

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4423

Appeal MA22-00557

Corporation of the Township of Muskoka Lakes

August 21, 2023

Summary: This is a third party appeal in response to an access decision made by the Township of Muskoka Lakes (the township) under the *Act*. The access request was for records relating to a specific property. The township decided to grant partial access to the records, claiming the application of the mandatory personal privacy exemption in section 14(1) to portions of the records. The appellant claims that the records in their entirety contain their personal information which is exempt from disclosure under section 14(1). Most of the records are emails. In this order, the adjudicator finds that many of the emails are exact duplicates of others, or are not responsive to the access request, and removes them from the scope of the appeal. She also finds that some of the records do not contain personal information because they are about a property and not about an individual. She further finds that other records contain personal information which is exempt from disclosure under section 14(1). The appeal is allowed in part, and the township is ordered to disclose the records to the requester, but withhold the exempt 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) and 14(1).

Orders Considered: Orders MO-3067, MO-4410, P-23 and PO-4382.

OVERVIEW:

[1] This order resolves the issues raised as a result of an appeal of an access decision made by the Corporation of the Township of Muskoka Lakes (the township) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

The access request was for records regarding a property at a specified address.

[2] Prior to issuing a decision, the township clarified the request with the requester and then notified a third party, seeking their views on the possible disclosure of records responsive to the request. The third party responded and objected to the disclosure of the records, claiming that they were exempt from disclosure under the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] The township subsequently issued a decision, granting the requester partial access to the records. The third party (now the appellant) appealed the township's decision to the Information and Privacy Commissioner of Ontario (the IPC). The requester did not submit an appeal regarding the information the township withheld from them. As a result, the information in the records that the township has indicated it intends to withhold is not at issue in this appeal and will not be disclosed to the requester.

[4] A mediated resolution of the appeal was not attained. As a result, the appeal moved to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry. I sought and received representations from the appellant and the township. I did not find it necessary to seek representations from the requester. During the inquiry, I notified the requester that I had formed a preliminary view that some of the records are not responsive to the request. The requester responded by urging that I find these records to be responsive to the request, given that the township had determined they were responsive. I also notified the requester that I had formed a preliminary view that many of the records were exact duplicates of other records. The requester advised IPC staff that he wished to have access to all of the records in the appeal, including duplicate records.

[5] For the reasons that follow, I find that some of the records (emails) are not responsive to the request and I remove them from the scope of the appeal. I also find that many of the emails are exact duplicates of other emails, and I decline to review the exemption in section 14(1) claimed to the duplicates. As a result, I have removed the duplicate emails from the scope of the appeal. I also find that some of the records do not contain personal information because they are about a property and not about an individual. I further find that other records contain personal information which is exempt from disclosure under the mandatory personal privacy exemption in section 14(1). I allow the appeal in part, and order the township to disclose the records to the requester, in part.

RECORDS:

[6] There are 31 records at issue, totalling 209 pages. The records consist of a licence agreement application, a building permit application refusal and emails/email chains.

ISSUES:

- A. Which records are within the scope of the appeal?
- B. Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?
- C. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

DISCUSSION:

Issue A: Which records are within the scope of the appeal?

Duplicate records

[7] I have reviewed all of the records at issue. Based on my review, several pages are exact duplicates of each other. Past IPC Orders, including Order PO-3321, have taken the approach of reviewing exemptions claimed for a record, but not for its duplicate. In consideration of the information at issue and my review, I agree with and adopt this approach in this appeal. I will review the possible application of the exemption claimed in section 14(1) to the following records which have duplicates:

- Records 2-1 (2022-08), 2-2 (2022-06), 2-5 (2022-06), 2-5 (2022-08), 2-6 (2022-06), 2-7 (2022-06) and 2-15 (2022-06).

[8] However, I will not review their exact duplicate counterparts, which effectively removes the duplicate records from the scope of the appeal.¹

Non-responsive records

[9] I also find, based on my review of the records, that there are nine records which are not responsive to the request, either in whole or in part. To be considered

