

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-4114-F

Appeal MA18-323

Corporation of the County of Grey

October 22, 2021

Summary: This final order addresses the remaining issue of access to withheld portions of two professional profiles in an appraisal report. In Interim Order MO-4031-I, the adjudicator found that sections 10(1) (third party information) and 11 (economic or other interests) did not apply to the appraisal report, and ordered the county to disclose it to the appellant, except for the portions that she found may contain personal information of other individuals (the affected parties). As the appellant confirmed her intention to pursue access to that information, the adjudicator continued the inquiry into that issue. In this order, the adjudicator finds that the mandatory personal privacy exemption at section 14(1) applies to the withheld portions of the appraisal report, and dismisses the appeal.

Statutes Considered: The *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), and 14(3)(d).

Orders Considered: Interim Order MO-4031-I.

OVERVIEW:

[1] This final order determines the issue of access to withheld portions of two real estate appraisers' professional profiles in an appraisal report of a long-term care home.

[2] By way of background, the Corporation of the County of Grey (the county) received a request for access under the *Municipal Freedom of Information and*

Protection of Privacy Act (the *Act*) to a copy of the final signed appraisal report, prepared by a named company, regarding land and a long-term care home owned by the county.

[3] The county identified a responsive record and notified the third party consultant, who had prepared the record for the county, to obtain its views regarding disclosure. The county then issued a decision denying access to portions of the report under sections 10(1)(a) and 10(1)(c) (third party information) of the *Act*.

[4] The requester, now the appellant, appealed the county's decision to the Information and Privacy Commissioner (the IPC), and I conducted an inquiry under the *Act*. During that inquiry, the county issued a revised decision to the appellant claiming that sections 11(c), (d), and (e) (economic or other interests) also applied to the withheld information.

[5] In Interim Order MO-4031-I, I found that sections 10(1) and 11 did not apply to the appraisal report. I ordered the county to disclose it to the appellant, except for portions of the professional profiles of the two individuals (the affected parties), who prepared the report for the third party consultant, at pages 91 and 92 that I concluded may contain their personal information. The appellant had 30 days after receiving the disclosed report to advise the IPC if she wished to pursue access to the identified portions. The appellant confirmed her intention to pursue access to the withheld portions of the affected parties' professional profiles after receiving the report. Therefore, I continued my inquiry into that issue by inviting representations from the county and the two affected parties, initially, on the definition of "personal information" in section 2(1) and the application of the section 14(1) mandatory personal privacy exemption.

[6] I received representations from the county and the affected parties. I shared the representations of the county with the appellant, but withheld the representations of the affected parties because I accepted that they were confidential according to the confidentiality criteria in section 7 of the IPC's *Code of Procedure*. I then invited representations from the appellant, which I received.

[7] In this order, I find that the section 14(1) mandatory personal privacy exemption applies to the withheld portions of the appraisal report. As section 14(1) prohibits the county from disclosing the information, I dismiss the appeal.

RECORDS:

[8] The information remaining at issue in this appeal is contained in withheld portions of the "Appraiser's Qualifications" section of the appraisal report under the heading of "Professional Profile". These portions consist of a paragraph summarizing each affected party's prior employment and a list of their "Selected Project Experience",

"Clients Represented", and "Education".

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 personal privacy exemption at section 14(1) apply to the information at issue?

DISCUSSION:

A. Does the record 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 record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) and the relevant portion in this appeal is 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

[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.¹

[11] Sections 2(2), (2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

¹ Order 11.

(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.²

[13] 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

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

Representations of the parties

[15] The county submits that all of the withheld information in the professional profiles identifies the affected parties in a business capacity, and while some of the withheld information may constitute personal information within the meaning of the *Act*, most of it does not.

[16] The county submits that the "Clients Represented" information and the "Selected Project Experience" information is, based on the information available to the county, information regarding the professional activities undertaken by the affected parties in the context of their employment and involvement with the consulting company that created the appraisal report. The county submits that information belonging to a corporation is not information about an individual, and thus, is not personal information within the meaning of section 2(1) of the *Act*.

