

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4358

Appeal MA21-00781

City of Vaughan

March 30, 2023

Summary: An individual who was bitten by a dog in the City of Vaughan (the city) requested records related to the dog bite incident from the city under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). This order concerns the city's decision to withhold the names and addresses of the dog owner and dog walker, under the discretionary exemption at section 38(b) of the *Act*. The adjudicator allows the appeal, in part. She finds that the dog walker's name and address are exempt under section 38(b) of the *Act*, but that the dog owner's name and address are not, and she orders the city to disclose that information in the record to the appellant.

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(2)(d), 14(2)(e), 14(2)(f), 14(3)(b), 38(b), 53(1) and 53(2); *Dog Owners' Liability Act*, R.S.O. 1990, c. D.16, as amended.

Orders Considered: Orders M-1146, MO-2147, MO-2954, MO-2980, MO-3088, MO-3893, MO-3911, and MO-4049.

OVERVIEW:

[1] An individual who was bitten by a dog in the City of Vaughn (the city) made a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA*, or the *Act*) to the city for records related to the dog bite incident. The city granted partial access to the responsive record to the requester, but withheld the

names and addresses of the dog owner and dog walker, as well as other information.

[2] The requester (now the appellant) appealed the city's decision to the Information and Privacy Commissioner of Ontario (IPC). The IPC appointed a mediator to explore resolution. Mediation clarified and narrowed the scope of the appeal:

- the appellant clarified that she only seeks the names and addresses of the dog owner and dog walker,
- the city confirmed that it was relying on the discretionary exemption at section 38(b) (personal privacy) of the *Act* to withhold this information, not the mandatory personal privacy exemption at section 14(1) of the *Act*, and
- the city attempted to obtain the consent of parties whose interests may be affected by disclosure (affected parties), but could not do so, and maintained its decision to withhold the names and addresses at issue.

[3] Since no further mediation was possible, the appeal proceeded to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[4] I conducted a written inquiry under the *Act* by sending a Notice of Inquiry, setting out the facts and issues on appeal, first to the city and two affected parties, and then to the appellant. The city and the appellant provided written representations in response, but the affected parties did not; the city also provided a reply to the appellant's representations.¹

[5] For the reasons that follow, I allow the appeal, in part. In this order, I find that the dog owner's name and address are not exempt under section 38(b) and must be disclosed to the appellant, but the dog walker's name and address are exempt and must be withheld.

RECORDS:

[6] The record at issue is 60-page Vaughan Animal Services File. The only information at issue in this record consists of the names and addresses of the dog walker and dog owner.

¹ The processing of this appeal experienced some delay after I received the city's reply representations because of the appellant's reliance on Order MO-4049, which the City of Vaughan was seeking judicial review of at the Divisional Court, and the hearing date was approaching. However, in November 2022, the city decided that it would no longer pursue its application and asked the Court to vacate the hearing date and to dismiss the city's application. The Court dismissed the city's application.

ISSUES:

- A. Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

DISCUSSION:

Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[7] 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.² Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.³ Therefore, 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.

[8] Here, as noted, the appellant seeks the names and addresses of the dog owner and dog walker. The city and the appellant agree, and I find, that the names and addresses are "personal information," as that term is defined in section 2(1) of the *Act*.⁴ I also find that there is agreement that the record also contains the personal information of the appellant (since they relate to her being bitten by a dog).

[9] Since the record contains the appellant's personal information, I must assess any right of access she has to the information withheld under the discretionary personal privacy exemption at section 38(b) of the *Act*.

² 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.

³ See sections 14(1) and 38(b).

⁴ Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Paragraphs (d) and (h) of the definition of "personal information" at section 2(1) say:

"personal information" means recorded information about an identifiable individual, including,

(d) the address, telephone number, fingerprints or blood type of the individual,

(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.

Issue B: Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

[10] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides some exemptions from this right.

[11] Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[12] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.

[13] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 38(b).

Would disclosure be "an unjustified invasion of personal privacy" under section 38(b)?

[14] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy,⁵ but only sections 14(2) and 14(3) are relevant in this appeal.

[15] In deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), the decision-maker⁶ must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁷

[16] Here, the parties agree that a section 14(3) presumption weighing against disclosure applies, but disagree about which section 14(2) factors apply in favour of disclosure or against it, and what weight is to be given to them.

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

[17] Sections 14(3)(a) to (h) list several situations in which disclosing personal

⁵ If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b). Section 14(4) lists situations where disclosure would *not* be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 14(2) or (3) apply. Here, the parties do not argue that any of the exceptions at sections 14(1) or 14(4) apply, therefore, I will not consider these provisions.

