

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4494

Appeal MA22-00682

City of Toronto

February 27, 2024

Summary: The appellant sought access to the identity of an individual who complained about the tree on the appellant's front lawn by making a request under the *Act* to the City of Toronto (the city).

The city denied access to the requested information, found in records relating to a 311 call made by the complainant. It relied on the mandatory personal privacy exemption in section 14(1) of the *Act* to deny access to the information. In this order, the adjudicator finds that the contact and identifying information of the complainant is exempt by reason of section 14(1) and upholds the city's decision not to disclose it.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of personal information), 14(1), and 14(3)(b).

OVERVIEW:

[1] The appellant sought access to the identity of an individual who complained about the tree on his front lawn.

[2] Specifically, the appellant made a request to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (*FIPPA* or the *Act*) for access to the:

Contact information for (presumably) a 311 call made to Urban Forestry, Tree Protection and Plan Review. The complaint alleged that a saucer magnolia on our property was dangerous. ...We request identification of the complaining party/parties; name, address, and proof that this/they are the complaining party/parties and not someone masquerading as they/them. Inspection was carried out by [named individual] [phone number] on Aug. 10, 2022 at 11:55 am according to the card dropped off at our house.

[3] The city denied access to the information requested, pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*.

[4] The appellant appealed the access decision to the Information and Privacy Commissioner of Ontario (the IPC) and a mediator was assigned to explore the possibility of resolution.

[5] As the parties were unable to resolve the appeal through mediation, the file was referred to adjudication. I decided to conduct an inquiry. I sought and received representations from the parties. Representations were shared in accordance with *Practice Direction 7* of the IPC's *Code of Procedure* (the *Code*).

[6] During adjudication, all of the information in the records was disclosed to the appellant except for the name and phone number of the complainant and two portions that would reveal the complainant's identity.

[7] In this order, I uphold the city's decision and find that the information at issue, which reveals the identity of the complainant, is exempt by reason of section 14(1).

RECORDS:

[8] The records at issue in this appeal are a two-page investigation report and a one-page service request form from the city's Parks, Forestry and Recreation department concerning a complaint about an alleged by-law infraction about a tree on the appellant's property. The information that remains at issue is the name and phone number of the complainant, as well as certain information that would identify them.

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 information at issue?

DISCUSSION:

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

[9] 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.

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

[11] 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.¹ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.²

[12] In this appeal, both parties agree that the records contain the personal information of an identifiable individual, the individual who complained about the tree on the appellant’s property. I agree.

[13] Neither party addresses whether the records contain the personal information of the appellant. The records are about a tree on the appellant’s property. If information is about a property, then it is not about an identifiable individual and is not personal information.³

[14] The guiding principle in distinguishing personal information from information about a property is whether the information in the record reveals something of a personal nature about an individual, or, put another way, whether the information has a personal dimension to it. In this appeal, the records do not reveal something of a personal nature about the appellant and, therefore, I find that they do not contain the appellant’s personal information.

[15] The records contain the personal information of only the complainant. It contains their name and phone number, and other information that would identify the complainant in their personal capacity, in accordance with paragraphs (d) and (h) of the definition of personal information in section 2(1) of the *Act*.⁴

¹ 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.

² See sections 14(1) and 38(b).

³ See Orders P-23, M-175, MO-2053, MO-2081, PO-2322, MO-2695, MO-2792, MO-2994, MO-3066, MO-3125, MO-3321, and MO-4400.

⁴ These sections read:

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

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

[17] 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.

[18] 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. None of these exceptions apply.⁵

[19] 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.

[20] In this case, I must determine whether disclosure of the personal information of the complainant would be an unjustified invasion of privacy under section 14(1)(f) of the *Act*.

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

[22] Sections 14(3)(a) to (h) should generally be considered first.⁶ These sections outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[23] 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

"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.

⁵ Section 14(1)(a) permits the disclosure of personal information "upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access." The city sought consent from the complainant, who refused to consent to the disclosure of their name and contact information. The IPC also attempted to obtain consent but was unable to contact the complainant. Thus, section 14(1)(a) does not apply.

⁶ 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.

determine whether or not disclosure would be an unjustified invasion of personal privacy.

[24] 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.

Representations

[25] The city submits that the presumption against disclosure in section 14(3)(b) applies as the name and contact information of the complainant was compiled as part of its investigation into violations of municipal by-laws (Toronto Municipal Code). Section 14(3)(b) reads:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[26] The city states that, as a result of the application of section 14(3)(b), the disclosure of the personal information of the individual whose name and contact information are at issue, would constitute a presumed unjustified invasion of their personal privacy under section 14(1).

