

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4138

Appeal MA19-00121

Township of Oro-Medonte

December 16, 2021

Summary: This order addresses the appellant's appeal of an access decision by the Township of Oro-Medonte about additional records related to a specific location that were located in response to a further search ordered in Interim Order MO-3687-I. The order also addresses the appellant's request that the adjudicator change her decision to withhold portions of the township's representations with the appellant during the inquiry.

The township's access decision issued after Order MO-3687-I denied the appellant access to additional records, claiming that various exemptions applied. After the appellant appealed the township's access decision to the IPC, the township ultimately withdrew all of its discretionary exemption claims, resulting in it relying only on the mandatory personal privacy exemption in section 14(1).

In this order, the adjudicator upholds the township's decision to withhold certain information under the mandatory personal privacy exemption at section 14(1), and finds that the public interest override at section 16 does not apply to this information. However, she finds that the remaining portions of the records are reasonably severable without disclosing exempt personal information, and that the township must disclose this information.

In a preliminary discussion, the adjudicator dismisses the appellant's request that the adjudicator change her decision with respect to the sharing of the township's representations during the inquiry.

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(3)(b) and 16.

Orders Considered: Orders MO-3687-I, MO-3810-F, PO-2538-R, and PO-3062-R.

Cases Considered: *Chandler v. Alberta Assn. of Architects*, (1989), 1989 CanLII 41 (SCC), 62 D.L.R. (4th) 577 (S.C.C.); *Grant v. Cropley*, 143 O.A.C. 131 (Div. Ct.); [2001] O.J. 749.

OVERVIEW:

[1] In 2016, the appellant filed a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Township of Oro-Medonte (the township) for “any and all consultation records with any Aboriginal group in respect to [a specified location] since 2010.” The location spans several hundred acres and has multiple uses. In response to the request, the township issued a decision in which it granted the appellant access to responsive records.

[2] The appellant appealed the township’s decision to the Information and Privacy Commissioner of Ontario (the IPC) claiming that additional records should exist and, after an inquiry into the appeal (MA16-446-2), the IPC issued Interim Order MO-3687-I and Final Order MO-3810-F. The township was ordered to conduct a further search in Interim Order MO-3687-I, which resulted in the township locating 211 additional pages of responsive records. The township was also ordered to issue an access decision regarding the additional records located, which it did. In Final Order MO-3810-F, the adjudicator concluded that the township’s further search remedied the deficiencies identified in Interim Order MO-3687-I. The adjudicator upheld the township’s search as reasonable and Appeal MA16-446-2 was closed.

[3] This appeal, MA19-00121, addresses the township’s access decision regarding the additional records located following Interim Order MO-3687-I. The township’s access decision granted the appellant access to most of the 211 pages of records located. The appellant appealed the township’s decision to deny access to two bundles of records totalling nine pages under the discretionary law enforcement exemption under section 8(1). Appeal MA19-00121 was opened and a mediator was appointed to explore settlement with the parties.

[4] During mediation, the township issued a revised access decision confirming that it continued to rely on the discretionary law enforcement exemptions in sections 8(1)(a) and (b) while also raising the application of the mandatory personal privacy exemption under section 14(1). The township’s revised access decision also marked the first time it claimed that the discretionary exemption in section 9.1(1) (relations with Aboriginal communities) also applied to the records. The appellant objected to the township relying on section 9.1(1). The appellant also took the position that the public interest override in section 16 applies in the circumstances of this appeal.

[5] Mediation did not resolve the issues and the appeal was transferred to the adjudication stage in which an adjudicator may conduct an inquiry. I decided to conduct an inquiry and invited the parties to make written representations in support of their positions. The non-confidential portions of the parties’ representations were exchanged in accordance with the IPC’s *Code of Procedure* and *Practice Direction 7*. The appellant later raised an issue with my decision to withhold a portion of the township’s

representations and requested that I change my decision. I address that matter as a preliminary issue below.

[6] The parties were asked to, and did, provide representations on the possible application of sections 8(1)(a) and (b). The township confirmed that the law enforcement matter it had identified had concluded, and it withdrew its claim that sections 8(1)(a) and (b) apply to the records. The parties also provided representations on whether the township should be allowed to “late raise” the discretionary exemption in section 9.1(1) to deny access and on the applicability of the exemption itself.¹ However, the township subsequently confirmed that it no longer relies on section 9.1(1) to withhold the records. Accordingly, the issues related to the township’s withdrawn sections 8(1) and 9.1(1) exemption claims have been removed from the scope of this appeal. This left the applicability of the mandatory personal privacy exemption at section 14(1), and the public interest override at section 16 as the only issues to be resolved.