⁶ The institution or, on appeal, the IPC.

⁷ Order MO-2954.

information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[18] The city and the appellant agree, and I find, that the presumption at section 14(3)(b) (investigation into a possible violation of law) of the *Act* applies. This presumption requires only that there be an investigation into a *possible* violation of law,⁸ and can apply to different types of investigations, including those relating to by-law enforcement.⁹ The city states, and I find, that the information was compiled and is identifiable as part of an investigation into a possible violation of law under the city's Animal Services By-Law 53-200 relating to a vicious dog investigation. As a result, the presumption at section 14(3)(b) applies, meaning disclosure of the information at issue is presumed to be an unjustified invasion of personal privacy of the dog owner and dog walker.

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

[19] 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.¹⁰ Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[20] 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).¹¹

[21] 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.

The dog owner's name and address

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

[22] The appellant relies on this factor and past IPC orders which found that this factor applies, considering the *Dog Owner's Liability Act (DOLA)*.

[23] Past IPC orders have referred to section 2(1) of the *DOLA*, which states: "The owner of a dog is liable for damages resulting from a bite or attack by the dog on another person or domestic animal."

⁸ Orders P-242 and MO-2235.

⁹ Order MO-2147.

¹⁰ Order P-239.

¹¹ Order P-99.

[24] Section 14(2)(d) supports disclosure of 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 at section 14(2)(d) 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?¹²

[25] Although the city acknowledges that past IPC orders have determined that disclosure of the personal information of dog owners is necessary to enable bite victims to exercise their right to compensation under the *DOLA*,¹³ it maintains its opposition to disclosing the information at issue for a number of reasons. However, I find that the city's objections are not relevant or persuasive. Briefly:

- The city is concerned that allowing for disclosure due to 14(2)(d) and *DOLA* risks broadening the interpretation of "rights" regarding other potentially sensitive information in other by-law situations. This is not persuasive because it ignores, or does not sufficiently consider, the existence of *DOLA*, and the city's obligation to consider all relevant factors and circumstances, on a case-by-case basis.
- The city cites section 53(1) of *MFIPPA* (which relates to confidentiality provisions in other statutes),¹⁴ and argues that it cannot disclose the information at issue because *DOLA* does not contain confidentiality provision overriding the mandatory personal privacy provisions in *MFIPPA*. However, under section 53(1), *MFIPPA* prevails over a confidentiality provision unless either that other statute, or *MFIPPA* itself, says *MFIPPA* does not prevail.¹⁵ Section 53(2) lists the two statutory confidentiality provisions that *MFIPPA* says prevail over it,¹⁶ and *DOLA*

¹² 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.).

¹³ The city says this includes Order MO-4049, which also involved the city and which the city was seeking judicial review of at the time.

¹⁴ Confidentiality provisions in other statutes are provisions that do not allow for the disclosure of certain information.

¹⁵ Section 53(1) says: "This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise."

¹⁶ Section 53(2) says:

is not one of the statutes on this list. Therefore, I find that sections 53(1) and section 53(2) of *MFIPPA* are not relevant in this appeal.

- At the time, the city maintained its objection to disclosure, pending its application for judicial review of Order MO-4049 (in which the IPC ordered the city to disclose a dog owner's name and address to a dog bite victim). However, the city has since decided not to pursue this, and the court dismissed the city's application, so there is no court decision on Order MO-4049 weighing against finding for the appellant in this appeal.

[26] Turning to the four-part test for section 14(2)(d), I agree with the appellant and the reasoning in past IPC orders,¹⁷ and find, that all four parts of the test are met in relation to the dog owner's name and address:

1. the appellant's right to sue and seek damages from the dog owner is drawn from statutory law (*DOLA*);
2. the appellant's right is related to a contemplated proceeding against the dog owner under *DOLA*;
3. the personal information that the appellant is seeking (the dog owner's name and address)¹⁸ have some bearing to her right to sue, because she needs to identify and serve the defendant to bring a successful action under *DOLA*; and
4. the appellant requires the dog owner's name to prepare for the proceeding under the *DOLA*.

