

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-4052

Appeal MA19-00139

Toronto and Region Conservation Authority

May 20, 2021

**Summary:** The appellant seeks access to records relating to a residential property. The institution located responsive records and notified an affected party, who objected to the disclosure of the records. The institution issued a decision to the parties, granting the appellant partial access to the responsive records. The institution withheld portions of the records under sections 13 (danger to safety or health) and 14(1) (personal privacy) of the *Act*. The appellant appealed the institution's decision. In this order, the adjudicator finds the majority of the records contain personal information relating to the affected party and is exempt under section 14(1). The adjudicator finds section 13 does not apply to the remainder of the information at issue and orders the institution to disclose it to the appellant.

**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*), 13, 14(1), and 14(2)(f).

**Orders and Investigation Reports Considered:** Order PO-3616.

### OVERVIEW:

[1] The appellant filed an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) with the City of Toronto (the city) for information relating to a specified address. The appellant sought access to agreements, permits, correspondence, and emails about the installation of a concrete deck and use of a pool at the address from 1993 to the date of the request. The city believed the Toronto and Region Conservation Authority (the TRCA) might have some responsive records and forwarded the request to the TRCA under section 18(2).

[2] The TRCA located responsive records and notified third parties who might have an interest in the disclosure of them under section 21(1) of the *Act*. The owners of the identified property (the affected party) objected to the disclosure of the information. The TRCA then issued an access decision to the parties, granting the appellant partial access to the records. The TRCA withheld portions of the records under the discretionary exemption in section 13 (danger to safety or health) and the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] The appellant appealed the TRCA's decision.

[4] During mediation, the TRCA confirmed its reliance on sections 13 and 14(1) to withhold all but three of the responsive records. The TRCA disclosed these three records to the appellant. The appellant confirmed their interest in obtaining access to the remainder of the responsive records. The appellant also raised the possible application of the public interest override in section 16 of the *Act*.

[5] Mediation did not resolve the issues under appeal and the file transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. The adjudicator originally assigned to the file began the inquiry by inviting the TRCA and the affected party to submit representations in response to a Notice of Inquiry, which summarizes the facts and issues under appeal. The TRCA advised it would not be submitting representations and would defer all representations to the affected party as the records relate to them. The affected party submitted representations, confirming their objection to the disclosure of any information at issue on the basis of the exemptions at section 13 and 14(1) of the *Act*.

[6] The adjudicator then invited the appellant to make submissions in response to the Notice of Inquiry and the affected party's representations, which were summarized for the appellant. The adjudicator did not share the affected party's representations with the appellant because they contain information that meets the confidentiality criteria in Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant submitted representations.

[7] The appeal was then transferred to me to complete the inquiry. In the discussion that follows, I find the majority of the records contain personal information relating to the affected party and other identifiable individuals and are exempt under section 14(1) of the *Act*. I find the remainder of the information is not exempt under section 13 and order the TRCA to disclose it to the appellant.

## **RECORDS:**

[8] The following 31 records are at issue in this appeal:

<b>Record Number</b>	<b>Description</b>
1	Correspondence from the city to affected party
2	City staff notes regarding property
3	Correspondence from the city to affected party

4	City staff notes regarding property
5	Correspondence from the city to the affected party
6	Correspondence from the affected party to the city
7	Correspondence from the city to the affected party
8	Meeting materials
9	Correspondence from the city to the affected party
10	Correspondence from the city to the affected party
11	Correspondence from the city to the affected party
12	Correspondence from the city to the affected party
13	Correspondence from the affected party to the city
14	Correspondence from the city to the affected party
15	Correspondence from the city to the affected party
16	Delegated Authority Approval Form
17	Correspondence from the city to the affected party
18	Correspondence from the city to the TRCA
22	Correspondence from the TRCA to the city
23	Correspondence from the city to the TRCA
24	Map of residential area
28	Correspondence from the city to the affected party
42	Correspondence from the city to the affected party
43	Correspondence to the affected party
48	Correspondence from the appellant to the city
53	Correspondence from the city to the affected party
55	Correspondence from the city to the affected party
56	Correspondence from the city to the TRCA

57	Correspondence from the city to the affected party
58	Correspondence from the city to the affected party
59	Correspondence from the city to the TRCA

## 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) apply to the records?
- C. Does the discretionary exemption in section 13 (danger to health or safety) apply to the records?

