

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4424

Appeal MA21-00135

Town of Iroquois Falls

August 22, 2023

Summary: The appellant submitted a fifteen-part request under the *Act* to the town for records relating to an identified company, an identified individual, and various town by-laws, zoning issues and ordinances involving the company and/or the individual. The town located records responsive to the appellant's request and issued an access decision granting them partial access. The town withheld some records under the personal privacy exemption in section 14(1) of the *Act*. The town also refused to confirm or deny the existence of records responsive to one part of the appellant's request pursuant to section 14(5) of the *Act*. The appellant appealed the town's decision and claimed additional responsive records ought to exist, thereby raising the issue of reasonable search. In this order, the adjudicator upholds the town's search as reasonable. She also upholds the town's application of the personal privacy exemption to withhold the records at issue. However, the adjudicator finds the town did not properly claim the application of section 14(5) and orders it to issue an access decision regarding the relevant part of the appellant's request.

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(1)(f), 14(2)(h), 14(3)(b), 14(5) and 17.

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Town of Iroquois Falls (the town) for the following records:

1. What communication (e-mail, written, verbal or through any social media) has occurred between the [town] (Animal Control & By-Law) and [name of company ("the company")], [name of individual ("the individual")]?
2. What communication (e-mail, written, verbal or through any social media) occurred between the [town] (Animal Control & By-Law) and [the company], ([the individual]) after my communications to the town (specifically [name of town employee]) dated November 4th, 2020? Please provide a copy.
3. What actions (e-mail, written, verbal or through social media) or By-law infractions if any occurred between the [town] (Animal Control & By-Law) and [the company], ([the individual])?
4. What actions (e-mail, written, verbal or through any social media) or By-law infractions if any occurred between the [town] (Animal Control & By-Law) and [the company], ([the individual]) after my communications to the town (specifically [name of town employee]) dated November 4th, 2020? Please provide a copy.
5. What are the Town By-Laws on petting zoos within the Municipality?
6. What are the Town By-Laws on the licencing and keeping of dogs within the municipality?
7. What is the zoning of the Property on which [the company] is situated and is the activity occurring licenced and in compliance with that zoning and all By-Laws?
8. If the zoning referred to in question 7 has changed, at what time did this change occur? Records, Documents, Communications?
9. On how many occasions has Animal Control, bylaw or any other Town Department visited, communicated with or warned [the company] on any contravention or infraction of by-law?
10. On how many occasions has Animal control, bylaw or any other Town Department received communications (e-mail, written, verbal, through any social media or their own employee's observations) or visited or warned [the company] on their animals running loose on Jacobs Hill Road, the associated right of way or any property but their own?
11. Are [the company's] fence posts, or any other items encroaching on Town Property?
12. Has [the company] received permission from the Town to post a barricade and signage to restrict public traffic or use of the right of way associated with Jacobs Hill Road?

13. Is (or has) [the company] contravening(ed) any Town By-laws or ordinances?
14. Is [the company] permitted and licenced along with any of its animals in compliance with any and all Town By-Laws, Zoning requirements or restrictions?
15. Please provide all minutes or documented Council Meeting discussion or decision in regards to [the company]. i.e. erecting signs for horseback riding area.

[2] The town conducted a search and issued an access decision denying the appellant access to the responsive records pursuant to a discretionary law enforcement exemption. For parts 5 and 8 of the request, the town indicated no responsive records exist. For parts 6 and 15 of the request, the town provided the appellant with a copy of By-Law No. 3464/17 and a copy of Committee of the Whole Meeting minutes for June 8, 2020.

[3] The appellant appealed the town's decision to the Office of the Information and Privacy Commissioner (the IPC).

[4] During mediation, the appellant¹ advised the mediator they will no longer pursue part 6 of their request because the town provided them with the relevant by-law. However, they confirmed their interest in the withheld records and believe additional responsive records should exist where the town indicated none do.

[5] No further mediation was possible and the appeal was transferred to the adjudication stage of the appeals process, where an adjudicator may conduct an inquiry under the *Act*.

