

Information and Privacy Commissioner,  
Ontario, Canada



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

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## INTERIM ORDER MO-4152-I

Appeal MA20-00073

City of Toronto

January 20, 2022

**Summary:** The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a particular fence permit. The city granted partial access to the responsive records, but denied access to the remainder of the records (in full or in part) under the mandatory personal privacy exemption at section 14(1) of the *Act*. The appellant appealed the city's access decision, and raised the public interest override at section 16 of the *Act*. In this order, the adjudicator upholds the city's access decision, in part. She finds that certain information in the records is outside the scope of the access request. In addition, she finds that many of the responsive records include the personal information of the appellant and, therefore, must be considered under the discretionary personal privacy exemption at section 38(b) of the *Act*. As a result, the adjudicator defers her decision in relation to these records, pending receipt of further representations. However, the adjudicator upholds the city's decision to withhold the personal information at issue in the responsive records that do not contain the appellant's personal information under section 14(1), and finds that section 16 does not apply to that personal information.

**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"), 2(2.1), 2(2.2), 14(1), 16, and 38(b).

**Order Considered:** Order M-352

### OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of*

*Information and Protection of Personal Privacy Act* (the *Act*) for the following:

All records pertaining to fence PERMIT NO [specified number] that was approved by bylaw officer [specified name] and issued by [specified name], Transportation Services Department. Include records of application, requests for permit, the receipt of permit fee, sketches, drawings, notes, copy of letters and emails correspondence between applicants and the City staff.

[2] The city issued a decision under the *Act* as follows:

Access is granted in part to the records found by staff of Municipal Licensing & Standards and Transportation Services. Access is denied to the remainder of the records under section 14(1) of the *Act*.

[3] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was appointed to explore resolution.

[4] During mediation, the mediator reviewed the issues on appeal with both the city and the appellant. Through the mediator, the appellant clarified the scope of his request for the city, raised the issue of reasonable search as to survey-type records, and articulated some other concerns regarding the city's application of the section 14(1) personal privacy exemption. The city then provided the appellant with written explanations regarding its search and the exemption, while maintaining its decision to grant partial access to the records. The city also located and disclosed the second page of the Permit Directive to the appellant, as only page one of that responsive record had been disclosed at the request stage.

[5] The appellant then advised the mediator that he would like to proceed to adjudication, as he was still interested in obtaining access to the remainder of the records severed by the city in its original access decision. He also stated that he believes that survey records should exist, so the reasonableness of the city's search remained at issue.

[6] After the initial Mediator's Report was sent out to the parties, the city conducted another search for responsive records and then disclosed additional information to the appellant. The appellant then advised the mediator that the issue of reasonable search could be removed from the issues remaining in dispute.

[7] Accordingly, the appeal moved to the adjudication stage, where an adjudicator may conduct a written inquiry under the *Act*, with the sole issue in dispute being the

application of the personal privacy exemption at section 14(1).<sup>1</sup>

[8] As the adjudicator of this appeal, I began an inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, to the city. Although the outstanding issue listed in the Mediator's Report was the application of section 14(1), the Notice of Inquiry included the issue of whether the records contain "personal information," as that term is defined in section 2(1) of the *Act*, and if so, to whom it relates, as this must always be considered before assessing a personal privacy exemption. I asked the city for written representations in response, and the city provided representations. I then asked the appellant for written representations in response to the issues set out in the Notice of Inquiry, and to the non-confidential portions of the city's representations. Due to confidentiality concerns, portions of the city's representations were withheld from the appellant.<sup>2</sup> The parties exchanged further representations.

[9] Upon my review of the representations and the records, I determined that the following issues also appeared to be relevant: the scope of the request (given certain representations by both parties), the discretionary personal privacy exemption at section 38(b) of the *Act*, and if so, the city's exercise of discretion in relation to section 38(b). Therefore, I invited the city to provide further representations on these issues. The city declined to give fulsome representations in response.

[10] For the reasons that follow, I uphold the city's access decision, in part. I find that portions of the records are not responsive to the request and uphold the city's decision to withhold them. I also find that some of the records (specifically, records 1-8, 11, 19, and 20) contain information that qualifies as the personal information of the appellant, and that the remaining responsive records contain only personal information belonging to one or more individuals other than the appellant. I defer my findings on the application of section 38(b) to the records, and the application of the public interest override at section 16, pending receipt of further representations which I will invite separately.

## **RECORDS:**

[11] The city fully withheld 29 pages of records consisting of emails (27 pages) and insurance documents (2 pages). I will refer to these records as records 1-10 in this order. Based on my review of the emails or email chains, I have numbered the emails or email chains as records 1-8. Records 9 and 10 are the insurance documents.

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<sup>1</sup> Although this was listed as the sole issue in dispute, any consideration of section 14(1) of the *Act* would require, first, a consideration of whether the records contain personal information under section 2(1) of the *Act*, and if so, to whom it relates.

<sup>2</sup> In accordance with *Practice Direction 7* of the IPC's *Code of Procedure*, a practice direction dealing with the sharing of representations.

