

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-4068-F

Appeal MA18-478

Town of South Bruce Peninsula

June 17, 2021

Summary: This is a final order disposing of the remaining issues in dispute that arose from an access request made to the town about its maintenance activities and an endangered bird on Sauble Beach. The town denied access on the basis of a variety of exemptions. Most of the issues in the appeal were resolved in Interim Orders MO-3919-I and MO-4048-I.

In the most recent interim order, the adjudicator deferred consideration of the town's claim that the mandatory personal privacy exception at section 14(1) applies to certain information pending notification of a third party. In this final order, the adjudicator finds that the section 14(1) exemption does not apply to the information at issue and orders it to be disclosed to the appellant.

Statute Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 14(1).

Orders Considered: Interim Orders MO-3919-I and MO-4048-I.

OVERVIEW:

[1] This order deals with the remaining issues in dispute arising from an access request for records about the Town of South Bruce Peninsula's (the town) maintenance activities on Sauble Beach.

[2] The request is best understood with some additional context. The Ministry of Natural Resources and Forestry (the ministry) laid charges against the town under the *Endangered Species Act, 2007*¹ (the *ESA*) for allegedly damaging piping plover bird habitat on Sauble Beach in 2017. Following the initial charges, the ministry also issued “stop orders” to the town to limit the nature of the town’s maintenance activities on Sauble Beach.

[3] The requester (now the appellant) made a request under the *Municipal Freedom of Information and Protection of Privacy Act*² (the *Act*) for copies of a variety of records pertaining to the town’s beach maintenance activities and its communications about piping plovers for a specified time period.

[4] The town issued a decision denying access in full in reliance on a variety of mandatory and discretionary exemptions under the *Act*.³ The appellant appealed the town’s decision to the IPC and a written inquiry occurred.⁴

[5] On April 20, 2020, I issued Interim Order MO-3919-I resolving some of the issues in the appeal. On May 11, 2021, I issued Interim Order MO-4048-I resolving most of the remaining issues in the appeal.

[6] I partially upheld the town’s decision to withhold some of the records on the basis of the discretionary solicitor-client privilege exemption in section 12. Regarding the information for which I did not uphold the town’s decision under section 12, I found that the town had not established any of its alternative claims and I ordered the town to disclose certain records to the appellant.

[7] I deferred consideration of whether the mandatory personal privacy exemption applies to four records,⁵ pending notification of a third party. I notified the third party who decided not to make any representations in this inquiry.

[8] In this final order, I find that the section 14(1) exemption does not apply to the remaining information at issue and order the town to disclose that information to the appellant.

RECORDS:

[9] The information remaining at issue is contained in records 15 (part), 16 (part),

¹ S.O. 2007, c. 6.

² R.S.O. 1990, c. M.56.

³ See Interim Orders MO-3919-I and MO-4048-I for a more detailed description of the exemptions claimed.

⁴ See Interim Orders MO-3919-I and MO-4048-I for a description of the inquiry steps.

⁵ Records 15 (part), 16 (part), 18, and 48.

18 and 48, which are email exchanges.

DISCUSSION:

[10] The sole issue in this final order is whether records 15, 16, 18 and 48 contain an individual's personal information.

[11] The town claims that several records contain the personal information of a number of different individuals and that therefore the mandatory personal privacy exemption at section 14(1) applies to that information.

[12] As a result of my findings in Order MO-4048-I, it is only necessary to consider this argument in relation to parts of records 15 and 16; and, records 18 and 48. The town expressly claimed that Record 48 contains the personal information of a particular individual. Although not expressly claimed by the town, records 15, 16 and 18 also involve the same individual.

[13] In order to determine whether section 14(1) applies, I must first determine whether the records at issue contain an individual's personal information.

[14] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual," including information such as: an individual's age or marital status (paragraph (a)), the address or telephone number of the individual (paragraph (d)), the personal opinions or views of the individual, except if they relate to another individual (paragraph (e)), or the individual's name if it appears with other personal information about the individual (paragraph (h)).

[15] Section 2(2.1) relates to the definition of personal information. This section states:

(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.

Representations

[16] The town submits Record 48 in particular contains the name of this individual and "their role in assisting the Town in the litigation...." The town says that correspondence from and to this individual "relates to the litigation and he was not authorized by any party or professional capacity to assist the Town and in essence was assisting as a private individual, thus the documentation relates to him as an individual and includes his opinions of the litigation."

[17] The appellant points out that the town did not raise the possible application of section 14(1) until the inquiry. It says that it does not object to redaction of "personal opinions" but submits that the remainder of the records relating to individuals in their professional, official or business capacity be disclosed.

[18] The individual in question was notified in this inquiry and decided not to make representations.

Analysis and finding

[19] 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.⁶

[20] Based on my review of it, the information at issue is not personal information and disclosing it would not reveal anything of a personal nature about the individual. Any references to the individual are to them in their official capacity or involve communications on their behalf by their staff. While the records reveal the views of the individual about certain matters, these are views taken by them in their official capacity and communicated by their office staff.

[21] Having found that there is no personal information in the records remaining at issue, the mandatory exemption for personal privacy at section 14(1) of the *Act* does not apply and I will therefore order the information to be disclosed to the appellant.

ORDER:

1. I order the town to disclose the following information to the appellant by **July 23, 2021** but not before **July 19, 2021**: part of record 15, part of record 16, record 18 and record 48. The town is not required to disclose the portions of records 15 and 16 for which I have upheld its section 12 claims in Interim Order MO-4048-I.
2. In order to verify compliance with order provision 1, I reserve the right to require the town to provide the IPC with a copy the records sent to the appellant.

Original signed by: _____
Valerie Jepson
Adjudicator

_____ June 17, 2021

⁶ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.