[27] The appellant disagrees that section 14(3)(b) applies. He submits that the original complaint was not reasonable, as his tree was not dangerous. Therefore, he states that there was no possible violation of the law deriving from the original complaint as it was not a reasonable complaint.

[28] Also, in his representations the appellant quotes section 12⁷ of the *Canadian Charter of Rights and Freedoms* (the *Charter*), which reads, "Everyone has the right not to be subjected to any cruel and unusual treatment or punishment." He then submits that since the complaint, as presented by the city, was clearly threatening, the complainant should not expect to remain anonymous. He states that "the playing field should be levelled to remedy, at least in part, the violation of our rights." He further states that, as a result, the factor at section 14(2)(d) should be considered.⁸

⁷ Referred to by the appellant as section 7(12)

⁸ Section 14(2)(d) reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether, the personal information is relevant to a fair determination of rights affecting the person who made the request.

Section 14(2)(d) 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 appellant has not identified such a court or tribunal process.

[29] As indicated above, during adjudication, the records were disclosed to the to the appellant with the exception of the identifying information of the complainant. After the appellant received partial disclosure of the records, I asked him if he wanted to modify his representations. In his response, he discussed the tree's history and concluded that the complaint was made by the complainant with a spiteful intent. He did not provide any further representations on the application of section 14(1) to the information remaining at issue.

Findings

[30] The presumption in section 14(3)(b) requires only that there be an investigation into a possible violation of law.⁹ So, even if criminal proceedings were never started against the individual, section 14(3)(b) may still apply.¹⁰

[31] The presumption can apply to different types of investigations, including those relating to by-law enforcement, as is the case here.¹¹

[32] It is clear that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law, specifically a city by-law infraction regarding a tree on the appellant's property.

[33] I disagree with the appellant that section 14(3)(b) cannot apply as the complaint about the appellant's tree that was investigated by the bylaw officers was, in his view, not a reasonable complaint.

[34] The section 14(3)(b) presumption requires only that there be an investigation into a possible violation of law, the reasonableness of the complaint that initiated the investigation is not relevant. All this presumption requires is that the personal information at issue was compiled and is identifiable as part of an investigation into a possible violation of law, which is the case here.

[35] I find that the personal information of the complainant, being their name and phone number, as well as the other information in the records that would identify them, is exempt by reason of the mandatory section 14(1) exemption as the presumption in section 14(3)(b) applies.

[36] The appellant appears to seek the application of section 12 of the *Charter* in support of his argument that the factor in section 14(2)(d) of the *Act* applies and the information that he seeks should be disclosed on the basis that this factor applies.

[37] However, in considering the application of the mandatory section 14(1) exemption,

⁹ Orders P-242 and MO-2235.

¹⁰ The presumption can also apply to records created as part of a law enforcement investigation where charges were laid but subsequently withdrawn (Orders MO-2213, PO-1849 and PO-2608).

¹¹ Order MO-2147.

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

[38] When a presumption applies, the personal information cannot be disclosed unless:

- there is a reason under section 14(4)¹² 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”).¹³

[39] In this appeal, section 14(4) does not apply, and the appellant has not raised the application of section 16. Therefore, as the presumption in section 14(3)(b) applies, I find that the personal information at issue in the record is exempt by reason of section 14(1).

Other Issue:

[40] In making the finding that the personal information at issue is exempt under section 14(1), I have considered that the appellant has raised the application of section 12 of the *Charter* as he believes that the complaint was threatening.

[41] As noted above, in his initial representations provided during the adjudication stage of this appeal, for the first time during the processing of the appeal, the appellant raised the possible application of section 12 of the *Charter* which states: “Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.”

[42] I also note that the appellant does not refer to the remedy provision under section 24 of the *Charter*. Section 24 states in part:

(1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.

[43] Addressing the appellant’s Charter argument, it is clear that the IPC has the authority to decide constitutional issues, including those arising under the *Charter*.¹⁴ The

¹² Section 14(4) contains situations where disclosure of personal information is considered not to be an unjustified invasion of personal privacy.