[12] In addition, the city partially withheld information found in 22 pages of records, which the city provided to the IPC in a batch of 16 pages (which I will refer to as records 11-20) and 6 pages (which I will refer to as records 21-25), respectively. Records 11 and 14 are print-outs relating to complaints made to the city. Record 12 is an investigation card. Records 16 and 21-25 are permit or directive documents. Records 17-20 are emails.

[13] Records 13 and 15 are not at issue, as they were fully disclosed to the appellant.

[14] I note that much of the content in the emails is repeated, as parts of email chains.

[15] In this order, I make findings about the scope of the appellant's access request and whether responsive records contain personal information of the appellant. I will summarize these findings in the table below.

<b>Record #</b>	<b>Contains non-responsive information</b>	<b>Record contains appellant's personal information</b>
1-8, 19, 20	Yes	Yes
9 and 10	Yes	Not responsive to the request
11	Yes	No
12, 14, 16, 17, 18, 21-25	No	No

## **ISSUES:**

Preliminary issue: What is the scope of the request for records? Which records (or parts of records) are responsive to the request?

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in records 12, 14, 16-18, and 21-25?
- C. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

## **DISCUSSION:**

### **Preliminary issue: What is the scope of the request for records? Which records (or parts of records) are responsive to the request?**

[16] In my examination of the parties' representations, I found references to information that was not initially being sought but was now being sought, or that was otherwise unrelated to the subject matter of the appellant's access request. Upon a further review of the IPC's copy of the records at issue, I formed the preliminary view that information that did not appear to be responsive to the request had been withheld under section 14(1), not on the basis of being outside the scope of the request. As a result, I asked the city for comment on the scope of the request and responsiveness of records (or parts of records), but it declined to provide representations further to those already provided. In the end, I am able to determine these issues from the nature the access request, the representations provided and from the records themselves, as I explain below.

[17] To be considered responsive to the request, records must "reasonably relate" to the request.<sup>3</sup> As I will explain below, the scope of this appeal does not include what the city referred to in its representations as "an unrelated matter," or the information in records 9 and 10 (which are insurance records), but does include the names of the fence permit applicants.

[18] It is agreed that the request is for all records related to a particular fence permit issued by the city. This was to include "records of application, requests for permit, the receipt of permit fee, sketches, drawings, notes, copy of letters and emails correspondence between applicants and the City staff."

[19] In my view, on the questions of scope and responsiveness, it is helpful to refer to the following text from an email of the appellant to the city, during the mediation process (the city set out this text in its initial representations):

The communications that were made for the purpose of obtaining a permit such as scheduling (e.g. site inspections), initial permit request (dates/times), references to other permits (2013) and adjacent properties is the information that I am seeking. This is all about a fence, properties and City business. This is a fence permit to build between two adjacent properties, on City property (public Right of Way) not on neighbours' private property. I am not interested in private insurance information but rather the supporting information communicated to have a permit.

[20] With this background in mind, I will discuss three points related to the scope of the appeal which emerge from the parties' representations in the inquiry: an "unrelated

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<sup>3</sup> Orders P-880 and PO-2661.

matter” that was subject to a by-law investigation, the names of the fence permit applicants, and insurance records.

***“An unrelated matter”***

[21] The city’s representations briefly refer to “an unrelated matter” that is mentioned in the records. However, the city did not withhold those portions of the records relating to the unrelated matter on the basis that they were not responsive to the request. Based on my review of the records and the city’s representations, it appears that the city then referred to this unrelated matter in the context of its representations about an investigation into a by-law investigation unrelated to the fence.

[22] The appellant’s representations address the by-law that is unrelated to the fence, offering comment about the legality of certain actions to do with that issue. He also states that the by-law investigation into that issue is irrelevant in the circumstances of this appeal.

[23] Throughout the appellant’s representations, he repeatedly states that he is only seeking records relating to the fence permit in question and the property line dispute connected to that, and that the information he seeks is not personal information under the Act, but information about property.

[24] Based on my review of the wording of the request and the parties’ representations, I find that the scope of the request is clearly limited to the fence permit question and the property line dispute. I accept the city’s submission that the records contain information about a matter that is “unrelated” to the subject matter of the request, and I find that this is the matter relating to the by-law investigation unrelated to fences. I note, however, that these portions of the records include information that qualifies as the “personal information” of the appellant, under section 2(1) of the *Act*, as detailed below, under Issue A. This is noteworthy because the presence of personal information belonging to a requester in a record – even if that personal information is non-responsive to the request – means that the consideration of any right of access to responsive information in that record must be done under the discretionary personal privacy exemption at section 38(b), not the mandatory personal privacy exemption at section 14(1) of the *Act*.

[25] Since portions of the records are not responsive to the request, they are not within the scope of the appeal. This information should not be disclosed to the appellant in response to the access request before me. To be clear, records 1-8, 11, 19 and 20 contain some non-responsive information.

***Names of the fence permit applicants***

[26] The appellant states the following in his representations: “The name of the [fence] permit applicants is not at issue in the appeal.” However, he later says the following, in the context of his comments about the how much the city severed: “The

first name and last initial of the fence permit applicants should be disclosed.”

