

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4526

Appeal MA22-00242

City of Mississauga

May 29, 2024

Summary: The appellant sought access to information about individuals who had made complaints against a specified address by making a request under the *Act* to the city. Ultimately, the city disclosed some information to the appellant and withheld some information claiming the discretionary personal privacy exemption at section 38(b). In this order, the adjudicator upholds the city's decision and dismisses the appeal.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, RSO, 1990, c. M.56, sections 2(1) (definition of "personal information"), 14(1)(b), 38(b).

Orders and Investigation Reports Considered: Order MO-2677, MO-3247, MO-4067-I, MO-4494, PO-2541 and PO-3742.

OVERVIEW:

[1] The City of Mississauga (the city) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*):

I would like all information regarding the individuals who have been making repeated complaints against [specified address] since we bought the home in [specified date].

I would like all information available regarding the complainants.

I would also like all the emails and correspondence by City of Mississauga staff pertaining to this property since [a specified date].

[2] The city identified six complaints responsive to the request and issued a decision to grant the requester partial access to the records. Access to some information in the records was denied pursuant to section 38(a) read with section 8(1)(d) (law enforcement, confidential source), and section 38(b) (personal privacy) of the Act.

[3] In response to the requester's belief that additional records existed, the city conducted an additional search and located email correspondence and an additional occurrence. The city issued a second decision letter granting the requester partial access to the additional records. Access to some information in the records was denied pursuant to section 38(a) read with section 8(1)(d) and section 38(b) of the Act.

[4] The requester, now the appellant, appealed the city's decision to the Office of the Information and Privacy Commissioner of Ontario (the IPC).

[5] During mediation, the appellant advised the mediator that they still believed that additional responsive records existed, specifically, notebook entries and additional internal correspondence between staff. The city conducted an additional search and located more records. The city issued a supplementary decision to the appellant, granting the appellant partial access to the records and denying some information pursuant to sections 38(a) read with 8(1)(d), and section 38(b) of the Act. In addition, some information was denied as it was not responsive to the request.

[6] After receipt of the supplementary decision and records, the appellant requested that the mediator attempt to gain the consent of any complainants (affected parties) to disclose their identity. The mediator was not able to obtain the consent and relayed this to the appellant.

[7] The appellant advised the mediator that they no longer took issue with the city's search. As such, this is no longer at issue in the appeal.

[8] As no further mediation was possible, the file was transferred to the adjudication stage of the appeals process in which an adjudicator may conduct an inquiry under the Act. As the adjudicator assigned to this appeal, I invited and received representations from the city, the appellant and an affected party. Representations were shared in accordance with the IPC's Code of Procedure.

[9] In this order, the adjudicator upholds the city's decision and dismisses the appeal.

RECORDS:

[10] At issue remains various records regarding complaints received by the city, including emails, correspondence, a complaint report, a complaint form and print-outs

from the city's service request system, all partially withheld.

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 discretionary personal privacy exemption at section 38(b) 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?

[11] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the record contains "personal information" and, if so, to whom it relates. That term is defined in section 2(1) that reads, in part:

"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,
- (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,
- (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;

[12] The 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.

[13] The city submits that the withheld information in the records consists of personal information of identifiable individuals including:

- the address and telephone number of an affected party
- the views or opinions of an affected party
- the affected party's name appearing with other personal information relating to that individual, disclosure of which would reveal other personal information about the individual.

[14] The city submits that the details of the complaint, although concerning the appellant's property, identifies the affected party as the complainant. The city submits that it is reasonable to expect that releasing some the details of the complaint may identify the affected party if disclosed to the appellant.

[15] The appellant did not address whether the record contains personal information in their representations.

[16] I have reviewed the records and find that the withheld information includes the personal information of affected parties as defined in paragraph (a), (c), (d), (e) and (h) of the definition of that term, in section 2(1) of the *Act*. The records also contain the personal information of the appellant. All other information, other than the personal information of affected parties, has been disclosed to the appellant.