## DISCUSSION:

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

[9] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain *personal information* and, if so, to whom it relates. That term is defined in section 2(1) of the *Act* as "recorded information about an identifiable individual."

[10] 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>1</sup> However, 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.<sup>2</sup>

[11] 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>

[12] In their representations, the affected party submits the records contain information that is personal and confidential information relating to them.

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<sup>1</sup> See sections 2(2.1) and (2.2) of the Act and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.

<sup>2</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>3</sup> Order PO-1880, upheld on judicial review in Ontario (Attorney General) v. Pascoe, [2002] O.J. No. 4300 (C.A.).

[13] The appellant does not address whether the records contain personal information as defined in section 2(1) of the *Act*.

[14] I reviewed the records and find the majority of the records contain information that qualifies as the personal information of the affected party. Specifically, I find the records contain the affected party's

- address and telephone number (considered to be *personal information* under paragraph (d) of section 2(1)),
- their personal opinions or views (paragraph(e)),
- correspondence they sent to the city and other institutions 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 (paragraph (f)),
- the views or opinions of other individuals about the affected party (paragraph (g)), and
- the affected party's names where they appear with other personal information relating to them or where the disclosure of their names would reveal other personal information about them (paragraph (h)).

[15] I note the TRCA only applied section 14(1) to withhold the affected party's names from the records, thereby appearing to consider only their names as *personal information* within the meaning of section 2(1) of the *Act*. However, based on my review of the records, I find that the majority of the records contain information *about* the affected party and could serve to identify them if it were disclosed. The records at issue contain correspondence to and from the affected party relating to their residential property and an encroachment issue. While the records relate to the status of the affected party's property and boundaries, they contain information involving to the city and the TCRA's interactions with the affected party. Specifically, I find the following information contains personal information relating to the affected party:

- Document 1, page 1: correspondence to the affected party
- Document 3: correspondence to the affected party
- Documents 5 to 7: correspondence to/from the affected party
- Document 8, pages 1, Schedules A, D, F, and I: meeting materials containing records relating to the affected party
- Documents 9 to 15: correspondence to/from the affected party
- Document 16: Delegated Authority Approval Form
- Document 17, pages 2 to 5: correspondence to the affected party

- Document 18, pages 2 to 11: License Agreement between the city, the TRCA and the affected party
- Document 19: cover letter and copies of License Agreement between the city, the TRCA and the affected party
- Document 23: cover letter and copies of License Agreement between the city, the TRCA and the affected party
- Documents 28, 42, 43, 48, 53 and 55: correspondence to/from affected party
- Document 56, page 2 and 3: draft correspondence to affected party
- Document 57: correspondence to affected party
- Document 58, pages 1 to 4: correspondence to affected party and application for construction
- Document 59, pages 2 to 5: Delegated Authority Approval Form and correspondence to affected party

[16] I note that Document 8 contains *personal information* relating to identifiable individuals other than the affected party and the appellant, such as the previous owners of the property at issue. Specifically, Schedules B, C, D, F, and G contain personal information relating to other identifiable individuals. These individuals were not notified by the TRCA during the notification process nor were they notified during the inquiry.

[17] Based on my review, I find these records contain personal information within the meaning of section 2(1) of the *Act*. I find the entire records, or the pages identified, contain *personal information* relating to the affected party. I find severing the affected party's names from these records (or pages thereof) would not serve to de-identify the information contained in the records. I note the appellant is an assiduous requester and is aware of the affected party's identities and issues relating to their residential property. Given these circumstances, I find these records would reveal something of a personal nature about the affected party, even if the affected party's names are severed. Therefore, I will consider whether the records or pages, as a whole, are exempt from disclosure under section 14(1) below.