[7] In this order, I find that disclosure of the names, addresses, phone numbers or personal email addresses of individuals who filed complaints with the township would constitute an unjustified invasion of the personal privacy under section 14(1), and that the public interest override in section 16 does not apply to permit disclosure of this information. However, the township is ordered to disclose the portions of the records that do not qualify for exemption under section under 14(1).

[8] Additionally, as a preliminary issue, I deny the appellant’s request that I change my decision to withhold a portion of the township’s representations from the appellant.

RECORDS:

[9] The two bundles of records at issue are identified as Records B01 and B05 in the “Responsive Documents List”, which was prepared by the township and provided to the appellant with its access decision. The township identified these records as responsive to the appellant’s request for “any and all consultation records with any Aboriginal group in respect to [a specified location] since 2010.” I have reviewed these records and they do not appear to relate to consultations the township may have engaged in

¹ Section 11 of the IPC’s *Code of Procedure* addresses circumstances where institutions seek to raise new discretionary exemption claims during an appeal. Section 11.01 states:

In an appeal from an access decision an institution may make a new discretionary exemption claim within 35 days after the institution is notified of the appeal. A new discretionary exemption claim made within this period shall be contained in a new written decision sent to the parties and the IPC. If the appeal proceeds to the Adjudication stage, the Adjudicator may decide not to consider a new discretionary exemption claim made after the 35-day period.

The purpose of the 35-day rule is to provide an opportunity for institutions to raise a new discretionary exemption without compromising the integrity of the appeal process.

with an Indigenous group, but they do appear to be related to the property location identified in the request.

[10] The records at issue are described in the chart below:

Record B01	Attachments to emails regarding a complaint received by the township consisting of a screenshot of a complaint form (1 page) and a notice of violation (2 pages)
Record B05	Email attaching draft responses to residents, dated December 23, 2015 (6 pages).

PRELIMINARY ISSUE:

My decision to withhold portions of the township’s representations from the appellant

[11] During the inquiry process, I decided to withhold approximately two and a half pages of the township’s nine-page representations from the appellant. In my correspondence to the appellant explaining this decision, I told the appellant that these portions of the representations were withheld “as they address issues outside the scope of the appeal.”²

[12] Initially, the appellant did not raise a concern with my decision. However, after reviewing the township’s reply representations, the appellant requested that I change my decision and provide them with the withheld information from the township’s representations. In support of their position, the appellant stated:

A few pages of the [township’s] representations were redacted on the basis they were irrelevant to issues in the appeal. We understand the township did not ask the IPC to withhold [this information].

IPC policy on sharing representations is stated in Practice Direction 7 (Sharing of Representations). The general rule is to share all representations. Section 5 and 6 of the Direction provide exceptions but it appears none of them apply to this appeal.

It would be unusual for the Township to make representations unrelated to appeal issues, me or our community. More likely they have some

² The appellant was also told that “a small portion of the township’s representations were withheld due to confidentiality concerns. Those portions address the township’s position that the personal privacy exemption under section 14(1) applies.” The appellant did not raise any concerns about this portion of the township’s representations being withheld.

bearing on the issues, or may indicate other issues not yet raised in the appeal, and these issues may not be readily apparent to the IPC.

[13] I subsequently wrote to the appellant and gave them an opportunity to make additional submissions in support of their request that I revisit my decision to withhold portions of the township's representations, which they did.

Analysis and decision

[14] The following discussion summarizes the appellant's submissions along with my reasons for my decision to withhold the portion of the township's representations in question.

[15] The appellant submits that procedural fairness dictates that the withheld portions of the township's representations should have been provided to them upon their request. The appellant states that a "principle of procedural fairness is the right to fair and impartial decision making."

[16] The appellant submits that the township has acted in a manner that is biased against them and provides examples of incidents that they believe support their position. The appellant also provided a copy of a letter and email as supporting documentation. The appellant stated:

... there is a rebuttable presumption of Township bias and it overshadows the [township's] decisions and representations. The redacted Township representations may be relevant to this question, and, in the interest of procedural fairness, they should be shared with us.