[17] The city has withheld employee's identification numbers, and although not addressed in its representations, I find that the employee numbers constitute personal information within the meaning of section 2(1) of the *Act*. I find support for this finding in Order PO-3742, in which the adjudicator found that disclosure of an employee number would reveal something of a personal nature about the employee. Specifically, the adjudicator stated,

... the undisclosed information represents an identifying number that has been assigned to the employee, who is also identified in the record by name. I also note that the number provides a link to other personal information of the employee, i.e. human resources information. Accordingly, I find that the employee number qualifies as the employee's personal information within the meaning of paragraph (c) of the definition.

[18] This analysis has been followed in a number of IPC decisions. I find the employee numbers are personal information within the meaning of that term in section 2(1) of the *Act*.

[19] I will now discuss if the withheld personal information is exempt under section 38(b).

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

[20] Since I have found that the record contains the personal information of both the appellant and affected parties, section 36(1) applies to this appeal. Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[21] Under section 38(b), where a record contains personal information of both the appellant and another individual, and disclosure of the information would be an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the appellant.

[22] Sections 14(1) to (4) provide guidance in determining whether disclosure of the information would be an unjustified invasion of personal privacy under section 38(b). It is apparent that section 14(4) is not relevant in this appeal.

[23] In making this determination, the IPC will consider, and weigh, the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.¹ If the information fits within any of paragraphs (a) to (e) of section 14(1), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). In this appeal sections 14(1)(a) to (e) are not relevant.

[24] If the information fits within any of paragraphs (a) to (h) of section 14(3), disclosure of the information is presumed to be an unjustified invasion of personal privacy.

[25] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.² Some of the factors listed in section 14(2), if present, weigh in factor of disclosure, while others weigh in favour of non-disclosure. The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).³

Representations

[26] The city sets out that an affected party contacted it and filed complaints against the specified property. The city notes that once a complaint is received, a by-law inspector has the ability to investigate and inspect the property that is subject to the complaint(s). The city submits that it considered that the affected party provided their personal information when submitting complaints regarding the possible violations of city by-laws (Nuisance Type Noise By-law 0785-1980 and Privacy Tree Protection By-law 0021-2022)

¹ Order MO-2954.

² Order P-239.

³ Order P-99.

and the *Reopening Ontario Act* (the *ROA*)⁴ and so the personal information collected from the affected party was done as part of investigations into a possible violations of law [section 14(3)(b)].

[27] The city submits that no section 14(2) factors that support disclosure apply in this appeal. It argues that section 14(2)(h) (supplied in confidence) is relevant as the affected party provided their personal information in confidence for the purposes of conducting a by-law inspection regarding a possible violation of law. The city submits that the by-law complaint process traditionally guarantees the confidentiality of complainants.

[28] The appellant provided reasons for his request and asked that his representations be kept confidential, as a result they will not be detailed in this order. The appellant submits that since no by-laws were breached the affected party's personal information is irrelevant to the enforcement of any by-law. They suggest that the factor at section 14(2)(d) (fair determination of rights) is relevant in this appeal.

[29] The appellant submits that the exception in section 14(1)(b) applies to the withheld personal information. That section reads:

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

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates.

[30] The appellant provided confidential representations addressing why this exception applies, which I have considered but will not set out here.

Analysis and finding

[31] If the section 14(1)(a) to (e) exceptions exist, the institution must disclose the information. In this case, the appellant relies on the exception in section 14(1)(b) which requires compelling circumstances affecting the health or safety of an individual.

[32] The purpose of section 14(1)(b) is to permit disclosure of potentially significant information affecting the health or safety of an individual.⁵ As noted, I have considered the confidential representations of the appellant.

[33] Based on my review of the records and the appellant's representations, I am not satisfied that the appellant has established that there exists a threat to the health or safety of an individual as contemplated by section 14(1)(b). Previous IPC orders have held that in order to meet the "compelling" circumstances threshold, the purpose of

⁴ 2020, S.O. 2020, C. 17.

⁵ Order PO-2541.

seeking the personal information at issue must be a matter of “immediate and essential health or safety.”⁶ In other words, the circumstances must either be self-evident or evidence must be provided to demonstrate that release of the information could reasonably be expected to ameliorate any health or safety issues.⁷ After considering the information in the records and the confidential representations of the appellant, I am not satisfied that the circumstances here meet the standard of compelling required.