[18] I find the following information does not contain personal information relating to an identifiable individual:

- Document 1, page 42: measurements regarding a property
- Document 2: notes with measurements regarding a property
- Document 4: handwritten notes and map regarding a property
- Document 8, Schedules E, H, J, and K: drawings regarding a property
- Document 17, page 1: fax cover page

- Document 18, page 1: letter between City of Toronto and TRCA
- Document 24: map of residential area
- Document 56, page 1: correspondence between City of Toronto and TRCA
- Document 58, pages 5 to 12: templates
- Document 59, page 1: fax cover page from the city to TRCA

Based on my review, page 42 of Document 1, Document 2, Document 4, Schedules E, H, J and K of Document 8, and Document 24 do not contain personal information. These records, or portions thereof, contain maps, measurements or drawings relating to a residential property.

[19] The IPC has considered whether information relating to a residential property, even where it is owned by an identifiable individual, is *personal information* within the meaning of section 2(1) of the *Act*. In Order PO-3616, the adjudicator considered whether an environment consultants report relating to a residential property contained *personal information*. Adopting the analysis of previous decisions such as Order MO-2053, the adjudicator found that the “guiding principle in distinguishing personal information from information about a property is whether the information in the record reveals something of a personal nature about an individual.”<sup>4</sup> With this principle in mind, I find the maps, drawings or measurements relating to the identified property do not contain information that would reveal something of a personal nature about an individual, specifically the affected party. I find there is no “personal dimension”<sup>5</sup> to the information that would result in the information constituting personal information for the purposes of the *Act*. Therefore, I find that page 42 of Document 1, Document 2, Document 4, Schedules E, H, J and K of Document 8, and Document 24 do not contain personal information. I will consider whether these portions of the records are exempt under section 13 of the *Act* below.

[20] In addition, I find page 1 of Documents 17, 18 and 56, pages 5 to 12 of Document 58, and page 1 of Document 59 do not contain personal information within the meaning of the *Act*. Pages 5 to 12 of Document 58 contain blank forms and templates from the city and do not contain any information about an identifiable individual. Finally, certain pages of Documents 17, 18, 56 and 59 are correspondence between staff with the city and the TRCA. As discussed above, information that relates to an individual in their official, business or professional capacity is not *personal information*. Based on my review, the information contained in these records relate to the individual correspondents in a professional manner or relate to the identified property. There is no information that reveals anything of a personal nature about an identifiable individual. Therefore, I find page 1 of Documents 17, 18 and 56, pages 5 to 12 of Document 58, and page 1 of Document 59 do not contain

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<sup>4</sup> Order PO-3616, para. 27.

<sup>5</sup> Order PO-3616, para 34.

personal information and I will consider whether these portions of the records are exempt under section 13 of the *Act* below.

[21] Finally, I find the records do not contain any personal information relating to the appellant. Therefore, I will consider whether the appellant is entitled to disclosure under Part 1 of the *Act*.

**Issue B: Does the mandatory personal privacy exemption at section 14(1) apply to the records?**

[22] As I have found the records do not contain the personal information of the appellant, I will determine whether disclosure of the personal information relating to other identifiable individuals would constitute an unjustified invasion of personal privacy under the mandatory exemption at section 14(1).

[23] Sections 14(2) and (3) help in determining whether disclosure would or would not constitute an unjustified invasion of privacy under section 14(1). In addition, section 14(4) lists situations that would not be an unjustified invasion of personal privacy.

[24] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to 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>6</sup> The parties have not claimed that any of the exceptions in section 14(4) apply and I am satisfied that none apply. In addition, I am satisfied that none of the presumptions listed in section 14(3) apply to the personal information at issue.

[25] If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy. Given that the individuals identified in the records did not consent to the disclosure of their information, the only exception that could apply is section 14(1)(f), which states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except if the disclosure does not constitute an unjustified invasion of personal privacy.

[26] Neither the appellant nor the affected party directly address the application of the personal privacy exemption in their representations. Upon review of the affected party's confidential representations, it is clear they are concerned about the disclosure of the records to the appellant. They are also of the view the personal information is confidential and reflects a private matter between themselves and the TRCA. In light of these representations, I will consider whether the factor at section 14(2)(f) (highly sensitive) applies in the circumstances of this appeal.

