



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-2253**

## **Appeal MA06-424**

### **York Regional Police Services Board**



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## **BACKGROUND:**

In an effort to motivate a municipality to launch an investigation, an individual (the affected party) sent the municipality a copy of a letter he had received from the York Regional Police Service. The affected party withheld most of the information in the letter but for his name and address, and a paragraph stating that a preliminary investigation had been undertaken by York Regional Police Service, which concluded that a further investigation was warranted. The municipality subsequently made an access-to-information request to the York Regional Police Services Board (the Police) to obtain an unsevered copy of the letter.

## **NATURE OF THE APPEAL:**

The municipality's access request to the Police was made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*.) The request was for the following:

... An unsevered copy of the July 7, 2005 letter that was sent from York Regional Police to [affected party]. This letter is identified as York Regional Police [specified file number]. This letter relates to the York Regional Police investigation of the tendering process at the [municipality].

The Police located the responsive record and, following notice to the affected party under section 21 of the *Act*, the Police issued a decision denying access to the record under sections 14(1) (personal privacy) with reference to the factors at sections 14(2)(f) and (h) of the *Act*.

The requester municipality (now the appellant) appealed the Police's decision and this matter was assigned to a mediator. During mediation, the mediator contacted the affected party to seek his views on the disclosure of the record at issue. The affected party objected to disclosure. The appeal was then transferred to the adjudication stage of the appeal process, in which an adjudicator conducts an inquiry under the *Act*.

This office commenced the inquiry by sending a Notice of Inquiry to the Police and the affected party, outlining the background and issues in the appeal, and inviting representations. The Police and the affected party submitted representations. This office then sent a Notice of Inquiry to the appellant, but due to confidentiality concerns, the representations of the Police and affected party were not provided to the appellant, who provided representations in response to the Notice. I forwarded the appellant's complete representations to the Police and the affected party, who were given an opportunity to provide representations in reply. Only the affected party responded with reply representations. The non-confidential portions of the Police's and the affected party's initial representations were then shared with the appellant and the appellant was given an opportunity to make sur-reply representations, which it did.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

The Police rely on the personal privacy exemption in section 14(1) to deny access to the record.

This exemption can only apply to records containing “personal information”. This term is defined in section 2(1) of the *Act*, in part, to mean “recorded information about an identifiable individual”, followed by a non-exhaustive list of examples of personal information.

In order 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 [Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F, PO-2225]. 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 [Orders P-1409, R-980015, PO-2225].

The Police and the affected party submit that the information at issue constitutes the personal information of the affected party. The appellant submits that any information that might relate to the affected party contained in the letter relates to his professional, official or business capacity.

The appellant goes on to mention Order PO-2225, in which former Assistant Commissioner Tom Mitchinson addressed the question of when information relating to an individual in an employment or professional context would nevertheless qualify as that individual’s personal information within the meaning of section 2(1). As noted above, information in this context will be considered to be personal information if it reveals something of a personal nature about the individual.

In support of its position that the letter does not contain personal information, the appellant’s representations refer to the affected party providing his “residential” address (which, as noted, has already been disclosed in the copy of the letter given to the appellant by the affected party) as his mailing address in various business, professional and organizational roles he serves in the community. The appellant also questions how a letter relating to the Police’s investigation of the appellant’s own tendering process could reveal something of a personal nature about the affected party.

I have reviewed the record. It is clear that the letter contains “recorded information about an identifiable individual,” namely the affected party. As well, in my view, the undisclosed information reveals something of a personal nature about the affected party that goes beyond his business, professional or official roles. I have carefully considered the appellant’s submissions in this regard. With respect to the affected party’s name and address, this information has already been disclosed. Neither the disclosure of the affected party’s name and address, nor the fact that the letter concerns an investigation of the appellant’s own tendering process, derogates from this conclusion in any way. The fact is that the letter reveals information of a personal nature about the affected party. I therefore find that, with two exceptions, the undisclosed parts of the letter constitute the affected party’s personal information.