[6] During the inquiry, the town conducted another search and issued a revised access decision to the appellant. In the decision, the town advised the appellant,

- There are no responsive records for parts 5, 9, 10 and 11 of the request;
- It refused to confirm or deny the existence of records responsive to parts 13 and 14;
- It denied the appellant access to a five-page email chain responsive to parts 1 and 3 of the request, a two-page email responsive to part 12 of the request, an a one-page letter responsive to parts 2 and 4 of the request under section 14(1); and
- It disclosed a copy of By-Law No. 3464/17 for part 6 of the request, By-Law No. 2869/04 for parts 7, 8, and 14 of the request, and a copy of the Committee of the Whole Meeting minutes for June 8, 2020 for parts 12 and 15 of the request.

¹ The appellant is being represented by another individual. In this order, I will refer to the appellant and their representative as "the appellant."

[7] As a result, this appeal was returned to mediation to clarify the issues. The appellant confirmed reasonable search remains at issue in this appeal and they pursue access to the withheld records. However, the appellant advised that parts 6 and 15 of the request are no longer at issue.

[8] No further mediation was possible and this appeal was transferred back to the adjudication stage of the appeals process. The adjudicator originally assigned to the appeal began the inquiry by inviting the town to submit representations on the issues set out in a Notice of Inquiry. The town submitted representations. In its representations, the town withdrew its reliance on section 14(5) for part 14 of the request. It also confirmed the only record responsive to part 14 of the request is the Zoning By-Law 2869/04 and corresponding schedules, which the town disclosed to the appellant.

[9] The adjudicator invited the appellant to make submissions in response to the Notice of Inquiry and the town's representations, which were shared in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant declined to submit representations.

[10] The appeal was then transferred to me to complete the inquiry and issue an order. I reviewed the parties' representations and decided I did not need to hear from them further before issuing my decision.

[11] In the discussion that follows, I uphold the town's decision in part. I find the town properly withheld the records at issue under section 14(1) of the *Act*. I also uphold its search for responsive records as reasonable. However, I find the town did not properly apply section 14(5) of the *Act* when it refused to confirm or deny the existence of records responsive to part 13 of the request and order it to issue an access decision in relation to this part of the request.

RECORDS:

[12] The records at issue are:

- Record 1: a five-page email chain, which is responsive to parts 1 and 3 of the request;
- Record 2: a two-page email, which is responsive to part 12 of the request; and
- Record 3: a one-page letter, which is responsive to parts 2 and 4 of the request.

ISSUES:

- 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 records?
- C. Did the town properly apply section 14(5) of the *Act* when it refused to confirm or deny the existence of records responsive to part 13 of the request?
- D. Did the town conduct a reasonable search for records?

DISCUSSION:

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

[13] In order to decide which sections of the *Act* may apply, the IPC must first decide whether the records contain *personal information*, and if so, to whom it relates. It is important to know whose personal information is in the records. If the records contain the requester's personal information, their access rights are greater than if it does not.² Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.³ The term *personal information* is defined in section 2(1) as "recorded information about an identifiable individual."

[14] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be *about* the individual.⁴ However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.⁵

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

[16] The town submits the three records at issue contain the personal information to identifiable individuals. The records include these individuals' names, addresses and

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 Sections 14(1) below.

⁴ See sections 2(3) and (4) of the *Act* and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

personal email accounts. In addition, the town submits the records contain these individuals' private correspondence.

[17] The appellant did not make submissions in response to the Notice of Inquiry.

[18] I have reviewed the records and find they contain the personal information of identifiable individuals. Specifically, I find the records contain these individuals' names (considered to be *personal information* under paragraph (h) of the definition of that term in section 2(1)), their contact information (paragraph (d)), and their personal views or opinions (paragraph (e)).

[19] I find the records do not contain any personal information relating to the appellant. Accordingly, I will consider whether the appellant is entitled to access to the records under Part I of the *Act*.

Issue B: Does the mandatory personal privacy exemption in section 14(1) apply to the records?

[20] The town relies on the personal privacy exemption in section 14(1) to deny the appellant access to the two email records and one letter at issue. For the reasons that follow, I find the records are exempt under section 14(1) and uphold the town's decision to withhold them.