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



[27] To be considered *highly sensitive* under section 14(2)(f), there must be a reasonable expectation of significant personal distress if the information is disclosed.<sup>7</sup> The affected party did not submit representations on the application of section 14(2)(f). In any case, it is clear the disclosure of the affected party's personal information could reasonably be expected to result in significant personal distress. Upon review of the parties' representations and given the circumstances, I find the disclosure of the personal information relating to the affected party could result in significant personal distress. Therefore, I find section 14(2)(f) weighs in favour of non-disclosure.

[28] I have considered the remaining factors in section 14(2) and find that none apply. Therefore, I find the personal information of the affected party and other identifiable individuals is exempt under section 14(1) of the *Act*. Given this finding, it is not necessary to consider whether section 13 also applies to exempt this information from disclosure.

[29] I note the appellant raised the possible application of the public interest override in section 16 to the information withheld from disclosure. In their representations, the appellant submits, "the public surrounding the respective area should be made aware and everyone have an opportunity to agree or disagree when such decisions" regarding the affected party's encroachment onto public lands are made. The appellant does not provide further submissions on the application of the public interest override in their representations. Based on my review, the appellant has not provided sufficient evidence to demonstrate there is a compelling public interest in the disclosure of the records. Given these circumstances, I find section 16 does not apply and will not consider it further.

[30] In conclusion, I uphold the TRCA's decision to withhold the personal information in the records from disclosure.

**Issue C: Does the discretionary exemption in section 13 (danger to health or safety) apply to the records?**

[31] The following information remains at issue:

- Document 1, page 42: measurements regarding a property
- Document 2: notes with measurements regarding a property
- Document 4: handwritten notes and map regarding a property
- Document 8, Schedules E, H, J, and K: drawings regarding a property
- Document 17, page 1: fax cover page
- Document 18, page 1: letter between City of Toronto and TRCA
- Document 24: map of residential area

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<sup>7</sup> Orders PO-2518, PO-2617, MO-2262 and MO-2344.

- Document 56, page 1: correspondence between City of Toronto and TRCA
- Document 58, pages 5 to 12: templates
- Document 59, page 1: fax cover page from the city to TRCA

[32] The TRCA withheld this information from disclosure under section 13 of the *Act*. Section 13 of the *Act* states,

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[33] For this exemption to apply, the TRCA must provide detailed evidence about the potential for harm. The TRCA must demonstrate a risk of harm well beyond the merely possible or speculative, although it needed not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.<sup>8</sup> As stated above, the TRCA did not submit representations in response to the Notice of Inquiry. The TRCA stated it would defer to the affected party's representations because the records relate to them. I advise the TRCA that, as the institution, it bears the onus of supporting their discretionary exemption claims, not the other parties to the appeal.

[34] The information remaining at issue does not contain personal information relating to the affected party. The information remaining at issue consists of maps, drawings and measurements relating to an identified property, blank forms or templates, and correspondence between the city and the TRCA. The affected party takes the position that the disclosure of the records relating to them could reasonably be expected to cause harm to their health. However, the information that remains at issue does not relate to them and they did not provide specific evidence to demonstrate how the disclosure of this information could reasonably be expected to seriously threaten their health or safety. In the absence of representations, I find section 13 does not apply to the information that remains at issue.

[35] In conclusion, I find that section 13 has no application to the information remaining at issue and I will order the TRCA to disclose it to the appellant.

## **ORDER:**

1. I uphold the TRCA's decision to withhold the personal information under section 14(1) of the *Act*.
2. I order the TRCA to disclose the following information to the appellant by **June 25, 2021**, but not before **June 21, 2021**:
  - Document 1, page 42

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<sup>8</sup> Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner), 2014 SCC 31 at paras. 52-54.

- Document 2
- Document 4
- Document 8, Schedules E, H, J, and K
- Document 17, page 1
- Document 18, page 1
- Document 24
- Document 56, page 1
- Document 58, pages 5 to 12
- Document 59, page 1

3. I reserve the right to require the TRCA to provide me with a copy of the records disclosed to the appellant to verify compliance with Order Provision 1.

Original Signed by: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ May 20, 2021