[27] I find that the names of the fence permit applicants are responsive to the access request, but whether or not they are still being sought by the appellant (and are therefore in the scope of the appeal) is less clear. I have decided to include this information within the scope of the appeal because that information is responsive to the request.

### ***Insurance documents***

[28] The city initially identified records 9 and 10 as responsive records. These records are insurance documents, which the city withheld in full. Based on my review of the parties’ representations, it appears that whether or not these records are of interest to the appellant, or are responsive to the request, has been a matter of some discussion since the appellant filed the appeal.

[29] In its initial representations, the city argued that the presumption at section 14(3)(f) (finances) applied to these records and that these records were therefore exempt in their entirety under section 14(1).

[30] In response, the appellant argued that section 14(1) does not apply to the entire records, arguing that the city could have narrowed its redaction to only the insurance policy number. In addition, he stated the following about his request: “[t]he insurance information other than the policy number is requested to be disclosed even though it is not part of the original request.”

[31] In reply, the city stated that a “request for insurance information was not included in the appellant’s access request and so falls outside its scope.” The city also provided information about a specified email that the appellant sent in reply to the IPC mediator which said, “I am not interested in private insurance information but rather the supporting information communicated to have a permit.” Therefore, the city submits that “the disclosure of this non-responsive record is not a part of this appeal.”

[32] The appellant’s sur-reply representations did not address records 9 and 10.

[33] Based on my review of records 9 and 10, and the representations of the parties about these records, I am satisfied that they are not within the scope of the request or the appeal. The request is about records related to a boundary dispute and the city’s grant of a particular fence permit. I acknowledge that the city initially identified record 9 as responsive (perhaps because of a reference to the fence found within that record), and record 10 because it is an insurance document that is connected to record 9 (though it does not specifically mention a fence). However, it is important to consider the wording of the request, the appellant’s own acknowledgement in his representations that what he was originally seeking was not insurance documents, and the appellant’s email to the mediator specifically stating that he is not interested in private insurance information. Based on my review of records 9 and 10, I find that

these records are clearly private insurance information.

[34] For these reasons, I find that records 9 and 10 are outside the scope of the request and I will not be considering access to them.

### ***Conclusion***

[35] For the reasons set out above, I find that the “unrelated matter” referenced by the city and records 9 and 10 are outside the scope of the request, but that the names of the fence permit applicants are within the scope of the request.

[36] The discussion that follows will only relate to the responsive records, or portions of records, containing the remaining information.

### **Issue A: Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?**

[37] In order to decide which sections of the Act may apply to a specific case, the IPC must first decide whether the record contains “personal information,” and if so, to whom the personal information relates. For the reasons set out below, I find that eleven records contain mixed personal information of the appellant and one or more other identifiable individual(s), but the rest of the records at issue contain only personal information belonging to individuals other than the appellant.

### ***What is “personal information”?***

[38] Section 2(1) of the Act defines “personal information” as “recorded information about an identifiable individual.”

#### *Recorded information*

[39] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.<sup>4</sup>

#### *About*

[40] Information is “about” the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. See also sections 2(2.1) and (2.2), which state:

(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.

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<sup>4</sup> See the definition of “record” in section 2(1).



(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.

[41] In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be “personal information” if it reveals something of a personal nature about the individual.<sup>5</sup>

*Identifiable individual*

[42] Information is about an “identifiable individual” if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.<sup>6</sup>

***What are some examples of “personal information”?***

[43] Section 2(1) of the *Act* gives a list of examples of personal information:

“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

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<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>6</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

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.

[44] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."<sup>7</sup>

***Statutory exclusions from the definition of "personal information"***

[45] Sections 2(2.1) and (2.2) of the Act exclude some information from the definition of personal information. Sections 2(2.1) and (2.2) are described above.<sup>8</sup>

***Whose personal information is in the record?***

[46] It is important to know whose personal information is in the record. If the record contains the requester's own personal information, their access rights are greater than if it does not.<sup>9</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>10</sup>

*The parties' positions*

[47] The city submits that the records contain the personal information of identifiable individuals other than the appellant, such as the names, address, telephone number, email address, and views and opinions of these other individuals (affected parties). The city submits that this information pertains to an individual in their personal capacity.

[48] In addition, the city states that information in the records that relates to its staff is not personal information under the *Act*, and was disclosed to the appellant.

[49] The city also submits that "[t]he circumstances necessitated that some portions were denied in full under 14(1)."

[50] The appellant's position is that the records do not contain personal information,

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<sup>7</sup> Order 11.

<sup>8</sup> Section 2(2) also excludes some information from the definition of personal information: information about an individual who has been dead for more than thirty years.

<sup>9</sup> Under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies.

<sup>10</sup> See sections 14(1) and 38(b).

and that the request was not for personal information but information about property. He submits that a property owner applying for a city permit should not have an expectation of complete confidentiality, especially when other property owners are involved. He also states that the city's Fence Permit and Directive do not say "confidential." In addition, the appellant states that the city collects and provides permit information to the general public through routine disclosure, and provided a city website link relating to that.<sup>11</sup>

[51] The appellant also submits that the city should disclose all information relating to its employees, and that the city over-redacted some of the records (as some records were withheld in full).

