

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-4108

Appeal MA19-00136

City of Vaughan

October 6, 2021

**Summary:** This appeal deals with whether the records at issue are exempt from disclosure under either the discretionary exemption in section 8(1) (law enforcement) (claimed by the affected party) or the mandatory exemption in section 14(1) (personal privacy) (claimed by the city), as well as whether the affected party can raise a discretionary exemption. The records at issue consist of floor plans (ground floor, second floor and basement), roof plans, elevation plans, chimney details, a window schedule and a retaining wall and terrace plan of a specified residential property. In this order, the adjudicator does not allow the affected party to raise the application of a discretionary exemption, namely section 8(1). She further finds that because the records do not contain the personal information of an identifiable individual, the personal privacy exemption in section 14(1) cannot apply. The city is ordered to disclose the records to the appellant, in their entirety.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2 (definition of personal information) and 8(1).

**Orders and Investigation Reports Considered:** Orders M-23, M-175, P-257, P-777, P-1137, MO-2053, MO-2081, PO-2322, MO-2695, MO-2792, MO-2994, MO-3066, MO-3125 and MO-3321.

### OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the City of Vaughan (the city) under the *Municipal Freedom of*

*Information and Protection of Privacy Act* (the *Act*). The access request was for records related to a specific property, including building permits for the property, floor plans, a roof plan, architectural elevations, a basement plan, site plans and technical drawings.

[2] In response, the city issued a decision granting the requester partial access to the records. The city withheld other records, claiming the application of the mandatory exemption in section 14(1) (personal privacy), as well as the discretionary exemptions in sections 8(1)(a) (law enforcement matter), 8(2)(a) (law enforcement report) and 12 (solicitor-client privilege).

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

[4] During the mediation of the appeal, the appellant raised concerns about the city's access decision, the reasonableness of the city's search for responsive records and the city's processing of the request. In response, the city conducted additional searches and reviewed its access decision. The city subsequently located additional records and issued two revised decisions disclosing more records to the appellant. As a result of this further disclosure, the application of sections 8(2)(a) and 12 is no longer at issue.

[5] The city also confirmed that it had not processed the portion of the request seeking the plans and technical drawings and agreed to do so. The city subsequently located those records and notified three third parties to obtain their views regarding disclosure of them. The city then issued a supplementary decision denying access, in full, claiming the application of the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

[6] The appellant was satisfied with the city's additional record searches and revised decisions. The appellant however disagreed with the city's supplementary decision to deny him access to the plans and technical drawings. The mediator then sought the consent of a third party (the affected party) to the disclosure of the records to the appellant. The affected party declined to consent.

[7] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I sought and received representations from the city, the affected party and the appellant. Portions of the city's and the affected party's representations were withheld, as they met this office's confidentiality criteria set out in *Practice Direction 7*, but I have taken them into consideration in this order. In addition, in his representations, the appellant raised for the first time the possible application of the public interest override in section 16. As a result, I provided the city and the affected party with the opportunity to respond to this claim, and they did so. In addition, in his reply representations, the affected party raised for the first time, the possible application of the discretionary exemption in section 8(1) (law enforcement), which I address below.

[8] For the reasons that follow, I do not allow the affected party to raise the discretionary exemption in section 8(1). I also find that the records do not contain the personal information of an identifiable individual and therefore the exemption in section 14(1) cannot apply. I order the city to disclose the records to the appellant, in their entirety.

## **RECORDS:**

[9] The records at issue consist of floor plans (ground floor, second floor and basement), roof plans, elevation plans, chimney details, a window schedule and a retaining wall and terrace plan, which were prepared by an architectural firm and an engineering firm.

## **PRELIMINARY ISSUE:**

[10] In his reply representations, the affected party raised for the first time, the possible application of the discretionary exemption in section 8(1) to the records. The affected party submits that there is an element of harm and an expectation of harm given that there is ongoing animosity between the affected party and the appellant.

[11] A number of past orders have considered the issue of whether a party other than the institution can claim a discretionary exemption.<sup>1</sup> Generally, where a third party raises the possible application of a discretionary exemption, the adjudicator must consider the situation before her in the context of the purposes of the *Act* in order to decide whether the appeal might constitute the "most unusual of circumstances."