[17] The appellant asserts that they should have access to the portions of the township's representations that address matters that I determined to be about issues outside the scope of the appeal under the *Act*. In support of their position, the appellant submits that the withheld portions of the township's representations may be relevant to their allegation that the township has acted with bias against them. I understand the appellant to be arguing that it should be provided with all relevant submissions so that it has a chance to respond to them.

[18] I agree with the appellant that procedural fairness requires some degree of mutual disclosure of the parties' arguments. However, the portions of the township's representations that I withheld from the appellant are not related to the township's access decision and I will not be considering them in determining the appellant's access to the withheld records. With respect to the concerns the appellant raised about the township's conduct, such concerns are not within the jurisdiction of the IPC and must be addressed directly with the township or its Integrity Commissioner. In the circumstances of this appeal, I decided that sharing those representations with the appellant would only serve to distract the parties from the issues that are properly before me. I confirm again for the benefit of the appellant that I have not considered these portions of the township's representations in arriving at my conclusions below.

The appellant asserts that I made an error in applying the IPC's criteria for withholding representations set out in *Practice Direction 7*. The appellant submits that I failed to properly apply the criteria in section 5(c) as "scope of information is not a reason" to withhold representations outlined in section 6 of *Practice Direction 7*.³

[19] The criteria set out in *Practice Direction 7* provide guidance in situations where an adjudicator is faced with a request from one party to withhold representations from another. That was not the case here. Here, I determined that portions of the township's representations should be severed from the copy provided to the appellant for the reasons I explained above; that is, those portions were not relevant to the issues before me in this appeal.

[20] Section 41(13) of *Act* provides that it is within the IPC's discretion to deny a requester access to the representations of another party. Section 41(13) states:

The person who requested access to the record, the head of the institution concerned and any other institution or person informed of the notice of appeal under section 39(3) shall be given an opportunity to make representations to the Commissioner, **but no person is entitled to have access to or to comment on representations made to the Commissioner by any other person** or to be present when such representations are made. [Emphasis mine]

[21] The IPC has consistently found, and this has been recognized by the courts, that the IPC has the discretion to set the appeal procedures for inquiries under the *Act*, and must be given a considerable degree of latitude in doing so. For example, in *Grant v. Cropley*⁴ (2001), the Divisional Court upheld the IPC's decision to not share with a requester the representations of another party. The Court stated as follows:

³ The criteria for withholding representations is set out, in part, in sections 5 and 6 which state:

5. The Adjudicator may withhold information contained in a party's representations where:
 - (a) disclosure of the information would reveal the substance of a record claimed to be exempt or excluded; or
 - (b) the information would be exempt if contained in a record subject to the *Freedom of Information and Protection of Privacy Act* or the *Municipal Freedom of Information and Protection of Privacy Act*; or
 - (c) the information should not be disclosed to the other party for another reason.
6. For the purpose of paragraph (c) above, the Adjudicator will apply the following test:
 - (i) the party communicated the information to the IPC in a confidence that it would not be disclosed to the other party; and
 - (ii) confidentiality must be essential to the full and satisfactory maintenance of the relation between the IPC and the party; and
 - (iii) the relation must be one which in the opinion of the community ought to be diligently fostered; and
 - (iv) the injury to the relation that would result from the disclosure of the information would be greater than the benefit thereby gained for the correct disposal of the appeal.

⁴ 143 O.A.C. 131 (Div. Ct.); [2001] O.J. 749.

In our opinion, the language of s. 52(13) [the equivalent of section 41(13) in *MFIPPA*] is explicit and clear in stating that the applicant did not have the right either to receive the Minister's submissions or to comment upon them for the purposes of the appeal.⁵

[22] Given the wording of section 41(13) and the Court's treatment of it, I find that as the adjudicator in this matter, I have the power to control the process, which includes having the authority to withhold portions of the township's representations from the appellant. In arriving at this conclusion, I note that in Order 164, Former Commissioner Sidney Linden stated:

... the only statutory procedural guidelines that govern inquiries under the *Freedom of Information and Protection of Privacy Act, 1987* are those which appear in that *Act*. However, while the *Act* does contain certain specific procedural rules, it does not in fact address all of the circumstances which arise in the conduct of inquiries under the *Act*. By necessary implication, in order to develop a set of procedures for the conduct of inquiries, I must have the power to control the process. In my view, the authority to order the exchange of representations between the parties is included in the implied power to develop and implement rules and procedures for the parties to an appeal.