### *Analysis/findings*

[52] Based on my review of the records, I uphold the city's decision, in part.

[53] Having carefully reviewed the records, I find that records 1-8, 11, 19, and 20 contain personal information belonging to the appellant, as well as other identifiable individuals (affected parties). Records 1-8, 19, and 20 are emails, many of which contain repeated information, as part of email chains. Record 11 is a print-out relating to complaints made to the city, and the responsive information withheld in it summarizes a complaint made to the city by an individual other than the appellant. This includes information that falls within paragraphs (b) (financial history), (d) (address or email address), (f) (correspondence sent in confidence to the institution), (g) (views or opinions about the requester), and/or (h) (name, with other identifying information) of the definition of "personal information" at section 2(1) of the *Act*. These records also contain other personal information belonging to the appellant and one or more identifiable individual(s), under the introductory wording of the definition of that term ("recorded information about an identifiable individual").

[54] The city relied on the mandatory personal privacy exemption at section 14(1) to withhold information in records 1-8, 11, 19, and 20. However, since these records contain the personal information of the appellant and other identifiable individuals, the relevant personal privacy exemption to consider is the discretionary personal privacy exemption at section 38(b) of the *Act*. While the *responsive* portions of records 1-4 and 11 do not contain the personal information of the appellant, any right of access that the appellant may have to the responsive portions of these records must still be considered under the discretionary exemption at section 38(b) of the *Act*. Order M-352 establishes that I need to determine whether the record as a whole contains the appellant's personal information, using a "record-by-record approach", where "the unit of analysis is the record, rather than individual paragraphs, sentences or words contained in a record." If the section 38(b) exemption applies to the responsive personal information

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<sup>11</sup><https://www.toronto.ca/city-government/accountability-operations-customer-service/access-city-information-or-records/how-to-access-city-information/>

at issue in records 1-8, 11, 19, and/or 20, then I must determine if the city has properly exercised its discretion under section 38(b). As the appellant has also claimed section 16 over all of the withheld information, I would also need to consider whether information that is exempt under section 38(b), if any, could nevertheless be disclosed under section 16. I have not yet received full submissions on these issues.

[55] Turning to records 12, 14, 16-18, and 21-25, I find that they contain personal information belonging to one or more identifiable individual(s), but do not contain the appellant's personal information. More specifically:

- The portion of record 12 that is at issue contains the names of one or more identifiable individual(s).
- The portion of record 14 that is at issue is the email address of an affected party.
- The portions of records 16-18 that are at issue are the email address(es), name(s), and/or phone number(s) relating to one or more affected parties.
- The remaining withheld information in records 21-25 is similarly the names, signature and/or contact information of an affected party, and information about their financial interests. These records are city permit or directive documents. The city disclosed most of the content of these records to the appellant.

[56] Based on my review of records 12, 14, 16-18, and 21-25, I find that they contain the personal information of one or more identifiable individual(s) under the introductory wording of the definition of that term at section 2(1) of the *Act* ("recorded information about an identifiable individual"), and/or paragraphs (a), (b), (c), (d), (f), (g), and/or (h) of the definition of "personal information" at section 2(1). As a result, any right of access that the appellant may have to the personal information of the individual(s) involved must be assessed under the mandatory personal privacy exemption at section 14(1) of the *Act*.

[57] In addition, based on my review of the records at issue, I find that the records do not contain personal information of any city employees. In conclusion, I have found that some records at issue contain information belonging to the appellant and one or more identifiable individuals. The relevant personal privacy exemption to consider for those records is the section 38(b) exemption, but the parties have not made full submissions on that exemption or on the city's exercise of discretion if the exemption applies. In the circumstances, I have decided to defer my decision about the application of the discretionary (section 38(b)) personal privacy exemption, the city's exercise of discretion under section 38(b), and section 16 (as it pertains to personal information exempt under section 38(b), if any), pending further representations on these issues. However, I uphold the city's determination that the remaining records contain the personal information of identifiable individuals other than the appellant, and as a result, I will consider whether the personal information is exempt under the mandatory

personal privacy exemption at section 14(1), next.

**Issue B: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in records 12, 14, 16-18, and 21-25?**

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

[59] 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.

[60] The section 14(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the institution must disclose the information.

[61] The section 14(1)(f) exception is more complicated. It 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.

***Do any of the exceptions in paragraphs 14(1)(a) to (e) apply?***

[62] If any of the five exceptions in sections 14(1)(a) to (e) apply, neither the section 14(1) exemption nor the section 38(b) exemption applies.

[63] Here, the appellant claims that the exceptions at sections 14(1)(a) and 14(1)(c) are relevant, and the city disagrees.

***14(1)(a): prior written consent of the individual***

[64] Although the appellant submits that the exception at section 14(1)(a) is relevant because the city may have been able to obtain the consent of the individual(s) involved, that does not mean that section 14(1)(a) applies.