[17] The county submits, in the alternative, that if either or both of the "Clients Represented" and the "Selected Project Experience" portions is information about the affected parties, it is information respecting their current employment or involvement

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.

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

with the consulting company, and as such, does not constitute employment history, according to paragraph (b) of the definition of personal information in section 2(1).

[18] The county submits that some portions of the withheld information in the professional profiles are "sufficiently generic" that disclosure could not lead to the identification of either of the affected parties, by itself or together with the individual's first name. The county notes that, in any event, the affected parties have already been identified in the portions of the appraisal report that have been released.

[19] The county submits that the information under "Education" in the professional profiles of the affected parties may constitute personal information relating to their education. The county also refers to one withheld portion of a profile that may constitute the personal information of one of the affected parties as their employment history.

[20] The appellant submits that the withheld portions of the professional profiles do not consist of personal information, but rather, professional information.

[21] As noted above, I withheld the representations of the affected parties as confidential. However, generally, the affected parties submit that the withheld portions of the report contain their personal information as defined by the *Act*.

Analysis and findings

[22] Based on my review of the withheld portions of the professional profiles and the representations of the parties, I find that the withheld portions contain the personal information of the affected parties as defined by section 2(1) of the *Act*. Specifically, I find that this information fits within paragraph (b) of the definition of personal information, as set out above, because it relates to their education and employment history.

[23] The affected parties are the authors of the appraisal report. The withheld portions are found in the "Appraiser's Qualifications" section of the report under the heading of "Professional Profile". There is a paragraph summarizing each affected party's prior employment and a list of their "Selected Project Experience", "Clients Represented", and "Education".

[24] The county and the appellant both argue that the withheld information in the appraisal report is not the personal information of the affected parties, because it is about them in a business capacity. However, the withheld portions of the professional profiles contain information similar to that found in resumes, such as education and past work experience, which the IPC has found on many occasions to be personal

information as defined in section 2(1).⁵ Based on my review of the record, I find that the withheld portions of the "Appraiser's Qualifications" section of the appraisal report is information relating to the affected parties' education and employment history as defined by paragraph (b) of the definition of personal information, because it contains the education, work project history, and past work experience of the affected parties.

[25] The names and designations of the affected parties, and their contact information contained in the professional profiles are not at issue in this appeal. This information was already disclosed with the rest of the appraisal report. In any event, I note that even if this information was at issue, it would not qualify as personal information, because the section 2(2.1) exception to the definition of personal information would apply.⁶

[26] Based on the above, I am satisfied that the withheld portions of the professional profiles contain personal information as defined by the *Act*, and I must review whether it is exempt under section 14(1).

B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

[27] 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.

[28] 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.

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

[30] 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

⁵ Orders MO-2151, MO-2193, MO-2856, and MO-3061.

⁶ It follows that the personal privacy exemption in section 14(1) would not apply to that information, because it is not personal information.

16 applies.⁷

[31] If no section 14(3) presumption applies and the exception in section 14(4) does not apply, section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.⁸ In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring *disclosure* in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.⁹

[32] 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).¹⁰

Representations, analysis and findings

Section 14(1) exceptions

[33] The county submits that disclosure of the withheld portions of the professional profiles would not constitute an unjustified invasion of the personal privacy of the affected parties. The county also submits that the exception in section 14(1)(c) (record available to the public) applies to the withheld portions of the professional profiles. The affected parties and the appellant did not specifically address the exceptions in sections (a) to (e) of 14(1).

[34] The county submits that, given my finding in Interim Order MO-4031-I that the section 11 (economic or other interests) exemptions do not apply to the appraisal report, it follows that the report must be one that was, from the time of its creation, available to the public. The county submits, in the alternative, that the report is now almost entirely a record available to the public, and since the withheld portions of the professional profiles are inextricably linked to its purpose and conclusions, the withheld information must be considered as part of the inextricable whole.