[23] The authority in the *Act* to withhold representations from a party is, of course, tempered by the common law rules of procedural fairness. I have already explained above that withholding the irrelevant representations of the township from the appellant was not a breach of procedural fairness.

[24] For the above reasons, I am satisfied that it was appropriate for me to withhold the representations in question from the appellant and there is, therefore, no basis for me to change my decision to do so.

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 information remaining at issue?
- C. Does the public interest override in section 16 override the application of the mandatory personal privacy exemption at section 14(1)?

⁵ Here, the Court referred to *Kane v. Board of Governors of the University of British Columbia* [1980] 1 S.C.R. 1105, per Dickson J. (as he then was) at p. 1113.

DISCUSSION:

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

[25] The township relies on the mandatory personal privacy exemption in section 14(1) to withhold the records. Since section 14(1) can only apply to personal information, it is necessary for me to decide first whether the records contain "personal information" according to the definition in section 2(1) and, if so, to whom it relates.

[26] 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.

[27] 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.

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

Representations of the parties

[29] In its representations, the township submits that the records "contain personal opinions as well as personal information which is not entitled to be accessed by the appellant." The township argues that the personal information at issue was provided to the township "in confidence" to file a complaint.

[30] The appellant submits that the records do not contain information about individuals in a personal capacity but, rather, consist of "official communication" from an Indigenous community.

Analysis and findings

Record B01

Complaint form

[31] This record is a one-page complaint form filled out by an individual by hand. The form contains this individual's name, address, phone numbers and personal email address. In addition, the complaint form describes the individual's concerns about an identified property and their views regarding whether the township has properly enforced a by-law under the headings "Reason of Concern" and "Address of Concern". I

find that this individual's name, address, contact information and opinions or views constitute personal information as defined in paragraphs (d), (e) and (h) of section 2(1).⁶ I note that the substance of the complaint, which is contained in the individual's opinions or views, does not relate to any other identifiable individual, only to the location identified in the request.

[32] In addition, having reviewed the record, I am satisfied that the information at issue was provided by, and is about an individual, in their personal capacity. The content of the record itself does not support the appellant's assertion that the complaint was made in any official capacity. Having regard to the record and the representations of the township, I am satisfied that the personal information at issue is not associated with an individual in a professional, official or business capacity. Since this record contains the personal information of this individual, I will decide under Issue B whether the personal privacy exemption at section 14(1) applies to it.

Notice of violation

[33] This two-page document from the local conservation authority is addressed to two different companies⁷ and copied to nine individuals, including the township's Chief Administrative Officer, Chief Building Official and Chief Municipal Law Enforcement Officer. The information in the record notifies two companies of alleged violations and the date they are to contact the conservation authority with their proposed remedial measures. The record contains the names and titles of the nine individuals receiving a copy and I am satisfied that this information identifies the individuals in a business, professional or official capacity.⁸ Furthermore, I am satisfied that this information does not reveal something of a personal nature of the individuals who received copies of the notice.⁹ Accordingly, as this record is addressed to companies and copied to individuals acting in their official capacities, I find that this record does not contain the personal information of any identifiable individual. Since the personal privacy exemption at section 14(1) cannot apply to this record and no other mandatory exemptions apply, I will order the township to disclose this record to the requester.

⁶ The term "personal information" is defined, in part, in section 2(1) as recorded information about an identifiable individual, including,

(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,

(h) the individual's name where 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;

⁷ No individual associated with the companies receiving the notice is identified in the record.

⁸ Section 2.1 provides that "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."

⁹ See Orders P-1409, R-980015, PO-2225 and MO-2344.

Record B05

Responses to residents

[34] This record consists of an email to the township's staff sent by outside counsel. The email attaches proposed written responses to three complaints received from individuals, who are identified as township residents, about the township's management of certain land approval, permit or site plan matters. The individual who filed the complaint form identified above (Record B01) is one of the residents for whom a draft response has been prepared. In each proposed response, the resident is identified and the complaints or the questions they submitted to the township are set out.