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

¹⁴ See Order PO-3686. In *Nova Scotia (Workers’ Compensation Board) v. Martin*, 2003 SCC 54 at para. 3, the Supreme Court of Canada stated, in part: “Administrative tribunals which have jurisdiction — whether explicit or implied — to decide questions of law arising under a legislative provision are presumed to have concomitant jurisdiction to decide the constitutional validity of that provision. This presumption may only be rebutted by showing that the legislature clearly intended to exclude *Charter* issues from the tribunal’s

rules governing the raising of constitutional questions in appeals are set out in section 12 of the IPC's *Code of Procedure and Practice Direction Number 9*. The latter practice direction states, in part:

Circumstances where notice required/to whom notice must be given

2. Where a party intends,

(a) to raise a question about the constitutional validity or applicability of legislation, a regulation or a by-law made under legislation, or a rule of common law, or

(b) to claim a remedy under the *Canadian Charter of Rights and Freedoms*, notice of a constitutional question shall be served on the IPC.

Time limits

3. An appellant will be permitted to raise a constitutional question at first instance or an additional constitutional question only within a 35-day period after giving the IPC notice of his or her appeal.

4. Any other party will be permitted to raise a constitutional question only within a 35-day period after receiving notice of the appeal.

5. The Adjudicator has the discretion not to consider a constitutional question raised after the applicable time limit if the appeal proceeds to inquiry.

Form of notice

6. A notice of constitutional question shall be in the form attached to this *Practice Direction*, or in a similar form that contains the same information.

7. The party raising the constitutional question shall serve notice of the constitutional question on the IPC, leaving blank the dates when the constitutional question will be argued and when the Attorneys General of Canada and Ontario should notify the IPC of their intention to participate.

[44] In addition, section 12.02 of the *Code* states that a party raising a constitutional question shall notify the IPC and the Attorneys General of Canada and Ontario of the

authority over questions of law." The IPC's powers at sections 39 to 44 of the *Act* clearly include the power to decide questions of law including, for example, the interpretation and application of the exemptions at sections 6 to 15 and section 38, and the interpretation and application of the exclusions in section 52. There is no evidence that the legislature intended to exclude *Charter* considerations from the IPC's mandate.

question within the applicable 35-day time period.

[45] Based on my review of the file, it does not appear that the appellant raised this constitutional issue within a 35-day period after giving the IPC notice of his appeal, as required by section 3 of *Practice Direction Number 9*. There is no reference to this constitutional issue in the appeal form that he filed with the IPC. In addition, the mediator issued a report to the parties at the end of mediation that identified the issues in the *Act* as remaining at issue: being the application of section 14(1). There is no reference in the mediator's report to a constitutional issue raised by the appellant as one of the issues remaining at issue.

[46] There is also no evidence in the file to show that the appellant provided the IPC with a notice of constitutional question in the form required by section 6 of *Practice Direction Number 9*, or in a similar form that contains the same information. Nor is there any evidence that he provided the Attorney Generals of Canada or Ontario with a Notice of Constitutional Question, as required by section 12.02 of the *Code*.

[47] Section 5 of *Practice Direction Number 9* provides me with the discretion not to consider a constitutional question raised after the applicable 35-day time limit. In my view, important factors to consider in exercising my discretion in such a manner is whether the constitutional question raised by a party has a reasonable prospect of success, and whether the IPC has the jurisdiction to grant the remedy sought.

[48] The appellant does not appear to be submitting that the investigation by the city of the tree complaint has subjected to him to any cruel and unusual treatment or punishment by the city. Instead, he is appearing to be raising a private claim that the complainant, by complaining about the appellant's tree with a spiteful intent, has subjected the appellant to cruel and unusual treatment or punishment.

[49] Although I appreciate that the appellant believes that the complaint to the city was threatening to him, it appears to me that it is unlikely that the city's conduct in investigating this complaint would reach the threshold of constituting breaches of his rights under section 12 of the *Charter*.

[50] In these circumstances, I have decided to exercise my discretion not to consider the constitutional question raised by the appellant after the applicable 35-day time limit set out in section 3 of *Practice Direction Number 9*.¹⁵

[51] Nevertheless, even if I had decided to exercise my discretion to consider the appellant's *Charter* argument, I would have found that the appellant had failed to establish that the *Charter* applies to his access request. The appellant did not allege that any relevant *FIPPA* provisions violate the *Charter* and did not provide the requisite factual

¹⁵ See Orders PO-4323, PO-4332, and PO-4333.

or legal foundation for his allegation of a *Charter* breach.¹⁶

[52] In conclusion, I find the information at issue in the records, which is the information that identifies the complainant, is exempt by reason of section 14(1).

ORDER:

I uphold the city's decision and dismiss the appeal.

Original Signed By: _____
Diane Smith
Adjudicator

February 27, 2024 _____

¹⁶ See Orders MO-2860, and PO-3341.