¹ The duplicate records are records 2-4 (2022-08) - duplicate of 2-1 (2022-08), 2-6 (2022-08) – duplicate of 2-5 (2022-08), 2-7 (2022-08) – duplicate of 2-1 (2022-08), 2-9 (2022-06) – duplicate of 2-5 (2022-08), 2-10 (2022-08) – duplicate of 2-1 (2022-08), 2-11 (2022-06) – duplicate of 2-1 (2022-08), 2-12 (2022-06) – duplicate of 2-1 (2022-08), 2-13 (2022-06) – duplicate of 2-1 (2022-08), 2-15 (2022-08) – duplicate of 2-6 (2022-06), 2-16 (2022-06) – duplicate of 2-5 (2022-06), 2-16 (2022-08) – duplicate of 2-6 (2022-06), 2-17 (2022-06) pages 5 through 24 – duplicate of 2-15 (2022-06), 2-18 (2022-06) – duplicate of 2-15 (2022-06), 2-19 (2022-06) – duplicate of 2-15 (2022-06), 2-20 (2022-06) – duplicate of 2-5 (2022-06), 2-21 (2022-06) – duplicate of 2-5 (2022-06), 2-22 (2022-06) – duplicate of 2-5 (2022-06), 2-24 (2022-06) – duplicate of 2-2(2022-06), 2-25 (2022-06) – duplicate of 2-2 (2022-06), 2-26 (2022-06) – duplicate of 2-2 (2022-06), 2-28 (2022-06) – duplicate of 2-2 (2022-06), 2-29 (2022-06) – duplicate of 2-2 (2022-06), 2-31 (2022-06) – duplicate of 2-1 (2022-08), 2-36 (2022-06) – duplicate of 2-6 (2022-06), 2-40 (2022-06) – duplicate of 2-7 (2022-06), 2-43 (2022-06) – duplicate of 2-5 (2022-08), 2-46 (2022-06) – duplicate of 2-5(2022-08) and 2-50 (2022-06) – duplicate of 2-2 (2022-06).

responsive to an access request, records must “reasonably relate” to the request.² In addition, in past IPC orders, adjudicators have removed records from the scope of the appeal where it is clear that they are not responsive to the request.³ I find that these records do not reasonably relate to the type of information that was clearly set out in the access request about the address specified in the request. The records either relate to addresses other than the one specified in the request, or do not relate to an address or property at all. Because these records are not responsive, I uphold the township’s decision to withhold them and these records will not be disclosed to the requester.⁴

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

[10] In order to decide if section 14(1) of the *Act* may apply, the IPC must first decide whether the records contain “personal information,” and if so, to whom the personal information relates. There is no claim, and based on my review of the records, the records do not contain the personal information of the requester.

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

[12] 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. Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁵ See also section 2(2.1), which states:

(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.

[13] 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.⁶

[14] 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

² Orders P-880 and PO-2661.

³ See, for example, Order PO-3574.

⁴ The records that are not responsive to the access request are Records 2-2 (2022-08), 2-3 (2022-08), 2-8 (2022-06) (duplicate of 2-2), 2-8 (2022-08) (duplicate of 2-2), 2-39 (2022-06), 2-48 (2022-06) (duplicate of 2-2), 2-49 (2022-06) in whole, and Records 2-7 (2022-06) page 8 and 2-50 page 1.

⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

other information.⁷

[15] 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 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.

Representations

[16] The township submits that the information at issue does not qualify as “personal information” for the purposes of the definition of personal information in section 2(1), and that it withheld all of the information in the records that qualifies as the “personal information.”⁸ The township further submits that because the information at issue does

⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁸ As previously stated, the information that the township withheld is not at issue.

not qualify as personal information, it cannot be exempt from disclosure under the personal privacy exemption in section 14(1).

[17] The township goes on to submit that the personal information it withheld consists of individuals' names, addresses and telephone numbers. The town submits that it did not withhold names, titles, business names, contact information or other identifiable information in the records that are in a business, professional or official capacity, because that information does not qualify as personal information. The township's position is also that the information in the records fits within the category of information relating to a property, rather than to an individual.⁹

[18] The appellant submits that the records contain their personal information and that simply withholding their names and any other individuals' names in the records is not sufficient to protect their privacy. The appellant further submits that the type of personal information in the records includes their home address, as well as financial information relating to them. The appellant's position is that their personal information in the records is exempt from disclosure under section 14(1), which I address in Issue B.

Analysis and findings

[19] I find that some of the records contain personal information as defined in section 2(1) of the *Act*, while other records do not contain personal information because they relate to a property and not an individual.

[20] Past IPC orders have found that there is a distinction between information *about* an identifiable individual, which may be personal information, and information *about* a property. These orders have held that information about a property does not qualify as personal information as defined in section 2(1) of the *Act* if it does not reveal information about an identifiable individual,¹⁰ such as a property owner's name and telephone number.¹¹ This was the approach taken by the adjudicator in Order P-23 and most recently by Adjudicator Katherine Ball in Order MO-4400. I agree with the approach taken in these orders and adopt it in this appeal.