[35] Having reviewed the record, I am satisfied that it contains the personal information of identifiable individuals. I find that the draft responses contain the personal information of residents who submitted complaints or raised concerns with the township, including their names and opinions or views about the township's management of the identified issues, as defined in paragraphs (e) and (h) of the term in section 2(1).

[36] Despite the appellant's assertion that the complaints were filed by individuals acting in a professional or official capacity, there is insufficient evidence that this is the case. The records themselves identify each individual as a resident and, based on my review of the records, I am satisfied that the complaints were submitted by individuals acting in their personal capacities. Since this record contains the personal information of these individuals, I will decide under Issue B below whether the personal privacy exemption applies to it.

Summary

[37] I find that the complaint form and draft responses to residents contain the personal information of identifiable individuals. Accordingly, I must determine whether that personal information is exempt from disclosure under the mandatory personal privacy exemption in section 14(1).

[38] However, given my finding that the notice of violation does not contain the personal information of identifiable individuals, the personal privacy exemption in section 14(1) cannot apply. No other exemption has been claimed by the township to withhold the notice of violation, and I am satisfied that no mandatory exemption applies to it. Accordingly, I will order the township to disclose to the appellant the notice of violation in full.

B. Does the mandatory personal privacy exemption at section 14(1) apply to the complaint form and the responses to residents?

[39] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[40] Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to a number of exceptions. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information. The appellant alluded to the possible application of the exception in section 14(1)(a) which permits disclosure when the individual to whom the personal information relates has provided written consent to its disclosure in the context of the access request.

[41] In their representations, the appellant argues that the township did not provide evidence that it sought the consent of any individuals identified in the records to disclosure of their information. In response, the township states in its reply representations that it did not seek the authorization of individuals referenced in the records as the records related to a by-law complaint matter that was pending at the time it issued its access decision (and therefore also subject to the township's former section 8(1)(a) and 8(1)(b) exemption claims).

[42] On the evidence before me, it is clear that no written consents from these three individuals have been provided, and I find that section 14(1)(a) does not apply. Accordingly, the only exception that could apply in the circumstances in this appeal is section 14(1)(f), which allows the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy."

[43] The section 14(1)(f) exception allows the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Other parts of section 14 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

[44] Sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy. In this case, the township claims that the presumptions at sections 14(3)(b) and (g) apply.

[45] Sections 14(3)(a) to (h) should generally be considered first.¹⁰ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy. If one of these presumptions applies, the personal information cannot be disclosed unless:

- there is a reason under section 14(4) that disclosure of the information would not be an "unjustified invasion of personal privacy," or

¹⁰ If any of the section 14(3) presumptions are found to apply, they cannot be rebutted by the factors in section 14(2) for the purposes of deciding whether the section 14(1) exemption has been established.

- there is a “compelling public interest” under section 16 that means the information should nonetheless be disclosed (the “public interest override”).¹¹

[46] If the personal information being requested does not fit within any presumptions under section 14(3), one must next consider the factors set out in section 14(2) to determine whether or not disclosure would be an unjustified invasion of personal privacy. However, if any of the situations in section 14(4) is present, then section 14(2) need not be considered. The township does not claim that any of the situations in section 14(4) apply here and I am satisfied that none apply. However, the township claims that the factors at sections 14(2)(f), (g), and (h), which weigh in favour of privacy protection, apply in the circumstances of this appeal.

[47] Section 14(2) lists several factors that may be relevant to determining whether disclosure of personal information would be an unjustified invasion of personal privacy.¹² Some of the factors weigh in favour of disclosure, while others weigh against disclosure. If no factors favouring disclosure are present, the section 14(1) exemption — the general rule that personal information should not be disclosed — applies because the exception in section 14(1)(f) has not been proven.¹³

[48] The factors outlined in section 14(2) cannot be used to rebut (disprove) a presumed unjustified invasion of personal privacy under section 14(3).¹⁴ In other words, if disclosure of the personal information is presumed to be an unjustified invasion of personal privacy under section 14(3), section 14(2) cannot change this presumption.

[49] The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 14(2).¹⁵

[50] As noted above, any section 14(3) presumption claimed should generally be addressed first. I will first determine whether the presumption at section 14(3)(b) applies to the remaining information at issue, which is the personal information of an individual provided on the complaint form (record B01) and the personal information of residents contained in an email attaching draft responses to them (record B05).

