involved. I found that, although the affected person in that case may perhaps be exposed to pecuniary harm as a result of *DOLA* proceedings, this harm was not unfair, but was merely a consequence that any defendant would be exposed to in a civil action.

[70] The fact that disclosure may subject an individual to litigation is not, itself, exposing them unfairly, since the case would be determined by an independent trier of fact.¹⁹ Accordingly, I found in Order MO-3088 that the factor in section 14(2)(e) did not apply.

[71] In this case, although the affected persons may be exposed to pecuniary or

¹⁸ See Order MO-3370, where I found disclosure of the dog owner's name and address was relevant under section 14(2)(d). See also Orders MO-3893 and MO-3911 where names and addresses were ordered disclosed as being relevant to a fair determination of an individual's legal rights.

¹⁹ See Orders PO-1912, MO-3893 and MO-3997.

emotional harm by having a civil action brought against them for damages for the appellant's dog bite injury, I find that this harm would not be unfair according to the IPC's interpretation of this factor. Such an outcome would be a consequence that any defendant in a civil action would experience if a civil claim against them were to be successful. Accordingly, I find that the factor in section 14(2)(e) does not weigh in favour of privacy protection in this appeal.

Conclusion

[72] Regarding the records that must be review under section 38(b), I have considered and weighed the factors in section 14(2) relied upon by the parties, sections 14(2)(b), (d) and (e), and the unlisted factor that the *Act* should not be used in a way that prevents individuals from exercising their legal rights, as well as the presumption in section 14(3)(b). I have balanced the interests of the parties to determine whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.

[73] I find that the factor favouring disclosure in section 14(2)(d), combined with the unlisted factor that the *Act* should not be used in a way that prevents individuals from exercising their legal rights, outweigh the presumption in section 14(3)(b) and factors weighing against disclosure with respect to the dog owners' names and address.

[74] I find that disclosure of the dog owners' names and address to the appellant is necessary for her to proceed with any potential claim under *DOLA*.

[75] In particular, consistent with the findings in Order MO-3088, I find that this information is not exempt as:

- Disclosing the dog owners' names and address in this particular case is relevant to a fair determination of the appellant's rights under section 14(2)(d). This factor weighs in favour of disclosure and should be given considerable weight.
- The evidence does not demonstrate that the damage or harm envisioned by section 14(2)(e) in disclosing the dog owners' names and address in this particular case would be "unfair" to the affected persons. Consequently, this factor does not weigh in favour of privacy protection.
- An unlisted factor in section 14(2) is that the *Act* should not be used in a way that prevents individuals from exercising their legal rights. Non- disclosure of the dog owners' names and address would fetter the appellant's right to bring civil proceedings under *DOLA* to hold the dog owners accountable and seek redress for her injuries. This unlisted factor, which weighs in favour of disclosure, should be given considerable weight with respect to the dog owners' names and address.

[76] I have also considered and weighed the presumption in section 14(3)(b) and the

applicable factors in section 14(2) with respect to the remaining personal information at issue in the records. This consists of the dog owners' phone numbers, sex, dates of birth and their family status, as well as this same information for the dog walker along with the dog walker's name and address. As the appellant does need this information in order to exercise her rights under *DOLA*, I find that the factor in section 14(2)(d) and the unlisted factor that the *Act* should not be used in a way that prevents individuals from exercising their legal rights do not apply to this information.

[77] Therefore, I find that the dog owners' phone numbers, sex, dates of birth and their family status, as well as the same information for the dog walker and the dog walker's name and address are exempt under section 38(b). In making this finding, I have considered the parties' representations and the records and find that the city exercised its discretion in a proper manner concerning this information.

ORDER:

1. I order the city to disclose the photo of the dog on pages 7 and 15 and the names and address of the dog owners on pages 2, 3, 5 to 7, 20, 22, 23 and 25 of the records to the appellant by **June 16, 2021** and not before **June 11, 2021**.
2. I uphold the city's decision to withhold access to the remaining information at issue in the records.

Original signed by _____
Diane Smith
Adjudicator

_____ May 12, 2021