[12] The *Act* expressly contemplates that the head of an institution (in this case, the city) is given the discretion to claim, or not claim discretionary exemptions. Generally speaking, third parties are not permitted to claim discretionary exemptions not relied upon by the institution. This office has previously addressed whether a third party may raise discretionary exemptions. In Order P-777, former Assistant Commissioner Irwin Glasberg stated:

As a general rule, the responsibility rests with a Ministry to determine which, if any, discretionary exemptions should apply to a particular record. The Commissioner's office, however, has an inherent obligation to uphold the integrity of Ontario's access and privacy scheme. In discharging this responsibility, there may be rare occasions when the Commissioner or his delegate decides that it is necessary to consider the application of a discretionary exemption not originally raised by a Ministry during the course of an appeal. This result would occur, for example, where the release of a record would seriously jeopardize the rights of a third party.

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<sup>1</sup> Most often cited are Orders P-1137 and PO-1705. See also Orders MO-2635, MO-2792 and PO-3489.

[13] In Order P-257, former Assistant Commissioner Tom Mitchinson, in considering the question of when a third party, or a person other than the institution that received the access request, may be entitled to rely on one of the discretionary exemptions in the *Act*, stated:

As a general rule, with respect to all exemptions other than sections 17(1) and 21(1), it is up to the head to determine which exemptions, if any, should apply to any requested record. . . .

In my view, however, the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme. In discharging this responsibility, *there may be rare occasions when the Commissioner decides it is necessary to consider the application of a particular section of the Act not raised by an institution during the course of the appeal. This could occur in a situation where it becomes evident that disclosure of a record would affect the rights of an individual, or where the institution's actions would be clearly inconsistent with the application of a mandatory exemption provided by the Act.* It is possible that concerns such as these could be brought to the attention of the Commissioner by an affected person during the course of an appeal and, if that is the case, the Commissioner would have the duty to consider them. In my view, however, it is only in this limited context that an affected person can raise the application of an exemption which has not been claimed by the head; the affected person has no right to rely on the exemption, and the Commissioner has no obligation to consider it.

[Emphasis added]

[14] In Order P-1137, former Adjudicator Anita Fineberg made the following comments:

The *Act* includes a number of discretionary exemptions within sections 13 to 22 [of *FIPPA*, the equivalent of sections 6 to 16 of the *Act*] which provide the head of an institution with the discretion to refuse to disclose a record to which one of these exemptions would apply. These exemptions are designed to protect various interests of the institution in question. If the head feels that, despite the application of an exemption, a record should be disclosed, he or she may do so. In these circumstances, it would only be in the most unusual of situations that the matter would come to the attention of the Commissioner's office since the record would have been released.

The *Act* also recognizes that government institutions may have custody of information, the disclosure of which would affect other interests. Such information may be personal information or third party information. The

mandatory exemptions in sections 21(1) and 17(1) of the *Act* respectively are designed to protect these other interests. Because the Office of the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme, the Commissioner's office, either of its own accord, or at the request of a party to an appeal, will raise and consider the issue of the application of these mandatory exemptions. This is to ensure that the interests of individuals and third parties are considered in the context of a request for government information.

Because the purpose of the discretionary exemptions is to protect institutional interests, it would only be in the most unusual of cases that an affected person could raise the application of an exemption which has not been claimed by the head of an institution. Depending on the type of information at issue, the interests of such an affected person would usually only be considered in the context of the mandatory exemptions in section 17 or 21(1) of the *Act*.

[15] I agree with and adopt the reasoning in the above orders. The issue, therefore, is whether this is one of those "rare occasions" where a third party should be permitted to raise a discretionary exemption not claimed by an institution.

[16] Having reviewed the affected party's representations and the records at issue, I am not satisfied that this qualifies as one of those unusual of cases where an affected party could raise the application of an exemption which has not been claimed by the head of an institution. Discretionary exemptions all indicate that the head "may refuse to disclose..." In other words, the Legislature expressly contemplated that the head of the institution is given the discretion to claim, or not claim, these exemptions.

[17] In my view, the affected party has not provided sufficient evidence in this case to support a finding that compelling circumstances exist that would justify the extraordinary measure of permitting it to claim the discretionary exemption in section 8(1) when the head has elected not to do so.

## **DISCUSSION**

[18] The remaining issue is whether the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate. The term "personal information" 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;

[19] 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>

[20] 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>3</sup>

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

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<sup>2</sup> Order 11.

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

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

## **Representations**

[22] The city submits that the records consist of architectural drawings containing detailed layouts of all access points to the property, as well as clear depictions as to where each room and bedroom is located. The city's position is that these records qualify as the affected party's personal information as they consist of the affected party's name where it appears with other personal information relating to that individual, falling within paragraph (h) of the definition of personal information in section 2(1) of the *Act*. The city also submits that the information contained in the records should be considered to be information about the affected party and not about the property itself.