Is disclosure presumed to be an unjustified invasion of personal privacy under section 14(3)(b)?

[51] This presumption requires only that there be an investigation into a *possible*

¹¹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

¹² Order P-239.

¹³ Orders PO-2267 and PO-2733.

¹⁴ *John Doe*, cited above.

¹⁵ Order P-99.

violation of law.¹⁶ So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.¹⁷

[52] The presumption can apply to different types of investigations, including those relating to by-law enforcement,¹⁸ and enforcement of environmental laws,¹⁹ occupational health and safety laws,²⁰ and violations of the Ontario *Human Rights Code*.²¹

[53] The township takes the position that the presumption at section 14(3)(b) applies and states:

... the records contain personal information for which a possible violation of by-law has been declared. The documents in question were part of [Ontario Municipal Board and Land Planning Act Tribunal hearings] as well as part of an internal investigation through the [township's] by-law department as well as the Planning department. The personal information is taken under the public's assumption that it will be kept confidential as part of a formal complaint.

[54] The appellant questions the township's claim that the personal privacy exemption in section 14(1) applies given its claim that section 9.1(1)(a) (prejudice to relations between an Aboriginal community and an institution) also applies. The appellant argues that the township cannot on one hand rely on the personal privacy provisions and also argue that the exemption at section 9.1(1)(a) could apply. The basis of the appellant's argument appears to be their assertion that the records constitute an "official communication" from an Indigenous community. However, as stated above, I found that the records contain the personal information of identifiable individuals and that there was insufficient evidence to support the appellant's assertion that these communications were made by the individuals in any official capacity.

Analysis and Decision

[55] Having regard to the records themselves along with the submissions of the parties, I am satisfied that the personal information contained in the complaint form and responses to residents was compiled and is identifiable as part of an investigation into a possible violation of the township's by-laws for the purpose of the presumption against disclosure in section 14(3)(b).

¹⁶ Orders P-242 and MO-2235.

¹⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

¹⁸ Order MO-2147.

¹⁹ Order PO-1706.

²⁰ Order PO-2716.

²¹ R.S.O. 1990, c. H.19; Orders PO-2201, PO-2419, PO-2480, PO-2572 and PO-2638.

[56] In addition, throughout their submissions the appellant insists that the records before me are documents the township submitted into evidence in an Ontario Municipal Board (OMB) hearing. The appellant asserts that the procedural rules of that tribunal require a party who intends to introduce a document as evidence at a hearing to provide a copy of the document to all parties. Even if I were to accept that the information these residents provided to the township in support of their complaints was put into evidence by the township at the OMB hearing, that would be immaterial to whether the presumption against disclosure in section 14(3)(b) applies to the information in the context of this appeal under the *Act*.

[57] The appellant did not specifically argue that any of the factors listed under section 14(2), or an unlisted factor, weigh in favour of disclosure apply in the circumstances. Regardless, even if they had done so, when determining whether the section 14(1) exemption applies, section 14(2) factors favouring disclosure cannot be used to rebut a presumed unjustified invasion of personal privacy under section 14(3).

[58] Having regard to the above, I find that the presumption under section 14(3)(b) applies to the name, address, phone number or email address of the individuals who complained to the township, and find this information exempt under section 14(1).²²

[59] Regarding the "views or opinions" of these individuals, however, I note that section 4(2) of the *Act* requires an institution to disclose "as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions".²³

[60] In my view, the portions of the complaint form and email attaching the responses to residents that contain or summarize the concerns (views or opinions) these individuals brought to the township's attention, when viewed on their own, would not, without the name and/or contact information of the individuals, reasonably be expected to identify them. Accordingly, I find that these portions of the records can reasonably be severed from the name, address, phone number or email addresses of the individuals identified in the records and will order the township to disclose this information to the appellant.

[61] I will now go on to consider the appellant's submission that the public interest override in section 16 applies to names and/or contact information found exempt under section 14(1).

²² Given this, I need not consider the parties' representations about the factors weighing against disclosure at sections 14(2)(f), (g) and (h).

²³ Section 4(2) states:

If an institution receives a request for access to a record that contains information that falls within one of the exemptions under sections 6 to 15 and the head of the institution is not of the opinion that the request is frivolous or vexatious, the head shall disclose as much of the record as can reasonably be severed without disclosing the information that falls under one of the exemptions.