[21] As previously stated, the records at issue in this appeal consist of a license agreement application, a building permit application refusal and several emails. I am satisfied that some of these records contain information that is solely about the property specified in the request and that this information is not about an individual. I note that past orders of this office have found that records such as building plans, including residential plans, do not qualify as personal information,¹² and that emails can

⁹ In support of its position, the township relies on Order MO-4221.

¹⁰ Orders P-23, M-175, MO-2053, MO-2081, PO-2322, MO-2695, MO-2792, MO-2994, MO-3066, MO-3125 and MO-3321.

¹¹ See, for example, Order MO-3321.

¹² *Ibid.*

also contain information solely about a property and not about an individual.¹³ Accordingly, based on my review of the records and adopting the approach taken in the orders I refer to above, I find that some of the records do not contain information “about” any individuals, and do not, therefore, contain personal information as defined in section 2(1).

[22] I find that the records that do not contain personal information are Records 2-4 (2022-06), 2-10 (2022-06), 2-11 (2022-08), 2-32 (2022-06) and 2-44 (2022-06).

[23] Because these records do not contain personal information, I find that the mandatory personal privacy exemption in section 14(1) of the *Act* cannot apply to them. Further, the township has not claimed any other exemptions with respect to these records. As a result, I will order the township to disclose these records to the requester, with the exception of the information the township has withheld (which is not at issue in this appeal).

[24] Turning to the remaining records at issue, I find that they contain information that qualifies as personal information as defined in section 2(1) of the *Act* of three identifiable individuals other than the requester. The first individual is the appellant. Despite the fact that the appellant’s name was severed from the records by the township, I find that the appellant can be identified from the nature of the remaining information in the records. I find that the personal information about the appellant includes the following:

- family status and age of the appellant, which falls within paragraph (a) of the definition of personal information in section 2(1),
- information relating to a financial transaction in which the appellant was involved, falling within paragraph (b) of the definition,
- the personal opinions or views of the appellant, falling within paragraph (e) of the definition, and
- other personal information about the appellant, falling within paragraph (h) of the definition.

[25] The second individual is identified in the records by the appellant, who states their views or opinions about that individual, which qualifies as their personal information under paragraph (g) of the definition.

[26] The third individual appears in the records in a professional capacity. However, I find that the disclosure of some of the information relating to this individual would reveal something of a personal nature about them, thus qualifying as their personal information.

¹³ See, for example, Order PO-4382.

[27] In sum, I find that the following records contain the personal information of identifiable individuals as defined in section 2(1):

- 2-1 (2022-06), 2-1 (2022-08), 2-2 (2022-06), 2-3 (2022-06), 2-5 (2022-06), 2-5 (2022-08), 2-6 (2022-06), 2-7 (2022-06), 2-9 (2022-08), 2-12 (2022-08), 2-13 (2022-08), 2-14 (2022-08), 2-15 (2022-06), 2-17 (2022-06), 2-23 (2022-06), 2-27 (2022-06), 2-30 (2022-06), 2-33 (2022-06), 2-34 (2022-06), 2-35 (2022-06), 2-37 (2022-06), 2-38 (2022-06), 2-41 (2022-06), 2-42 (2022-06), 2-43 (2022-06) and 2-47 (2022-06).

[28] Having found that the records listed above contain personal information of individuals other than the requester, I will now determine whether this information is exempt from disclosure under section 14(1) of the *Act*.

Issue C: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

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

[30] 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.

[31] 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.

[32] The section 14(1)(f) exception is more complicated. It requires 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. Section 14(1)(f) states:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

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

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

[35] 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
- there is a “compelling public interest” under section 16 that means the information should nonetheless be disclosed (the “public interest override”).¹⁵

[36] 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.

[37] 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.¹⁶ Some of the factors weigh in favour of disclosure, while others weigh against disclosure. If no factors favouring disclosure are present, the section 14(1) exemption — the general rule that personal information should not be disclosed — applies because the exception in section 14(1)(f) has not been proven.¹⁷

[38] 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.

Representations

[39] As previously stated, the township’s position is that the personal privacy exemption in section 14(1) does not apply because the information at issue does not qualify as personal information.

[40] The appellant’s position is that the records contain their personal information and that the exemption in section 14(1) applies to their personal information for the following reasons:

¹⁴ 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.

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

¹⁶ Order P-239.

¹⁷ Orders PO-2267 and PO-2733.

- they have not consented to the disclosure of their personal information,
- the information in the records was not collected to create a record for the general public,
- the disclosure of their financial information is a presumed invasion of their personal privacy,
- the information provided to the township was done so in confidence, and
- the disclosure of their personal information will cause pecuniary harm and unfairly damage their reputation.