[34] Therefore, I find that the “compelling” threshold has not been met and the section 14(1)(b) exception does not apply to the personal information at issue in this appeal. As a result, and considering the parties’ representations, I find that sections 14(1)(a) to (e) are not relevant in this appeal.

[35] As such, I will turn to discuss whether any of the factors or presumptions under sections 14(2) and (3) apply.

[36] The city claims that section 14(3)(b) is relevant. If this presumption applies to the withheld information, then disclosure is presumed to be an unjustified invasion of personal privacy. This section states:

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;

[37] As set out in order MO-4494, 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.

[38] I have reviewed the records and find that the section 14(3)(b) presumption applies to the withheld personal information, which was compiled and is identifiable as part of an investigation into a possible violation of law, specifically city bylaws and the *ROA*. I am satisfied that the presumption applies to the personal information relating to affected parties including the employee identification numbers.

[39] Under section 38(b), the presumption in section 14(3)(b) must be weighed and balanced with any factors in section 14(2) that are relevant.

⁶ Orders MO-3247, MO-2677, MO-4067-I, and PO-2541.

⁷ See Order PO-2541 where the adjudicator found that records held by Archives of Ontario regarding the requester’s father could provide essential medical information regarding a loss of function in his own daughter’s arm that the medical profession had been unable to isolate.

[40] As noted above, the appellant submits that the factor in section 14(2)(d) applies and weighs in favor of disclosure while the city submits that the factor in section 14(2)(h) weighs in favour of non-disclosure. Those sections read as follows:

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,

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

(h) the personal information has been supplied by the individual to whom the information relates in confidence;

[41] The appellant submits that the factor at section 14(2)(d) applies; however, he has not provided any evidence to establish that the information at issue is required for any proceeding.⁸ After reviewing the appellant's representations which do not directly address this factor, I give this factor no weight.

[42] The police and an affected party submit that the factor at section 14(2)(h) applies to support non-disclosure of the withheld personal information. The factor at section 14(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. This requires an objective assessment of whether the expectation of confidentiality is "reasonable."⁹ In my view, whether an individual supplied his or her personal information to the city in confidence is contingent on the particular facts, and such a determination must be made on a case-by-case basis.

[43] After reviewing the withheld information and the parties' representations, I am satisfied that assurances of confidentiality were made when information was provided to the city and I am satisfied that the affected party's expectation of privacy was reasonably-held. I give this factor significant weight.

[44] In conclusion, I find that the presumption at section 14(3)(b) and the factor at section 14(2)(h) apply to the information at issue, which supports non-disclosure of the withheld information. I also find that there are no factors that support disclosure of the information. After weighing this with the interests of the parties, I find that the withheld personal information qualifies for exemption under section 38(b), because its disclosure would constitute an unjustified invasion of an affected party's personal privacy.

[45] I am also satisfied that the city exercised its discretion in choosing to withhold the

⁸ Order PO-1764; see also Order P-312, upheld on judicial record in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

⁹ Order PO-1670.

parts of the record that contained only the affected parties' personal information under section 38(b). The representations of the city demonstrate that it took relevant factors into account when exercising its discretion and did not consider irrelevant factors. In examining the portions of the records that were provided to the appellant, it is apparent that the city took into account considerations including the appellant's right of access to their own information, that the information was collected in the course of an investigation into a possible law enforcement matter, the belief of the affected parties that they were giving their personal information with an expectation of confidentiality and that the affected parties did not consent to the release of their personal information. I find these were relevant considerations and I uphold the police's exercise of discretion to claim section 38(b) to withhold the information in the records at issue.

[46] Given that I have found that the withheld information is exempt from disclosure under section 38(b), I will not also discuss if some portions of that information are also exempt under section 38(a) read with section 8(1).

ORDER:

The appeal is dismissed.

Original Signed by: _____
Alec Fadel
Adjudicator

_____ May 29, 2024