C. Does the public interest override in section 16 override the application of the mandatory personal privacy exemption at section 14(1)?

[62] Section 16 of the *Act*, the “public interest override,” provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. The appellant relies on the public interest override in this appeal respecting section 14(1). Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[63] For section 16 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[64] The *Act* does not state who bears the onus to show that section 16 applies. The IPC will review the records with a view to determine whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.²⁴

[65] In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government.²⁵ In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.²⁶

[66] A “public interest” does not exist where the interests being advanced are essentially private in nature.²⁷ However, if a private interest raises issues of more general application, the IPC may find that there is a public interest in disclosure.²⁸

[67] The IPC has defined the word “compelling” as “rousing strong interest or attention”.²⁹

²⁴ Order P-244.

²⁵ Orders P-984 and PO-2607.

²⁶ Orders P-984 and PO-2556.

²⁷ Orders P-12, P-347 and P-1439.

²⁸ Order MO-1564.

²⁹ Order P-984.

[68] The IPC must also consider any public interest in not disclosing the record.³⁰ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of "compelling."³¹

[69] The existence of a compelling public interest is not enough to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the exemption in the specific circumstances.

[70] An important consideration in balancing a compelling public interest in disclosure against the purpose of the exemption is the extent to which denying access to the information is consistent with the purpose of the exemption.³²

Representations of the parties

[71] The appellant submits that the specified location identified in the request "was, and remains, a significant public interest issue." The appellant goes on to say that the total amount of legal costs incurred by the township relating to the specified location are estimated to be about 10% of its annual expenses. The appellant also argues that the public interest in this matter commenced when the township acquired the property. Finally, the appellant states:

The public have a right to know a regulatory process was conducted fairly and the Township was acting in their interest. Withholding evidence erodes the public confidence in the process and raises many serious questions.

[72] The township takes the position that the public interest override in section 16 should not be applied in the circumstances of this appeal because a significant amount of information has already been made available to the public through an OMB hearing, a Land Planning Act Tribunal (LPAT) hearing and two public meetings. The township says that in this case there has been wide public coverage and debate of the issues related to the property and that disclosure of the personal information at issue would not shed further light on this matter. The township also submits that the public interest does not clearly outweigh the purpose of the personal privacy exemption in the circumstances.

Decision and analysis

[73] The information I found exempt under section 14(1) consists of the names and contact information of individuals who filed complaints or raised concerns with the township's by-law or planning department.

³⁰ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

³¹ Orders PO-2072-F, PO-2098-R and PO-3197.

³² Order P-1398, upheld on judicial review in *Ontario v. Higgins*, 1999 CanLII 1104 (ONCA), 118 OAC 108.

[74] I have considered the parties' representations along with the exempt personal information, and I find that disclosure of the exempt information would not shed light on the public interest identified by the appellant. The appellant argues that the public has a right to know how the township responded to regulatory matters related to the property in question. However, in my view, disclosure of the names and contact information of residents who raised concerns with the township would not shed light on the activities of the township.

[75] I agree with the township's assessment that a significant amount of information about regulatory proceedings related to the subject property has already been made available to the public as the result of public OMB and LPAT hearings. The township also argues, and I accept, that regulatory matters relating to the property were also discussed in public meetings. In addition, I note that as the result of the further search ordered in Interim Order MO-3687-I, almost 200 pages of responsive records were disclosed to the appellant.

[76] Even if I was satisfied that a compelling public interest existed, it is my view, based on the nature of the information found exempt and the parties' representations, that this interest would not outweigh the purpose of section 14(1), which is to protect the personal privacy of identifiable individuals.

[77] Having regard to the above, I find that the public interest override in section 16 does not apply to the personal information I found exempt under section 14(1), and I uphold the township's decision to withhold this information from the appellant.

ORDER:

1. I uphold the township's decision to withhold information that I have found exempt under section 14(1).
2. I order the township to disclose the portions of the records I found not exempt under section 14(1) by **January 20, 2022** but not before **January 15, 2022**. For the sake of clarity, I have highlighted the portions of the records the township is not to disclose to the appellant in the copy of this order provided to the township.
3. In order to verify compliance with order provision 2, I reserve the right to require the township to provide me with a copy of the records disclosed to the appellant.

Original signed by: _____
Jennifer James
Adjudicator

December 16, 2021 _____