[27] Therefore, I find that the factor at section 14(2)(d) is relevant to the determination of the fair determination of the appellant's rights, in relation to the dog owner's name and address. This factor weighs in favour of disclosing the dog owner's name and address to the appellant. While the existence of other means of finding the dog owner's name and address, such as the *Rules of Civil Procedure*, somewhat lessens the weight of section 14(2)(d), the existence of other possible methods of access does not preclude the appellant from exercising her access rights under the *Act* to seek the dog owner's name and address before she files a civil claim. Given the dog bite or attack that occurred (based on the record), she has a right to seek the information in the most efficient, cost-effective manner that she sees fit and should not have to jump through numerous hoops in different forums to seek basic information that would

The following confidentiality provisions prevail over this Act:

1. Subsection 88 (6) of the *Municipal Elections Act, 1996*.
2. Subsection 53 (1) of the *Assessment Act*.

¹⁷ See, for example, Orders MO-3893 and MO-3911.

¹⁸ There is no dispute that the appellant seeks both the name and address of the dog owner (and dog walker). The appellant lists the dog owner's name in setting out part three of the test, but in further representations about section 14(2)(d), she submits that she needs the name and address to identify and serve the dog owner to proceed with her claim.

enable her to exercise her legal right to seek redress.¹⁹

Unlisted factor in section 14(2) – circumstances following the dog bite

[28] The city submits that it considered circumstances following the dog bite as relevant. The city states that the dog has not lived with the dog owner's family for some time, and is owned by another family outside Ontario. In addition, the city states that the police were called for the incident, but terminated their investigation. The city submits that this means the police did not believe the incident was severe enough to warrant further investigation or actions. Furthermore, the city states that there was no witness statement received by the dog walker or the owner at the time of the incident, so this incident remains one sided despite multiple attempts by the city to contact the two individuals.

[29] I am not persuaded that these circumstances weigh in favour of withholding the dog owner's name and address. If anything, the lack of witness statements and inability of the city to contact the dog owner (and dog walker) may weigh in favour of disclosure, because they highlight the difficulty of the appellant pursuing her rights following the dog bite or attack. Given the rest of my findings, it is not necessary to decide this. Similarly, the city has not persuaded me that the dog's relocation, or the police's lack of investigation, are circumstances that weigh in favour of the protection of privacy either. Considering those circumstances in that way, in my view, have the effect of diminishing the appellant's rights and pre-judging a matter that would be determined by a court.

14(2)(e): disclosure of the personal information will result in exposure to unfair pecuniary or other harm

[30] The city submits that this factor applies in withholding the dog owner's name and address. However, I agree with the appellant, and find, that the factor at section 14(2)(e) does not apply here.

[31] The factor at section 14(2)(e) is intended to weigh against disclosure when the evidence shows that financial damage or other harm from disclosure is either present or foreseeable, *and* that this damage or harm would be "unfair" to the individual whose personal information is in the record.

[32] In line with other IPC orders, although a party may be exposed to pecuniary harm as a result of *DOLA* proceedings, I find that this harm is not unfair to the dog owner, according to the IPC's interpretation of the factor at section 14(2)(e); rather, it would be a consequence that any defendant would be exposed to in a civil action.²⁰ The fact that disclosure may subject an individual to litigation is not, itself, exposing them

¹⁹ Order MO-2980.

²⁰ See, for example, Order MO-4049.

unfairly, since the case would be determined by an independent trier of fact.²¹

[33] Accordingly, I find that the factor in section 14(2)(e) does not weigh in favour of withholding the dog owner's name and address from disclosure.

14(2)(f): the personal information is highly sensitive

[34] The city's position is that it appears that past IPC appeals have treated section 14(2)(d) as a factor that overrides section 14(2)(f), and it is not clear as to why that is. The city also relies on Order MO-2147 (that cited Order M-1146), in which the adjudicator found that the address in that dog bite case was highly sensitive, within the meaning of section 14(2)(f).

[35] With respect to Order MO-2147, I find it distinguishable from this appeal because in that order, *DOLA* was not considered, the appellant did not provide representations, and section 14(2)(d) was found not to apply. Therefore, I am not persuaded that the analysis in Order MO-2147 is helpful to the city here.

[36] Turning to the city's position that section 14(2)(d) inexplicably overrides section 14(2)(f), I reiterate that in deciding whether the disclosure of the personal information in a record would be an unjustified invasion of personal privacy under section 38(b), the decision-maker²² must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.²³ It is not that section 14(2)(d) "overrides" section 14(2)(f), but that it has been given more significant weight in dog bite cases, due to the existence of *DOLA*, and the assessment of whether names and addresses are highly sensitive is done on a case by case basis (as in Order MO-2980).