[65] For the exception at section 14(1)(a) to apply, the individual whose personal information is contained in the record must have consented to the release of their personal information. This consent must be *in writing*. The consent must be given in the specific context of the access request, meaning that the consenting individual must know that their personal information will be disclosed in response to an access request under the *Act*.<sup>12</sup>

[66] In the circumstances, since there is no written consent from the individual(s)

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<sup>12</sup> Order PO-1723.

involved, I find that the exception at section 14(1)(a) does not apply. The fact that the city could have tried to obtain this is not relevant. Without written consents before me, I cannot find that section 14(1)(a) applies.

*14(1)(c): record available to the general public*

[67] In order for section 14(1)(c) to apply, the information in question must have been collected and maintained for the purpose of creating a public record.<sup>13</sup>

[68] The appellant submits that the exception at section 14(1)(c) applies because the city "has this permit process to maintain these records which are available to the general public."

[69] In reply, the city explains that the collection of any "personal information," as that term is defined at section 2(1) of the *Act*, within the context of the fence permit applications process is not consistent with the provisions at section 14(1)(c) because permit applications are not "public records."

[70] Given the city's explanations that permit applications are not "public records," I find that section 14(1)(c) does not apply.

***Section 14(1)(f) exception: disclosure is not an unjustified invasion of personal privacy***

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

[72] Sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy.

[73] Sections 14(3)(a) to (h) should generally be considered first.<sup>14</sup> These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[74] 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

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<sup>13</sup> Order P-318.

<sup>14</sup> 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”).<sup>15</sup>

[75] 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.

***Section 14(3) – is disclosure presumed to be an unjustified invasion of personal privacy?***

[76] The city submits that the presumptions at sections 14(3)(b) and 14(3)(f) apply to the information at issue, and the appellant submits that none of the presumptions at section 14(3) apply.

[77] The city did not specify which of these presumptions applied to which records, or portions of records, that it withheld from disclosure. However, from the city’s representations, and based on my review of the records, I can determine which records the city is or is not referring to, as I will discuss below.

*14(3)(b): investigation into a possible violation of law*

[78] This presumption requires only that there be an investigation into a possible violation of law.<sup>16</sup>

[79] As the city points out, the presumption can apply to different types of investigations, including those relating to by-law enforcement.<sup>17</sup>

[80] The presumption does not apply if the records were created after the completion of an investigation into a possible violation of law.<sup>18</sup>

The parties’ positions

[81] In its representations about section 14(3)(b), the city submits that the personal information at issue in this appeal was compiled by the city as part of its investigation into a violation of a by-law (Municipal Code Chapter 447, or by-law 447).<sup>19</sup> The city explains that it advises complainants that their personal information will be kept confidential and, therefore, complainants have an expectation of this confidentiality. As a result, the city submits that the presumption in section 14(3)(b) applies to “some” of

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<sup>15</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>16</sup> Orders P-242 and MO-2235.

<sup>17</sup> Order MO-2147.

<sup>18</sup> Orders M-734, M-841, M-1086, PO-1819 and MO-2019.

<sup>19</sup> In summarizing the representations of the city and the appellant, I will not be discussing those relating to portions of the records that I have found to be non-responsive to the request.

the personal information at issue from disclosure.

[82] The appellant submits that there is no evidence of an investigation of violation of law (and specifically, by-law 447), and that this was not raised at mediation or in any correspondence with the city, and is just being raised in the inquiry to support the city's submissions. The appellant also argues that by-law 447 is irrelevant in the circumstances because it deals with private property fences, but what this request deals with is a public "right of way property." Rather than show evidence of an investigation into a violation of law, the appellant submits that:

... what the records show is that the city was collecting information about property matters including property lines, surveys and making drawings for the purposes of making a conclusion about the location of the common lot line between the fence permit applicants and the adjacent property.

[83] In addition, the appellant submits that it is "obvious by the nature of the fence permit application for a boundary fence that other adjacent property owners would be affected if the work were to be carried out." The appellant states that the city did not provide evidence that the permit applicants wanted to have complete confidentiality. In any event, the appellant's position is that the city "could not offer this" because it would be inconsistent with the spirit of the *Act* to do so.

[84] In reply, the city submits that 14(3)(b) is supported by the city's involvement and response to complaints raised over an alleged contravention of right-of-way by-law as it related to access to a portion of land. The city states that it responded to the complaints by conducting necessary surveys in order to establish the boundaries of this area, and to address the initial boundary issue. The city also submits that it could not, in good faith, consider its obligations under the *Act* and "ignore an important element impacting portions of the records, in that, alongside the application process there is the factor of complaint matters to which the City was obligated to respond." The city further states that a portion of the withheld records address a dispute between private parties over the use of a portion of property, in which questions were raised as to whom the property belonged and if it's use was in contravention of right-of-way.

#### Analysis/findings

[85] Based on these representations and my review of the records, I find that the city has applied section 14(3)(b) to emails and/or other information relating to the appellant. This includes records that I am reserving my decision on regarding section 38(b). As I am only deciding access issues related to records that must be considered under section 14(1) in this order, I find that the city's representations engage the remaining information at issue in records 12, 14, 17, and 18. Based on my review of these records and the remaining information at issue within them (names and various forms of contact information), I accept that the city compiled the personal information at issue as part of an investigation into a possible violation of by-law 447.