[35] Based on my review of the withheld portions of the professional profiles and the representations of the county, I find that none of the exceptions at sections (a) to (e) of 14(1) apply.

[36] With specific reference to section 14(1)(c), I note that it states:

⁷ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

⁸ Order P-239.

⁹ Orders PO-2267 and PO-2733.

¹⁰ Order P-99.

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except, personal information collected and maintained specifically for the purpose of creating a record available to the general public;

[37] I have considered the county's argument that my finding, in Interim Order MO-4031-I, that section 11 does not apply to the appraisal report means that the report must have been a record available to the public at the time it was created. I am not persuaded by this argument, because a finding that an exemption does not apply to a record does not make that record a "record available to the public" for the purposes of section 14(1)(c) of the *Act*. In particular, there is no evidence before me that the county collected and maintained the personal information at issue specifically for the purpose of creating a record available to the public, as required under section 14(1)(c).¹¹ Therefore, I find that the exception in section 14(1)(c) does not apply to the withheld portions of the professional profiles.

[38] Since I have found that none of the exceptions at sections 14(1)(a) to (e) apply, the only possibly relevant exception is section 14(1)(f), which requires me to consider any section 14(3) presumptions or section 14(2) factors that may apply.

Section 14(3)(d) – employment or educational history

[39] The county submits that section 14(3)(d) does not apply to the withheld portions of the affected parties' professional profiles. The appellant and the affected parties did not specifically address section 14(3)(d) or any other presumptions in their representations.

[40] Section 14(3)(d) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information, relates to employment or educational history;

[41] The county submits that the withheld portions of the professional profiles, based on its presentation and content, is not information that is directly related to the employment or educational history of the affected parties. The county relies on an assertion based on the nature of the record as a whole, arguing that the appraisal report is not a type of record that relates specifically to the employment or educational history of the affected parties, because it is clearly an appraisal of the value of land and property. The county also submits that the withheld portions of the professional profiles are an inextricable part of the property appraisal report. Finally, the county submits that

¹¹ See Order P-1111.

the information at issue is the type of information that a professional would make available in a public-facing profile on their employer's/business' website, or a LinkedIn profile, or in a professional directory.

[42] Past IPC orders have established that personal information contained in resumes or professional profiles generally fits within the scope of the presumption against disclosure in section 14(3)(d).¹² As noted above, the withheld portions of the two professional profiles contain a paragraph summarizing each affected party's prior employment, and a list of their "Selected Project Experience", "Clients Represented", and "Education". This personal information is clearly related to each affected party's employment and educational history. Therefore, I am satisfied that the withheld portions of the record relate to the employment and education history of the affected parties and I find that the presumption in section 14(3)(d) applies.

[43] After reviewing the parties' representations and given my finding about the presumption against disclosure in section 14(3)(d) above, I find that the withheld personal information contained in the "Appraiser's Qualifications" section of the appraisal report is exempt under the mandatory personal privacy exemption at section 14(1) of the *Act*.

Section 14(4) exceptions

[44] As noted above, in reviewing the mandatory exemption in section 14(1), once a presumed unjustified invasion of personal privacy under section 14(3) is established, it can only be overcome if an exception in section 14(4) or the "public interest override" at section 16 applies.

[45] I have found that the section 14(3)(d) presumption applies to the withheld personal information. The county submits that none of the paragraphs in section 14(4) apply to the withheld portions of the professional profiles. I agree, and I find that none apply. While the appellant did suggest that disclosure of the information at issue is "in the public interest", she did not argue that the "public interest override" at section 16 applies to the withheld personal information, and I am satisfied that it does not. Therefore, I find that section 14(1) applies to exempt from disclosure the withheld personal information in the professional profiles of the appraisal report.

ORDER:

I order the county to withhold the identified portions of pages 91 and 92 of the appraisal report, and dismiss the appeal.

¹² See Order MO-2283.

Original Signed by: _____
Anna Truong
Adjudicator

_____ October 22, 2021