

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4512

Appeal MA22-00233

Town of Aurora

April 19, 2024

Summary: The Town of Aurora (the town) received a request under the *Act* for access to records for building permit applications relating to two specified addresses. Following notification of two affected parties who might have an interest in the disclosure of the records, the town decided to disclose the records, in part. One of the affected parties appealed the town's decision with respect to the records related to one of the addresses.

In this order, the adjudicator finds that the information that is at issue is not personal information and, therefore, cannot be exempt from disclosure under section 14(1) (personal privacy) of the *Act*. The adjudicator upholds the town's decision to disclose the records, in part, and orders it to provide them to the requester in accordance with its original decision.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 2(1) (definition of "personal information" and "institution").

Orders Considered: Orders P-23, PO-1998, MO-4400 and MO-4458.

OVERVIEW:

[1] This order considers whether the disclosure of portions of records contained in a building permit application file would be considered an unjustified invasion of an individual's personal privacy under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] The Town of Aurora (the town) received a request under the *Act* for access to building permit application records relating to two specified addresses.

[3] Before issuing a decision, the town notified two affected parties whose interests may be affected by disclosure of the responsive records, which were contained in two building permit application files. One affected party's interests related to the records about one of the addresses specified in the request while the other affected party's interests related to the records about the other address. After notice was given, the town issued a decision granting the requester access, in part, to the responsive records, relying on the mandatory personal privacy exemption at section 14(1) of the *Act*, to withhold some information.

[4] One of the affected parties objected to the town's decision to disclose the portions of the records relating to one of the addresses specified in the request. The affected party (now the appellant) appealed the town's decision to the Information and Privacy Commissioner of Ontario (IPC).¹ The requester did not appeal the town's decision to withhold portions of the records.

[5] Mediation did not resolve the appeal and it was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct a written inquiry under the *Act*.

[6] As the adjudicator assigned to this appeal, I decided to conduct an inquiry and sought representations from the appellant. I also invited the appellant to comment on Order MO-4400 which considered the distinction between personal information and information related to a property.² The appellant provided representations in response.

[7] In this order, I uphold the town's decision to grant partial access to the records related to the address that is the subject of this appeal. I dismiss the appeal.

RECORDS:

[8] The records at issue in this appeal are contained in a building permit file for one of the addresses specified in the request. The building permit file consists of building plans and permit applications and totals 23 pages.

[9] The portions of the records related to the relevant building permit file that the town decided not to withhold are at issue in this appeal. As the requester did not appeal the town's decision to withhold information from the records, the information that the town withheld is not at issue and I will not consider it in this order.

¹ The other affected party who was identified by the town as having an interest in the records relating to the other address specified in the request did not appeal the town's decision. The town has disclosed the records related to that address to the requester.

² A copy of Order MO-4400 was provided to the appellant.

DISCUSSION:

[10] The appellant objects to the town's decision to disclose portions of the building permit application records on the basis that their disclosure would be an unjustified invasion of their personal privacy under section 14(1) of the *Act*. The sole issue in this appeal is therefore whether the mandatory personal privacy exemption in section 14(1) of the *Act* applies to those portions of the records.

[11] The exemption at section 14(1) can only apply to personal information and I must therefore first decide whether the responsive records contain "personal information" as defined in the *Act* and, if so, to whom it belongs.

[12] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" an individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual.

Section 2(1) gives a list of examples of personal information:

- (a) information relating to the race, national or ethnic origin, colour, religion, age, 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 except if they relate to another individual,
- (g) the views or opinions of another individual about the individual, and
- (h) the individual's name where 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.

[13] This list of examples of personal information under section 2(1) is not exhaustive. Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.³

[14] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[15] Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁵ However, in some situations, even if the 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

Representations

[16] In his representations, the appellant makes a number of submissions related to the Office of the Privacy Commissioner of Canada (the OPC)⁷ and the *Personal Information Protection and Electronic Documents Act (PIPEDA)*,⁸ Canada’s federal private-sector privacy law. As will be discussed below, the OPC does not have jurisdiction to consider this appeal and *PIPEDA* does not apply to the town or the records that are at issue in this appeal. However, to the degree that their arguments can be considered in the context of this appeal, I will consider them.

[17] First, the appellant submits that they made an appeal to the OPC. They submit that because the OPC will provide guidance and information on whether the disclosure of their property information is an invasion of personal privacy, an invasion of their personal safety and an invasion of their personal liberty, I should not issue a decision on this appeal until they heard back from the OPC.

[18] The appellant also refers to the definition of “personal information” set out in *PIPEDA* to support their position that a name cannot be revealed or any information that can identify an individual. The appellant submits that if information about the property to which the building application file relates is disclosed, it will identify the homeowner, which is a breach of the homeowner’s personal privacy.