[86] Considering the city's representations about section 14(3)(b), I have no reason to believe that the city applied section 14(3)(b) to the information at issue in record 16 (which is a fence permit) and records 21-25 (which are fence permits or directive documents). I will only consider the city's position about the other presumption that it claimed, at section 14(3)(f), in relation to these records.

*14(3)(f): information relating to finances*

[87] This presumption covers information related to an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness.

[88] For this presumption to apply, information about an asset must be specific and must reveal, for example, its dollar value or size.<sup>20</sup>

[89] The appellant's submissions about section 14(3)(f) relate to insurance records, which I have already found to be outside the scope of the appeal.

[90] With respect to section 14(3)(f), the city submits that "a portion of the records reveal information relating to an asset, liabilities incurred as well as related insurance liabilities."<sup>21</sup> This description appears to be in relation to one or more records that must be considered under section 38(b). However, I find that it also applies to the names (and in one case, a signature) found in records 21-25, as these records describe things that an individual must pay for at their own expense. I find that the presumption also applies to some personal information withheld on the second and third pages of record 25, because that personal information describes an individual's assets, financial history or activities. I find that section 14(3)(f) does not apply to the contact information found in records 16 and 21-25.

[91] Based on my review of the remaining information that is subject to review under section 14(1), I find that no other section 14(3) presumptions apply.

[92] To summarize, I find that the names and contact information found in records 12, 14, 17, and 18 is subject to the presumption at section 14(3)(b), and the names and certain information relating to an individual's assets, financial history or activities is subject to the presumption at section 14(3)(f) found in records 21-25. Given my findings that these presumptions apply, I will not consider any section 14(2) factors in relation to that personal information because section 14(2) factors cannot overcome a finding that a section 14(3) presumption applies to that personal information.

[93] Since the remaining personal information at issue (the contact information and

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<sup>20</sup> Order PO-2011.

<sup>21</sup> The city goes on to make more specific representations about insurance records, but I have already found that the insurance records (records 9 and 10) are not within the scope of the appeal, so I will not discuss those arguments in this order.

signature found in records 16 and/or 21-25) does not fit within any presumptions under section 14(3), I must now consider the factors set out in section 14(2) to determine whether or not disclosure of this personal information would be an unjustified invasion of personal privacy.<sup>22</sup>

***Section 14(2): Do any factors in section 14(2) help in deciding if disclosure would be an unjustified invasion of personal privacy?***

[94] 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.<sup>23</sup> Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[95] 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).<sup>24</sup>

[96] Each of the first four factors, found in sections 14(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the remaining five factors found in sections 14(2) (e) to (i), if established, would tend to support non- disclosure of that information.

[97] The appellant submits that the factors favouring disclosure at sections 14(2)(a) and 14(2)(d) apply.

[98] The city disagrees, and submits that the factors favouring the protection of personal privacy at sections 14(2)(e), 14(2)(f), and 14(2)(h) apply.

*14(2)(a): disclosure is desirable for public scrutiny*

[99] This section supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.<sup>25</sup> It promotes transparency of government actions.

[100] The issues addressed in the information that is being sought do not have to have been the subject of public debate in order for this section to apply, but the existence of public debate on the issues might support disclosure under section 14(2)(a).<sup>26</sup>

[101] Institutions should consider the broader interests of public accountability when

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<sup>22</sup> However, if any of the situations in section 14(4) is present, then section 14(2) need not be considered. Given my findings about section 14(4) later on in the order, I will be considering section 14(2).

<sup>23</sup> Order P-239.

<sup>24</sup> Order P-99.

<sup>25</sup> Order P-1134.

<sup>26</sup> Order PO-2905.

considering whether disclosure is “desirable” or appropriate to allow for public scrutiny of its activities.<sup>27</sup>

[102] The appellant submits that section 14(2)(a) applies, and in support of this view, he provided a lot of information about “laneway housing” in Toronto. He argues that the public interest is engaged because of housing affordability issues in the city. He submits that “disclosure enlightens the public on the City’s permit process and the operations of Transportation Services.”

[103] Based on the evidence before me, I am not persuaded that the disclosure of the personal information at issue in records 16 and 21-25, which is contact information and a signature (in one record), would subject the activities of the government to public scrutiny, whether those activities relate to “laneway housing” or not. I am similarly unpersuaded that disclosure of this information would promote transparency of government actions on any subject, or is otherwise “desirable” or appropriate to allow for public scrutiny of its activities. As a result, I find that the factor at section 14(2)(a) is not relevant to the information at issue in these records.

*14(2)(d): the personal information is relevant to the fair determination of requester’s rights*

[104] This section weighs in favour of allowing requesters to obtain someone else’s personal information where the information is needed to allow them to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?
4. Is the personal information required in order to prepare for the proceeding or to ensure an impartial hearing?<sup>28</sup>

[105] In support of his submission that section 14(2)(d) applies, the appellant states that he is the adjacent property owner and “believes the property rights have been violated.” In addition, he asserts that “[a]ll of the relevant circumstances circle back to

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<sup>27</sup> Order P-256.