One exception applies to the names of the police officers involved in the investigation referred to in the letter. In this context, I find that their names are their professional information, not their personal information, and’ I also find that they are not the affected party’s personal information.

In summary, the officers' names are not personal information. The other exception relates to portions of the third paragraph that provide further information about the investigation and the role of the Ontario Provincial Police, whose participation was already referred to in the version of the letter that was disclosed by the affected party. This is not information about the affected party or any other individual, and I find that it is not personal information. Only personal information can be exempt under section 14(1), and no other exemptions are claimed. Accordingly, I find that the officers' names and the information in the third paragraph that is not personal information are not exempt. I will order this information disclosed.

I will now go on to consider whether disclosure of the undisclosed personal information in the letter would constitute an unjustified invasion of privacy under section 14(1) of the *Act*.

## **PERSONAL PRIVACY**

Where a requester seeks personal information of another individual, section 14(1) prohibits an institution from releasing this information unless one of the exceptions in paragraphs (a) to (f) of section 14(1) applies. In the circumstances of this appeal, it appears that the only exception that could apply is paragraph (f), which provides an exception to the section 14(1) exemption "if the disclosure does not constitute an unjustified invasion of personal privacy."

The factors and presumptions in sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy under section 14(1)(f). Sections 14(2) and (3) of the *Act* provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Section 14(2) lists some criteria for the Police to consider in making this determination and section 14(3) identified certain types of information, the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. As well, section 14(4) identifies information whose disclosure is not an unjustified invasion of personal privacy. Section 14(4) does not apply in this case and the Police did not claim any of the presumptions in section 14(3).

The Police's decision letter to the appellant indicates that the disclosure of the information at issue would constitute an unjustified invasion of personal privacy, taking into account the factors in sections 14(2)(f) and (h) of the *Act*. The affected party provided representations supporting the Police's decision and raised the application of the factors in sections 14(2)(e) and (i) of the *Act* in addition to a further unlisted factor. The appellant, in its representations, claims that the factor in section 14(2)(a) of the *Act* applies to the information at issue. The appellant also objects to the affected party's raising of sections 14(2)(e) and (i).

I will initially deal with the appellant's objection to the affected party raising sections 14(2)(e) and (i) in its representations. The appellant refers to these sections as "exemptions". Although the appellant does not expressly say so, it appears to be referring to this office's policy that institutions should raise all discretionary exemptions they intend to rely on within the first 35 days after the institution receives notice of an appeal.

In responding to the appellant's comments on this point, I would first note that section 14(1) is a mandatory exemption and not subject to the 35-day policy. In addition, sections 14(2)(e) and (i) are not separate exemptions from disclosure; the exemption here is section 14(1). As noted, this section prohibits disclosure unless one of the exceptions in sections 14(1)(a) to (f) applies. The factors identified in section 14(2) relate to the question of whether disclosure is or is not an unjustified invasion of personal privacy, which relates to whether or not the exception at section 14(1)(f) applies. In my view, there is nothing to preclude parties from raising factors in section 14(2) during the representations process in an appeal even if they have not previously been named by the institution. Applying the appellant's logic, it should also be precluded from raising the factor at section 14(2)(a), which it raised in its representations to support its position that disclosure would not be an unjustified invasion of personal privacy. I find the appellant's objection on this point to be without merit.

I now turn to the question of whether the exception to the exemption provided by section 14(1)(f) applies.