[21] One of the purposes of the *Act* is to protect the privacy of individuals with respect to their personal information held by institutions.⁶ The mandatory personal privacy exemption in section 14(1) creates a general rule prohibiting an institution from disclosing another individual's personal information to a requester. The *Act* also allows for exceptions to this general rule, which are set out in sections 14(1)(a) to (f). If any of the exceptions exist, the institution is required to disclose the information to the requester.

[22] The town did not raise any exception other than section 14(1)(f) and I find this is the only exception relevant in the circumstances. This exception requires disclosure of personal where disclosure is not an unjustified invasion of privacy.

[23] Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of the information at issue would be an unjustified invasion of personal privacy. Section 14(2) sets out a list of considerations, or factors, that help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy for the purpose of section 14(1)(f). Section 14(3) lists the types of information of which disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

⁶ Section 1(b) of the *Act*.

[24] None of the circumstances in section 14(4) is relevant to the information at issue in this appeal.

[25] 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.⁷ 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.⁸

[26] The appellant did not raise any factors favouring disclosure of the records and I find none apply. In the absence of any submissions from the appellant on the factors in section 14(2) or in support of disclosure, I find the emails and letter are exempt under section 14(1) of the *Act*.

[27] I uphold the town's decision to withhold the emails and letter under section 14(1) of the *Act*.

Issue C: Did the town properly apply section 14(5) of the *Act* when it refused to confirm or deny the existence of records responsive to part 13 of the request?

[28] The town refused to confirm or deny the existence of records responsive to part 13 of the request on the basis that section 14(5) of the *Act* applies because disclosure of the records and disclosure of whether the records do or do not exist would be an unjustified invasion of personal privacy.

[29] Before an institution may exercise its discretion to invoke section 14(5), it must provide sufficient evidence to establish both of the following requirements:

1. Disclosure of the record (if it exists) would constitute an unjustified invasion of personal privacy; and
2. Disclosure of the fact that the record exists (or does not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

[30] Under part one of the section 14(5) test, the town must demonstrate that disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. An unjustified invasion of personal privacy can only result from the disclosure of personal information. Therefore, I must determine whether records, if they exist, would contain the personal information of individuals other than the appellant, first. As

⁷ Order P-239.

⁸ Orders PO-2267 and PO-2733.

discussed in Issue A, to qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be *about* the individual.⁹ However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.¹⁰

[31] Based on my review of the appellant's request and the town's representations, I find that responsive records, if they exist, would not necessarily contain the personal information of identifiable individuals. Part 13 of the request reads,

Is (or has) [the company] contravening(ed) any Town By-laws or ordinances?

The appellant did not identify an individual in this part of their request. Rather, the focus of the appellant's request is whether a named company has contravened or is contravening any town by-laws or ordinances. Given the wording of this part of the appellant's request, I find responsive records, if they exist, would not necessarily contain information that qualifies as personal information of identifiable individuals other than the appellant. Therefore, the disclosure of the responsive record, if it exists, may not result in an unjustified invasion of personal privacy if the record does not contain personal information relating to an identifiable individual.

[32] The town's representations on the application of section 14(5) of the *Act* cannot be summarized in detail due to confidentiality concerns. However, I reviewed the town's representations and find they do not support the town's position that the disclosure of whether responsive records do or do not exist would be an unjustified invasion of personal privacy. As stated above, the town must provide sufficient evidence that disclosure of a responsive record (if it exists) would constitute an unjustified invasion of personal privacy *and* disclosure of the fact that the record exists (or does not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy. In this case, the town did not provide sufficient evidence to meet both of these requirements. The fact that a company may or may not have contravened any town by-laws or ordinances is not, on its face, personal information. Furthermore, the responsive records, if they exist and relate to the company named in part 13 of the request, would be about the company. Part 13 of the appellant's request is clearly for business-related information, not personal information.

[33] I acknowledge that records responsive to this part of the appellant's request may contain personal information relating to identifiable individuals. However, this circumstance, on its own, does not permit the town to claim section 14(5) because the

⁹ See sections 2(3) and (4) of the *Act* and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.