<sup>28</sup> See Order PO-1764; see also Order P-312, upheld on judicial review in Ontario (*Minister of Government Services*) v. Ontario (*Information and Privacy Commissioner*) (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

a fence permit application and a conclusion about a shared property line.” He submits that the records could provide transparency into the city’s process for issuing fence permits on a common boundary between two property owners when it is on city property. He asks what correspondence the city received from the fence permit applicants that the city could have used in making its conclusions. He submits that he may have his rights affected since this involved property and a shared boundary line. He submits that disclosure of the information withheld “could help to fill in the blanks” and “would assist other property owners in the future.”

[106] Having considered the appellant’s representations, I am not satisfied that he has established each part of the four-part test. He appears to be speculating that unspecified property rights have been violated, which leads me to conclude that the first part of the four-part test is not met. He does not mention contemplated or actual litigation, which is critical to the remaining three parts of the test being met.

[107] As all four parts of the test for section 14(2)(d) must be met for that factor to apply, and there is insufficient evidence before me that they do, I find that section 14(2)(d) does not apply to the remaining contact information at issue in records 16 and 21-25.

[108] The appellant has not claimed, and I find no reason to conclude, that any other factors favouring disclosure apply.

[109] Since 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.<sup>29</sup> It is therefore, unnecessary for me to consider the city’s arguments about whether the factors not favouring disclosure at sections 14(2)(e), 14(2)(f), and 14(2)(h) apply.

[110] As a result, I uphold the city’s decision to withhold that contact information in records 16 and 21-25.

***Are any of the situations listed in section 14(4) present?***

[111] Above, I found that much of the information the city withheld in the records that I must consider under section 14(1) is subject to the presumptions at section 14(3)(b) or section 14(3)(f). Despite these findings, if any of the paragraphs in section 14(4) of the *Act* apply, disclosure of personal information is *not* an unjustified invasion of personal privacy. I will turn to this question now.

[112] The city submits that none of the situations listed in section 14(4) are relevant to the information at issue.

[113] There is no dispute that sections 14(4)(b) and 14(4)(c) are irrelevant in the

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<sup>29</sup> Orders PO-2267 and PO-2733.

circumstances.<sup>30</sup>

[114] The appellant submits that “[t]he classification and responsibilities should be disclosed of any individuals employed by the City.” This appears to be a reference to section 14(4)(a).

[115] Section 14(4)(a) applies when the personal information is the classification, salary range and benefits, or employment responsibilities of an individual who is or was an officer or employee of an institution.

[116] As I have found that none of the personal information belongs to employees of the city, section 14(4)(a) is not relevant in the circumstances. The only other way that the personal information to which a section 14(3) presumption applies may be disclosed is if there is a “compelling public interest” under section 16 for such disclosure. In other words, despite a finding that the personal information is exempt, it should nonetheless be disclosed (the “public interest override”).<sup>31</sup> I will consider this question, next.

**Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?**

[117] The appellant submits that there is a compelling public interest in disclosure of all of the information withheld by the city. For the reasons that follow, I find that the public interest override at section 16 does not apply to the personal information that I have found to be exempt under section 14(1).

[118] 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.

[119] For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

[120] The Act is silent as to who bears the burden of proof in respect of section 16. This onus cannot be absolute in the case of an appellant who has not had the benefit of reviewing the requested records before making submissions in support of his or her contention that section 16 applies. To find otherwise would be to impose an onus which could seldom if ever be met by an appellant. Accordingly, the IPC will review the

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<sup>30</sup> Section 14(4)(b) applies when the information consists of financial and other details of contracts for personal services between an institution and a consultant or independent contractor, if that information is found to qualify as personal information. Section 14(4)(c) provides for the disclosure of the personal information of a deceased individual, if disclosure to a “close relative” would be desirable for compassionate reasons.

<sup>31</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

records with a view to determining whether there could be a compelling public interest in disclosure which clearly outweighs the purpose of the exemption.<sup>32</sup>

### ***Compelling public interest***

[121] 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.<sup>33</sup> Previous orders have 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.<sup>34</sup>

[122] A public interest does not exist where the interests being advanced are essentially private in nature.<sup>35</sup> Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist.<sup>36</sup>

[123] The word “compelling” has been defined in previous orders as “rousing strong interest or attention”.<sup>37</sup>

[124] Any public interest in *non*-disclosure that may exist also must be considered.<sup>38</sup> A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling”.<sup>39</sup>

[125] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation<sup>40</sup>
- the integrity of the criminal justice system has been called into question<sup>41</sup>
- public safety issues relating to the operation of nuclear facilities have been raised<sup>42</sup>

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<sup>32</sup> Order P-244.

<sup>33</sup> Orders P-984 and PO-2607.

<sup>34</sup> Orders P-984 and PO-2556.

<sup>35</sup> Orders P-12, P-347 and P-1439.