Neither the Police nor the affected party claim the application of the presumptions in section 14(3) and I find that none of them applies. As well, I find that section 14(4) does not apply. In this situation, it is necessary to consider section 14(2), which states, in part, 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,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

### **Factors weighing in favour of disclosure**

The appellant raised the application of the factor in section 14(2)(a), which applies where "disclosure of the information at issue is desirable for the purpose of subjecting the activities of the institution to public scrutiny." In my view, the submissions of the appellant in relation to the

“public interest override” in section 16 are also relevant to section 14(2)(a). The appellant’s representations state:

The disclosure of the July 7, 2005 letter is desirable for the purpose of subjecting the York Regional Police and the [municipality] to public scrutiny. The public has a right to know if these two organizations are operating in the public’s best interest. In the past year, the Toronto Star has published many erroneous, incomplete and unbalanced articles about the [municipality].

...

The fact that the Toronto Star published a number of erroneous, incomplete and unbalanced articles about the [municipality] is a compelling reason that the Section 14(2)(a) and Section 16 exemption should apply.

...

The media and the public attention to the outcome of the investigation by York Regional Police and the Ontario Provincial Police into the [municipality’s] tendering practices reflect an on-going public interest in this matter. It is the [municipality]’s position that a compelling public interest is present in the circumstances of this appeal. Disclosure is necessary; so that the [municipality] can restore public confidence in their administration.

In support of its position, the appellant provided me with copies of correspondence the municipality has sent to the Toronto Star to complain about its coverage.

The representations of the appellant municipality focus on its position that it requires access to the withheld information to “restore public confidence” in its administration, which it alleges was eroded by a series of articles published by the Toronto Star about its tendering processes.

I have carefully reviewed the letter. I find that the undisclosed personal information in the letter does not directly address the investigation into the appellant municipality’s tendering processes, nor does it cast light on those processes in any other way. The only portions of the letter that address the investigation of tendering processes have either been disclosed already by the appellant, or will be ordered disclosed in this decision because they do not constitute personal information.

The undisclosed personal information relates to other matters which I cannot describe with any more particularity without disclosing the contents of the record and/or personal information about the affected party. There may be some interest in this information on the ground of public scrutiny, but in my opinion, it is not as strong as the appellant suggests because of the nature of the undisclosed information. I therefore find that the factor favouring disclosure at section 14(2)(a) is applicable, but I ascribe only moderate weight to this factor.

### **Factors weighing against disclosure**

Most of the submissions made by the Police regarding the application of the factors listed at paragraphs (f) and (h) of section 14(2) of the *Act* are confidential. The bulk of the affected party's representations regarding the factors listed in paragraphs (e), (f), (h) and (i) of section 14(2) of the *Act* were also not shared with the appellant due to confidentiality concerns. As noted above, the affected party's submissions also raise an additional circumstance in support of his position that disclosure of the information at issue would constitute an unjustified invasion of his personal privacy.

The appellant takes the position that the factors listed in paragraphs (e), (f), (h) and (i) of section 14(2) of the *Act* have no application in the circumstances of this appeal. In addition to its objection to the appellant's raising sections 14(2)(e) and (i), which I have dealt with above, the appellant submits that:

- the parties have failed to demonstrate that the withheld information contains highly sensitive information (section 14(2)(f)); and
- the parties have failed to demonstrate that the withheld information was supplied in confidence to the Police (section 14(2)(h)).

In support of its position, the appellant submits that the affected party provided a severed copy of the letter to the various officials of the municipality, including members of the municipal council, and also to news organizations. The appellant submits that the affected party's actions, "[have] in effect, disclosed the record to the world." I do not accept this submission. Disclosure of the severed letter by the appellant does not mean that disclosure of the withheld personal information would not be an unjustified invasion of his personal privacy. Rather, the fact that the appellant has consistently withheld certain portions of the letter from third parties demonstrates his genuine belief that the withheld information contains highly sensitive information.

In confidential representations, the affected party explains his position that disclosure of the withheld personal information will unfairly expose him to harm under section 14(2)(e). I accept his submissions in this regard, and I agree that section 14(2)(e) applies. In view of the nature of the affected party's concerns, I ascribe significant weight to this factor.