[19] The appellant also alleges that the town is biased because it refuses to disclose the identity of the requester but has decided to disclose information about the property,

³ Order 11.

⁴ Order PO-1880, upheld on judicial review in Ontario (*Attorney General*) v *Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁵ Orders P-257, P-427, P-1412 and PO-2225.

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

⁷ The OPC oversees compliance with the *Privacy Act* (R.S.C., 1985, c. P-21), which covers the personal information-handling practices of federal government departments and agencies, and *PIPEDA*, Canada’s federal private-sector privacy law.

⁸ S.C. 2000, c. 5.

which would reveal the identity of the owner.

[20] In response to my invitation to make submissions on the distinction between personal information and information about a property in light of the findings made in Order MO-4400, the appellant submits that the circumstances are not equivalent. The appellant submits that the property to which the building permit application information relates is in a residential neighbourhood in Aurora, which is a very small town, while Order MO-4400 considered information about a property in Toronto, the most populated Canadian city. They also submit that there is a distinction between information about properties in Toronto, where there is a need for commercial real estate developers to look at properties, and in Aurora, where no such need exists.

[21] Finally, the appellant further submits that they have not been told who the requester is, why they need the records and the purpose for the request.

Analysis and findings

[22] For the reasons that follow, I find that the information at issue is not “personal information” as defined by section 2(1) of the *Act*, rather I find that it is information about a property. As the information is not personal information, its disclosure is not an unjustified invasion of personal privacy and the personal privacy exemption at section 14(1) cannot apply.

[23] As explained above, the information that remains at issue in this appeal is the information that the town is prepared to disclose from the records found in the building permit application file. These records include building plans, design and engineering drawings, permit applications and permits, internal memoranda about the building permit application, receipts of fees and charges related to the building permit application, building permit application checklist, and correspondence from the town about its decision on the permit application. The town has severed the names, telephone numbers, email addresses and signatures of certain identified individuals.

[24] Having reviewed the information that remains at issue, I find that the majority of the information that the town is prepared to disclose relates to the property identified by the address in the request. I find that it is not personal information.

[25] A long line of past IPC Orders have found that information such as building plans, including residential plans, do not qualify as personal information as defined by section 2(1) of the *Act*, because they reveal only information about a property, and do not represent recorded information *about* an identifiable individual.⁹

[26] Examples of such past IPC decisions include Orders P-23, MO-4400 and MO-4458. In Order P-23, the distinction between “personal information” and information

⁹ See Orders P-23, M-175, MO-2053, MO-2081, PO-2322, MO-2695, MO-2792, MO-2994, MO-3066, MO-3125 and MO-3321.

concerning residential properties was first addressed by former Commissioner Sidney B. Linden. In that Order, the former Commissioner made the following findings, which have been applied in a number of subsequent orders of this office:

[27] In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the *Act*, which defines "personal information" as "...any recorded information about an identifiable individual...". In my view, the operative word in this definition is "about". The *Concise Oxford Dictionary* defines "about" as "in connection with or on the subject of". Is the information in question ... **about** an identifiable individual? In my view, the answer is "no"; the information is **about a property** and not **about an identifiable individual**. [emphasis in original]

[28] The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of subparagraph (h) of the definition of "personal information".

[29] Subparagraph (h) provides that an individual's name becomes "personal information" where it "... appears with other personal information **relating to the individual** or where the disclosure of the name would reveal other information **about the individual**" (emphasis added). In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the request information, in my view, the individual's name could not be said to "appear with other personal information relating to the individual" or "reveal other personal information about the individual", and therefore subparagraph (h) would not apply in the circumstances of these appeals.

[30] In Order MO-4400, the adjudicator considered building plans and permits for a specified residential property. She accepted that disclosure of the building plans and permits would reveal a property address which could be linked with an owner, resident or tenant through searches in reverse directories, and municipal property assessment rolls. As such, she accepted that property owners can be identified from their property address. However, she found that there is a distinction between information *about* an identifiable individual, which may be personal information and information *about* a property. Relying on Order P-23, the adjudicator found that the records contained information that is predominantly about the property specified in the request and that the information is not about an individual. Accordingly, she found that the building plans and permits did not contain information "about" the property owners.

[31] In Order MO-4458, the adjudicator considered permit application records and related correspondence held by Kawartha Conservation. As in this appeal, one of the affected parties objected to Kawartha Conservation's decision to disclose the portions of the records. Adopting the reasoning of a number of past IPC orders where the

adjudicators held that records relating to permit applications are records about a property not a person, the adjudicator found that the severed permit application records did not contain personal information about an identifiable individual, including the appellant in that appeal, within the meaning of that term in section 2(1) of the *Act*. As a result, the adjudicator found that the permit application records and related correspondence were not exempt from disclosure under either the mandatory or discretionary personal privacy exemptions in the *Act*.

