

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4535

Appeal MA23-00113

The Corporation of the City of St. Thomas

June 20, 2024

**Summary:** The City of St. Thomas (the city) received a request under the *Act* for records related to by-law complaints about the appellant's property. The city denied access to portions of a responsive by-law complaint form on the basis of the mandatory personal privacy exemption in section 14(1) of the *Act*.

In this order, the adjudicator upholds the city's decision that the personal information in the complaint form is exempt by reason of section 14(1).

**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).

**Orders Considered:** Orders PO-3279, and PO-3656.

### OVERVIEW:

[1] This order concerns whether the information redacted from a city by-law complaint form about the requester's property contains personal information which, if disclosed, would be an unjustified invasion of personal privacy of the individual to whom the personal information relates.

[2] The Corporation of the City of St. Thomas (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records regarding a specific by-law complaint made in relation to the requester's address.

[3] The city granted partial access to the complaint form with severances pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*.

[4] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[5] During mediation, the mediator notified the individual who made the complaint (the affected party). The affected party did not provide consent to disclose the information relating to them.

[6] The parties were unable to resolve the issues of the appeal through the process of mediation and the appeal was moved to adjudication, where an adjudicator may conduct an inquiry. I sought and received representations from the parties.<sup>1</sup>

[7] In this order, I uphold the city's decision that the affected party's personal information in the record is exempt by reason of the mandatory personal privacy exemption in section 14(1).

## **ISSUES:**

- A. Does the record 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?

## **RECORD:**

[8] The record at issue is a by-law complaint form titled, "complaint of boat parked in driveway." There are three portions that have been redacted, with the first redaction containing the affected party's name and telephone number and the second and third redactions containing the affected party's sex and city of residence.

### **Issue A: Does the record 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

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<sup>1</sup> Portions of the city's representations were confidential and not shared with the appellant in accordance with the IPC's *Code of Procedure*.

about an identifiable individual.”

[11] 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.

[12] 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 other information.<sup>2</sup>

[13] 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.

[14] The list of examples of personal information under section 2(1) is not a complete

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<sup>2</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

list. This means that other kinds of information could also be "personal information."<sup>3</sup>

[15] 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.<sup>4</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>5</sup>

### ***Representations***

[16] The city states that the record only contains the affected party's personal information consisting of their name, phone number, sex, and address. It states that it does not contain the personal information of any other individual.

[17] The affected party also states that the record contains their personal information including their name, phone number, and address.

[18] The appellant states that he does not believe the record contains the affected party's personal information.

### ***Findings***

[19] I have reviewed the by-law complaint investigation form and agree with the city that it contains information that qualifies as the personal information of the affected party, who called the city in their personal capacity to inquire about a boat parked in a residential driveway. This personal information includes the affected party's name, phone number, and personal opinion or views in accordance with paragraphs (d), (e) and (h) of the definition of personal information in section 2(1).

[20] Although the by-law complaint form contains the appellant's address, it does not contain his name or any other identifiable information about him. Instead, the information pertaining to the appellant is about his property and whether there is a boat stored on it.

[21] Previous orders issued by the IPC have considered information related to a property. In Order PO-3656, the adjudicator determined that if information is about a property, then it is not about an identifiable individual and is not personal information. He determined that 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.

[22] In Order PO-3279, the adjudicator found that the fact that the information in the

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<sup>3</sup> Order 11.

<sup>4</sup> 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.

<sup>5</sup> See sections 14(1) and 38(b).

records was associated with a fire at a specific address does not automatically result in all the information being personal information. He found that while the records before him contained some personal information, other information, even though associated with a fire at a specified address, was about the property rather than about the property owner and disclosing it would not reveal anything of a personal nature about him.

[23] I agree with the reasoning in these orders and find that the information in the record related to the appellant is about his property and does not reveal something of a personal nature about him. Therefore, the record does not contain the appellant's personal information.

[24] As the record contains only the personal information of the affected party and does not contain the personal information of the appellant, I will consider whether the mandatory personal privacy exemption in section 14(1) applies to it.

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

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

[26] 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.

[27] 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 have been claimed, nor do they appear to apply in this appeal.

[28] 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.

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

[30] Sections 14(3)(a) to (h) should generally be considered first.<sup>6</sup> These sections outline several situations in which disclosing personal information is presumed to be an

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<sup>6</sup> 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.

unjustified invasion of personal privacy.

[31] 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”).<sup>7</sup>

[32] 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.

### ***Representations***

[33] The city submits that the disclosure of the personal information withheld from the by-law complaint form would constitute a presumed unjustified invasion of privacy of the affected party pursuant to section 14(3)(b), which 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.

[34] The city states that the affected party’s personal information on the by-law complaint form was compiled as part of an investigation into a possible violation of law.<sup>8</sup> Specifically, the city submits that it was compiled as part of an investigation into a possible by-law infraction.

[35] The affected party does not make specific representations on whether the disclosure of their own personal information would be an unjustified invasion of their personal privacy.

[36] The appellant’s representations focus on the distress he has experienced as a result of being the subject of a potential investigation into a by-law violation.

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<sup>7</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div.Ct.).

<sup>8</sup> The city relies on Order MO-4372

**Findings**

[37] The presumption in section 14(3)(b), set out above, has been found to apply to different types of investigations, including those relating to by-law enforcement, as is the case in this appeal.<sup>9</sup>

[38] I agree with the city that the personal information on the by-law complaint form was compiled as part of an investigation into a possible by-law infraction.<sup>10</sup> In response to the affected party's complaint, the city began an investigation. The record also reveals the result of the investigation and the manner in which the by-law infraction was resolved.

[39] Whether charges were laid is immaterial, since the presumption at section 14(3)(b) only requires that there be an investigation into a possible violation of law.<sup>11</sup> Accordingly I find that the presumption at section 14(3)(b) applies.

[40] As noted above, if the presumption in section 14(3)(b) applies, the personal information cannot be disclosed unless one of the situations in section 14(4) are present or the public interest override at section 16 applies. In this case, none of the situations in section 14(4) are present and the public interest override has neither been claimed nor does it appear to apply in the circumstances of this appeal.

[41] Accordingly, as I have found the presumption at section 14(3)(b) applies, I find that disclosure of the personal information at issue in the record would constitute an unjustified invasion of the affected party's personal privacy within the meaning of section 14(1)(f) and the exemption at section 14(1) applies.

[42] In summary, I find that the information that remains at issue in the by-law complaint form is exempt from disclosure under the mandatory personal privacy exemption at section 14(1) and I dismiss the appeal.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ June 20, 2024

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<sup>9</sup> Order MO-2147.

<sup>10</sup> Orders P-242 and MO-2235.

<sup>11</sup> Orders P-242 and MO-2235.