Analysis and findings

[41] I have considered the appellant's and the township's representations and have reviewed the records. I find that the personal information contained in these records is exempt from disclosure under the mandatory personal privacy exemption in section 14(1) because the disclosure of the personal information would constitute an unjustified invasion of personal privacy.

[42] To begin, I find that none of the exceptions in section 14(1) through (e) apply in the circumstances, including section 14(1)(a), given that the individuals whose personal information is at issue have not consented to the disclosure of their personal information. Concerning the presumptions in section 14(3), I find based on my review of the records that the presumption in section 14(3)(f) applies to Records 2-5 (2022-08) and 2-47 (2022-6) because they contain information about a financial transaction that the appellant was involved in.¹⁸ Section 14(3)(f) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[43] I find that the personal information in the records does not include financial information of the other two individuals. I further find that none of the other presumptions in section 14(3) apply to the personal information of the appellant and the other two individuals in the records. Having found that the presumption in section 14(3)(f) applies to the appellant's financial information in Records 2-5 (2022-08) and 2-47 (2022-06), I find that this presumption cannot be rebutted by any of the factors in section 14(2) and that this personal information is exempt from disclosure under section 14(1), unless sections 14(4) or 16 apply to it.

¹⁸ The financial information in both records is identical.

[44] Turning to the factors in section 14(2), I find that none of the factors in section 14(2) that weigh in favour of disclosure of personal information of the three individuals in the records. If no factors favouring disclosure are present, the section 14(1) exemption — the general rule that personal information should not be disclosed — applies.¹⁹ With no factor favouring disclosure, it is not necessary to consider the appellant's arguments about whether any factors favour privacy protection. I accordingly find that disclosure of the personal information at issue in the records would constitute an unjustified invasion of the personal privacy of the three individuals, including the appellant.

[45] Section 14(4) must also be considered. Section 14(4) sets out situations where disclosure of personal information would not be an unjustified invasion of personal privacy. I find that the situations in section 14(4) are not applicable in this appeal. In addition, while it has not been raised as an issue, I find that there is not a compelling public interest in the personal information at issue and that section 16 which is the "public interest override," does not apply.

[46] In sum, I find that the disclosure of the personal information would constitute an unjustified invasion of personal privacy and is, therefore, exempt from disclosure under section 14(1) of the *Act*.

[47] Finally, having regard to section 4(2) of the *Act* which obliges an institution to disclose as much of a responsive record as can reasonably be severed without disclosing information that is exempt, I will order the township to disclose the records to the requester, but sever the personal information contained in them that is exempt from disclosure.

ORDER:

1. I uphold the appeal and the township's access decision, in part.
2. I order the township to disclose Records 2-4 (2022-06), 2-10 (2022-06), 2-11 (2022-08), 2-32 (2022-06) and 2-44 (2022-06) in part to the requester by **September 26, 2023** but not before **September 19, 2023**. The portions of the records that the township has withheld are not to be disclosed to the requester.
3. I order the township to disclose Records 2-1 (2022-08), 2-2 (2022-06), 2-3 (2022-06), 2-5 (2022-06), 2-5 (2022-08), 2-6 (2022-06), 2-7 (2022-06), 2-9 (2022-08), 2-12 (2022-08), 2-13 (2022-08), 2-14 (2022-08), 2-15 (2022-06), 2-17 (2022-06), 2-23 (2022-06), 2-27 (2022-06), 2-30 (2022-06), 2-33 (2022-06), 2-34 (2022-06), 2-35 (2022-06), 2-37 (2022-06), 2-38 (2022-06), 2-41 (2022-06), 2-42 (2022-06), 2-43 (2022-06) and 2-47 (2022-06) in part to the requester

¹⁹ Orders PO-2267 and PO-2733.

by **September 26, 2023** but not before **September 19, 2023**. I have included a copy of these records with the order sent to the township. I have highlighted the portions of the records that are not to be disclosed to the requester. In addition, the portions of the records that the township has withheld are not to be disclosed to the requester. The remaining portions of these records are to be disclosed to the requester.

4. I order the township to disclose Record 2-1 (2022-06) in part to the requester by **September 26, 2023** but not before **September 19, 2023**. The township is to disclose all of the pages of this record to the requester except the individual's name on pages 37, 38 and 39.
5. I reserve the right to require the township to provide copies to the IPC of the records it discloses to the requester.

Original Signed By: _____
Cathy Hamilton
Adjudicator

_____ August 21, 2023