[32] I agree and adopt the approach taken by the adjudicators in these past IPC orders on the distinction between information about a property and information about an identifiable individual.

[33] The appellant argues that disclosure of the property's address will identify the property owner. Although they do not provide details on how the property owner would be identified, I understand that it is possible that an individual could conduct searches in reverse directories and municipal property assessment rolls and discover who the property owner is. As such, I agree with the appellant that the property address in the information at issue relates to identifiable individuals. However, as noted by former Commissioner Linden in Order P-23, I agree that a property owner's name associated with a property does not itself reveal personal information about that individual. As noted above, personal information is information "about" an identifiable individual and information is "about" an individual when it reveals something of a personal nature about the individual. In this case, I find that the property owners' name associated with a property themselves do not reveal personal information about those individuals.

[34] As was found by the adjudicator in Order MO-4400 I find that the information that remains at issue, including the property address, is information *about* the property specified in the request and is not *about* an individual. In my view, the information does not reveal something of a personal nature about the appellant, the property owner or any other individual. Therefore, I find that it is not personal information within the meaning of section 2(1) of the *Act*.

[35] I note that in addition to the information I find is about the property, the town is also prepared to disclose the information about contractors involved in the work referenced in the building permit application file.

[36] As stated above, information about an individual in their professional, official or business capacity is not considered to be "about" the individual unless it reveals something of a personal nature about the individual.¹⁰ In this case, I have reviewed the records and can confirm that any information that appears in relation to a contractor, appears in their professional capacity and does not reveal anything of a personal nature about them. As such, I find that the names of contractors are not considered to be "about" an individual in their personal capacity and is not considered to be personal

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

information.

[37] In summary, I have found that the majority of the information that the town is prepared to disclose is about a property and the remainder of the information is the business information of contractors involved in the building applications for the identified property. As I have found that none of the information can be said to qualify as personal information as that term is defined in section 2(1) of the *Act*, the mandatory personal privacy exemption at section 14(1) cannot apply to information that is not personal information, the disclosure of the information would not be an unjustified invasion of personal privacy. As a result, I find that none of the information that the town is prepared to disclose is exempt under section 14(1).

[38] I will now address two concerns the appellant raised in their representations.

[39] First, the appellant suggests that before I make my decision on this matter, the IPC should await guidance from the OPC. The OPC oversees compliance with the *Privacy Act*,¹¹ which covers the personal information-handling practices of federal government departments and agencies, and *PIPEDA*.

[40] The definition of "institution" is defined in section 2(1) of the *Act*, which includes a municipality in Ontario. As such, the town is an institution under the *Act* and the *Act* governs this appeal. The appeal of that request is within the jurisdiction of the IPC, not the OPC.

[41] Second, the appellant alleges that the town is biased because it refuses to disclose the identity of the requester but has decided to disclose information about the appellant's property. They submit that this demonstrates clear bias and prejudice towards them. I disagree.

[42] In Order PO-1998, former Assistant Commissioner Tom Mitchinson states the following about the identity of requesters:

... Access to information laws presuppose that the identity of requesters, other than individuals seeking access to their own personal information, is not relevant to a decision concerning access to responsive records. As has been stated in a number of previous orders, access to general records under the *Act* is tantamount to access to the public generally, irrespective of the identity of a requester or the use to which the records may be put.

[43] I agree with the approach and reasoning applied by former Assistant Commissioner Mitchinson in the above-noted order.

[44] In this case, it appears that the town was following the principle of the *Act* that the identity of the requester is irrelevant in refusing to disclose the requester's identity

¹¹ R.S.C., 1985, c. P-21.

to the appellant. The town also properly recognized that the identity of requester is their own personal information and cannot be disclosed without their consent.

[45] Moreover, the appellant has not provided any evidence in support of their allegation that the town is biased. As no evidence has been led, I find that the allegations of bias are unsupported.

[46] For the reasons set out above, I dismiss the appellant's appeal. I uphold the town's decision to grant partial access to the requested records and will order it to disclose the records to the requester, in accordance with its original decision.

ORDER:

1. I uphold the town's decision to disclose copies of the redacted records to the requester, in accordance with its original decision, by **May 27, 2024** but not before **May 17, 2024**, and dismiss the appeal.
2. To verify compliance with provision 1, I reserve the right to require the town to provide me with a copy of the records disclosed to the requester upon request.

Original signed by: _____
Lan An
Adjudicator

_____ April 19, 2024