[23] The affected party submits that the records relate to a property that he and his spouse own, namely their personal home and that this information qualifies as his personal information.

[24] The appellant's position is that the records display information about the property and not about the affected party, and that they do not contain the affected party's name or any other personal information about him. Further, the appellant refutes the city's argument that the records contain detailed layouts of all access points to the property or clear depictions as to where each room and bedroom is located. The appellant goes on to argue that even if the records did contain personal information regarding the affected party, the public interest override in section 16 would apply.

## **Analysis and findings**

[25] I have carefully reviewed the records at issue. For the reasons that follow, I have concluded that information contained in the records is not "personal information" as defined by section 2(1) of the *Act* but rather that it is information about a property.

[26] A long line of past IPC Orders have found that building plans, including residential plans, do not qualify as personal information as defined by section 2(1) the *Act*, because they reveal only information about a property, and do not represent recorded information *about* an identifiable individual,<sup>5</sup> unless there is personal information in them such as the property owner's name and telephone number.

[27] Examples of past IPC decisions include Orders 23 and MO-2081. In Order 23, the distinction between "personal information" and information concerning residential properties was first addressed by former Commissioner Sidney B. Linden. In that Order, the Commissioner made the following findings, which have been applied in a number of subsequent orders of this office:

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<sup>5</sup> See Orders M-23, M-175, MO-2053, MO-2081, PO-2322, MO-2695, MO-2792, MO-2994, MO-3066, MO-3125 and MO-3321.

In considering whether or not particular information qualifies as “personal information” I must also consider the introductory wording of subsection 2(1) of the *Act*, which defines “personal information” as “...any recorded information about an identifiable individual...”. In my view, the operative word in this definition is “about”. The *Concise Oxford Dictionary* defines “about” as “in connection with or on the subject of”. Is the information in question ... **about** an identifiable individual? In my view, the answer is “no”; the information is **about a property** and not **about an identifiable individual**. [emphasis in original]

The institution’s argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of “personal information”.

Subparagraph (h) provides that an individual’s name becomes “personal information” where it “ ... appears with other personal information **relating to the individual** or where the disclosure of the name would reveal other information **about the individual**” (emphasis added). In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the request information, in my view, the individual’s name could not be said to “appear with other personal information relating to the individual” or “reveal other personal information about the individual”, and therefore subparagraph (h) would not apply in the circumstances of these appeals.

[28] In Order 23, the information at issue was the estimated market value of properties identified by municipal address. Several subsequent orders have departed from Order 23 in concluding that the appraised value and other financial information about properties owned by individuals, are personal information. However, the underlying analysis in Order 23, and the question of whether the information is about an identifiable individual, remains valuable in assessing this issue.

[29] In Order MO-2081, Adjudicator Catherine Corban was dealing with the issue of access to records that consisted of copies of a site plan relating to a proposed residential building on a specific property. The site plan delineated the existing buildings and structures on the property as well as the proposed residential structure to replace the current one. The property itself was identified on all site plans both in the title and the body of the plan by its legal description, and its lot and concession number within the particular township. The site plans did not identify the owner of the property. Adjudicator Corban found that drawings, plans and notations about proposed alterations or additions to a property in the context of a building permit application did



not qualify as personal information because it was about the property.

[30] I adopt and apply the approach taken by the past IPC Orders on this issue.

[31] As a result and based on my review of the records, I find that they do not contain recorded information about an identifiable individual. They do not contain the name or contact information of an identifiable individual, namely the affected party. The records are building plans for a property and thus relate solely to that property. Accordingly, I find that the records do not contain *personal information* within the meaning of section 2(1) of the *Act*, and therefore cannot be exempt under the personal privacy exemption in section 14(1). Having found that the personal privacy exemption cannot apply, it is not necessary for me to determine whether the public interest override in section 16 would apply.

[32] As the city did not claim any other exemptions to these records, I find that they are not exempt from disclosure under the *Act* and I will order the city to disclose them to the appellant.

**ORDER:**

1. I order the city to disclose the records in their entirety to the appellant by **November 15, 2021** but not before **November 9, 2021**.
2. I reserve the right to require the city to provide the IPC with copies of the records it discloses to the appellant.

Original Signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ October 6, 2021