¹⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

town must also prove that disclosure of the fact that responsive records exist (or do not exist) would in itself reveal personal information and constitute an unjustified invasion of personal privacy. The fact that the company named in part 13 of the appellant's did or did not contravene a town by-law or ordinances does not reveal personal information relating to identifiable individuals.

[34] Given these circumstances, the town cannot rely on section 14(5) to refuse to confirm or deny the existence of a record that might be responsive to part 13 of the appellant's request. I will order the town to issue an access decision relating to part 13 of the appellant's request.

Issue D: Did the town conduct a reasonable search for records?

[35] The town submits it conducted a reasonable search for records responsive to the appellant's multi-part request. The appellant claims additional responsive records should exist. For the reasons that follow, I find the town has conducted a reasonable search for records.

[36] If a requester (in this case, the appellant) claims additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.¹¹ If the IPC is satisfied the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[37] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show it made a reasonable effort to identify and locate responsive records;¹² that is, records that are *reasonably related* to the request.¹³ The IPC will order a further search if the institution does not provide enough evidence to show it made a reasonable effort to identify and locate all of the responsive records within its custody or control.¹⁴

[38] The town submitted an affidavit sworn by its Chief Administrative Officer (the CAO) that outlines the searches conducted. The CAO stated he joined the town as CAO in March 2021, after the departure of the town's Clerk-Treasurer (the clerk). The clerk conducted the initial search and issued the initial access decision. The CAO took over the matter after her departure. The CAO states he conducted an independent search for responsive record by examining all the physical boxes left by the clerk following her departure. The CAO states he reviewed the files in the boxes and reviewed all the documents relating to the appellant's file. The CAO states he also discussed every part of the appellant's request with the town's by-law officer to identify whether there were

¹¹ Orders P-85, P-221 and PO-1954-I.

¹² Orders P-624 and PO-2559.

¹³ Order PO-2554.

¹⁴ Order MO-2185.

any additional records beyond those previously identified. The CAO states this discussion resulted in disclosing Zoning By-Law 2869/04 and corresponding schedules to the appellant, which was responsive to parts 7, 8, and 14 of their request. The CAO affirms there are no other responsive records in the town's position. The CAO affirms he and his predecessors conducted a diligent and thorough search.

[39] The appellant did not make any submissions to support their view that additional responsive records ought to exist.

[40] I am satisfied the town demonstrated it made a reasonable effort to locate responsive records in fulfillment of its obligations under the *Act*. I am satisfied experienced employees knowledgeable in the subject matter of the request expended a reasonable effort to locate records responsive to the appellant's request. Specifically, I am satisfied the CAO, former clerk, and by-law officer are experienced employees knowledgeable in the subject matter of the request. I am also satisfied these individuals made a reasonable effort to locate records responsive to the appellant's request. The CAO confirmed he searched a number of locations, including physical boxes and documents relating to the appellant's file, and records that may be with the by-law office.

[41] As noted above, the *Act* does not require an institution to prove with absolute certainty that additional records do not exist. Additionally, the town is not required to go to extraordinary lengths to search for responsive records. Upon review of the town's representations and the CAO's affidavits, I am satisfied employees knowledgeable in the subject matter of the request expended a reasonable effort to locate records responsive to the appellant's request.

[42] Further, the appellant did not submit any representations to support their claim. In the absence of any representation, I am not satisfied there is a reasonable basis for the appellant's belief that additional records exist.

[43] Therefore, in light of the town's submissions regarding the searches conducted in response to the appellant's request, I am satisfied the town's searches were reasonable.

ORDER:

1. I do not uphold the town's application of section 14(5) in relation to part 13 of the appellant's request.
2. I order the town to issue an access decision to the appellant relating to part 13 of their request, treating the date of this order as the date of the request for administrative purposes.
3. I uphold the town's decision to withhold portions of the records under section 14(1) of the *Act*.

4. I uphold the town's search for records responsive to the appellant's request as reasonable.

Original Signed by: _____

Justine Wai
Adjudicator

August 22, 2023 _____