<sup>36</sup> Order MO-1564.

<sup>37</sup> Order P-984.

<sup>38</sup> *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

<sup>39</sup> Orders PO-2072-F, PO-2098-R and PO-3197.

<sup>40</sup> Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

<sup>41</sup> Order PO-1779.

- disclosure would shed light on the safe operation of petrochemical facilities<sup>43</sup> or the province's ability to prepare for a nuclear emergency<sup>44</sup>
- the records contain information about contributions to municipal election campaigns<sup>45</sup>

[126] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations<sup>46</sup>
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations<sup>47</sup>
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding<sup>48</sup>
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter<sup>49</sup>
- the records do not respond to the applicable public interest raised by appellant.<sup>50</sup>

#### *The parties' positions*

[127] The appellant submits that there is a public interest in disclosure of all of the records, in full. He submits that there is a public interest in understanding "the workings, procedures and operations of the City when issuing permits for boundary fences to be build on City (public) property that affect other parties."

[128] The city disagrees, and submits that a personal, rather than a public, interest is involved. In reply to the appellant's representations, the city also submits that the appellant has not provided any evidence throughout the entire process that the request, or resulting appeal, is of public interest, and that disclosure would outweigh the purpose of the mandatory personal privacy exemption at section 14(1).

[129] In response to the city, the appellant states that he would be happy to provide

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<sup>42</sup> Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

<sup>43</sup> Order P-1175.

<sup>44</sup> Order P-901.

<sup>45</sup> *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

<sup>46</sup> Orders P-123/124, P-391 and M-539.

<sup>47</sup> Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

<sup>48</sup> Orders M-249 and M-317.

<sup>49</sup> Order P-613.

<sup>50</sup> Orders MO-1994 and PO-2607.

evidence in support of his submission that this appeal is a matter of public interest. With his representations, he provided ten articles about "laneway housing." He argues that this supports his view that permits in laneways are a matter of public interest. He submits that interest in "Laneway Housing or Laneway Suites" is "well known in recent years throughout the City of Toronto as a possible solution to the affordable housing crisis."

[130] The appellant states that the fence permit that is the subject of the request was issued to a property owner along a laneway, and that the permit was for a boundary fence. The appellant submits that "[t]he property owners or their successors could build housing upon the property." He argues that the way the city issues different kinds of permits in laneways would be of vital importance to the public." He submits that it is "desirable to have full disclosure to subject the City's activities as related to permits to public scrutiny."

### *Analysis/findings*

[131] Having considered the parties' representations about the information at issue in records 12, 14, 16-18, and 21-25 itself, I find that there is no compelling public interest in the disclosure of the personal information that the city has withheld in these records.

[132] I find that the public interest identified by the appellant relates to transparency and decision-making regarding the city's issuance of fence permits and determinations about property boundaries that in turn, could affect the ability to build "laneway housing."

[133] While I acknowledge that the appellant has provided many news articles discussing the issue of "laneway housing," which include information about the city's consideration of this issue, I find that the personal information at issue in records 12, 14, 16-18, and 21-25 does not respond to the applicable public interest raised by the appellant.

[134] Based on the evidence before me, I am not satisfied the appellant has established that any public interest there may be in "laneway housing" in the City of Toronto extends to the personal information withheld in records 12, 14, 16-18, and/or 21-25.

[135] In addition, I find that the fact that one or more identifiable individual(s) may personally be able to benefit from the city's determination of the property boundary in these circumstances is not sufficient to establish that there is a public interest in the name(s), signature, contact information, and financial information that I have found to be exempt in records 12, 14, 16-18, and 21-25.

[136] For these reasons, I find that there is no public interest, let alone a *compelling* public interest, in the disclosure of the personal information that I have found to be exempt under section 14(1) in records 12, 14, 16-18, and 21-25.



[137] Given my finding that there is no compelling public interest in the disclosure of the personal information at issue in records 12, 14, 16-18, and 21-25, it is not necessary to discuss the part of the test for section 16 dealing with the purpose of the exemption at section 14(1).

[138] Since section 16 does not apply the personal information to which a section 14(3) presumption applies, the city must continue to withhold that personal information from disclosure.

**ORDER:**

1. I uphold the city's decision to withhold information that I have found to be non-responsive, and dismiss the portion of the appeal relating to non-responsive records or portions of records.
2. I uphold the city's determination that records 12, 14, 16-18, and 21-25 contain the personal information of individuals other than the appellant, and do not contain the appellant's personal information. I uphold the city's decision to withhold this personal information under the mandatory personal privacy exemption at section 14(1) of the Act. As this personal information is not subject to the public interest override at section 16 of the Act, this information must remain withheld.
3. I find that records 1-8, 11, 19, and 20 contain the personal information of the appellant and personal information of individuals other than the appellant.
4. I defer my findings on the application of section 38(b) to records 1-8, 11, 19 and 20, and the application of the public interest override at section 16, pending receipt of further representations which I will invite separately.

Original Signed by: \_\_\_\_\_

Marian Sami  
Adjudicator

January 20, 2022 \_\_\_\_\_