[37] In Order MO-2980, the IPC considered whether disclosure of an individual's name and address could be considered highly sensitive in relation to a request to the Toronto police for contact information of a dog owner by a dog bite victim. The adjudicator observed that an individual's name and address is not always sensitive information, citing the fact that, for most, this information appears in publicly-available directories. Considering the fact that no criminal charges were laid in the dog bite incident, the adjudicator found that the sensitivity of the personal information at issue was reduced. While he accepted that disclosure of the individual's name and contact information to the requester might cause distress, he found that this was not significant personal distress necessary for section 14(2)(f) to apply.

[38] I agree with the reasoning in Order MO-2980, and adopt it here. The factor at section 14(2)(f) is intended to weigh against disclosure when the evidence shows that the personal information is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is

²¹ See Orders PO-1912, MO-3893 and MO-3997.

²² The institution or, on appeal, the IPC.

²³ Order MO-2954.

disclosed.²⁴ For example, personal information about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.²⁵ I note that the dog owner did not provide representations concerning this factor, or any factor, in this appeal. In the circumstances, and adopting the reasoning in Order MO-2980, I find that the dog owner's name and address are not highly sensitive information such that section 14(2)(f) would apply.

The dog walker's name and address

[39] Under *DOLA*, an owner who is liable to pay damages under this statute is entitled to recover contribution and indemnity from any other person in proportion to the degree to which the other person's fault or negligence caused or contributed to the damages. In effect, the dog walker may be liable to the dog owner for damages arising out of the dog bite, as the dog walker may be sued by the dog owner for damages that the dog owner must pay if they are found liable.

[40] The appellant relies on Order MO-4049 to seek the name and address information of the dog walker. However, Order MO-4049 is not helpful to the appellant with respect to the dog walker's personal information. In that order, considering *DOLA*, the adjudicator found that the factors favouring disclosure of the dog owner's name and address did not apply to the name and address of the dog walker. I agree with that reasoning, and adopt it in this appeal. Since the appellant does not need the dog walker's name and address to pursue her rights under *DOLA*, the factor at section 14(2)(d) does not apply here.

[41] I also find that there are no other factors favouring disclosure of the dog walker's name and address.

[42] Given these findings, it is not necessary to consider whether the factors not favouring disclosure at sections 14(2)(e) and 14(2)(f) apply to the dog walker's name and address.

Weighing the factors and presumptions, and balancing the interests of the parties

The dog owner

[43] I have found that the presumption against disclosure at section 14(3)(b) applies to the dog owner's name and address, which weighs against disclosure.

[44] However, I have also found that the factor at section 14(2)(d) applies, weighing in favour of disclosure of the dog owner's name. In addition, I found that the factors weighing in favour of the protection of personal privacy at sections 14(2)(e) and

²⁴ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²⁵ Order MO-2980.

14(2)(f) do not apply to this information, and that the unlisted section 14(2) factor raised by the city does not apply as claimed.

[45] Weighing the presumption at section 14(3)(b), and the section 14(2) factors discussed, and considering the interests of the parties, I find that disclosing the dog owner's name and address would not be an unjustified invasion of the dog owner's personal privacy. Since I find that this personal information is not exempt under section 38(b) of the *Act*, I will order the city to disclose it to the appellant.

The dog walker

[46] I found that the presumption at section 14(3)(b) applies to the dog walker's name and address, and that no factors weighing in favour of disclosing this personal information. In the circumstances, and considering the interests of the parties, I find that disclosure of the dog walker's name and address would be an unjustified invasion of the dog walker's personal privacy. Therefore, I uphold the city's decision to withhold this personal information as exempt, under section 38(b) of the *Act*.

[47] The section 38(b) exemption is discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so. Here, there is no dispute that the city exercised its discretion to withhold the dog walker's name and address, and I find that it did.

[48] The city states that it considered all relevant considerations in doing so, and the appellant did not object to this. I accept that the city considered relevant considerations such as the purpose of the personal privacy exemption and the fact that the appellant was seeking her personal information. I also accept that the city did not consider irrelevant factors in exercising its discretion, and that it exercised its discretion in good faith, and not for an improper purpose. As a result, I uphold the city's exercise of discretion with respect to the dog walker's name and address.

ORDER:

1. I allow the appeal, in part.
2. I order the city to disclose the portions of the record containing the dog owner's name and address to the appellant by **May 5, 2023** and not before **May 1, 2023**.
3. I uphold the city's decision to withhold the dog walker's name and address from the appellant, and dismiss that aspect of the appeal.

4. I reserve the right to require the city to provide me with a copy of the records disclosed to the appellant in accordance with order provision 2.

Original signed by: _____

Marian Sami
Adjudicator

March 30, 2023 _____