Referring to Order PO-2518, the affected party also states that section 14(2)(f) applies because disclosure of the unsevered letter would cause him significant personal distress, the standard established in that order. Based on other confidential information provided by the affected party in his representations, I also accept this submission. I find that the factor at section 14(2)(f) applies and I ascribe significant weight to it.

Regarding section 14(2)(h), the appellant quite rightly points out that the letter was written by the Police to the affected party, not the other way around, and this suggests that the affected party

did not provide the information in question to the Police. Nevertheless, I am satisfied that some of the undisclosed information would reveal information provided to the Police by the affected party. As well, the context in which the information was provided (which I cannot describe without disclosing personal information that remains at issue) supports the view that it was provided with an expectation of confidentiality. I ascribe significant weight to this factor.

However, based on the evidence before me, I am not satisfied that disclosure “may unfairly damage the reputation of any person referred to in the record”, and I find that the factor at section 14(2)(i) does not apply.

I also considered the unlisted factor raised by the appellant and find that without the benefit of further representations, its applicability in the circumstances of this appeal are difficult to assess. However, in view of the other circumstances favouring privacy protection, it is not necessary to rely on this factor in the circumstances of this appeal.

As already discussed, I attribute significant weight to the factors favouring privacy protection at sections 14(2)(e), (f) and (h). In my view, these factors outweigh any public scrutiny interest under section 14(2)(a), to which I gave only moderate weight. On this basis, I have concluded that disclosure of the withheld personal information would be an unjustified invasion of the affected party’s personal privacy. This means that the exception to the exemption in section 14(1)(f) is not established, and the information is therefore exempt under section 14(1) of the *Act*.

### **What should be disclosed?**

I have found, above, that most of the undisclosed portions of the record constitute personal information whose disclosure would be an unjustified invasion of personal privacy. As noted above under “personal information,” the portions that do not constitute personal information will be ordered disclosed.

To be clear, the affected party’s submissions were directed at the information he chose not to disclose when he made the record public by distributing it to members of the municipal council and the media. Neither he nor the Police argue that disclosure of the portions already made public by him would be an unjustified invasion of his privacy. My finding above, under “personal privacy”, to the effect that disclosure would be an unjustified invasion of personal privacy, expressly refers to the *undisclosed* personal information. It is not a finding that disclosure of the portions already made public by the affected party would be an unjustified invasion of personal privacy, and given this previous voluntary disclosure, I expressly find that, in the circumstances of this appeal, it would not be an unjustified invasion of personal privacy to order this information disclosed. In the interest of disclosing a comprehensible document, I will therefore order disclosure of the record as already disclosed by the affected party, in a form that discloses, in addition, the information I have found not to qualify as personal information. I will provide a copy of the record to the Police with this order, showing the exempt portions with highlighting.



I will now consider whether any additional disclosure is warranted under the public interest override at section 16.

## **PUBLIC INTEREST OVERRIDE**

Section 16 states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

For section 16 to apply, two requirements must be met. First, there must be a compelling public interest in disclosure of the records. Second, this interest must clearly outweigh the purpose of the exemption.

In considering whether there is a “public interest” in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act*’s central purpose of shedding light on the operations of government [Order P-984]. Previous orders have stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing the citizenry about the activities of their government, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices [Order P-984].

A public interest does not exist where the interests being advanced are essentially private in nature [Orders P-12, P-347, P-1439]. Where a private interest in disclosure raises issues of more general application, a public interest may be found to exist [Order MO-1564]. The word “compelling” has been defined in previous orders as “rousing strong interest or attention” [Order P-984]. Any public interest in *non*-disclosure that may exist also must be considered [*Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.)]. The existence of a compelling public interest is not sufficient to trigger disclosure under section 16. This interest must also clearly outweigh the purpose of the established exemption claim in the specific circumstances.

The appellant submits that if I find that the personal privacy exemption in the *Act* applies to the information, I should nonetheless order the Police to disclose the information at issue as there exists a compelling public interest in its disclosure. As noted above, I ascribed only moderate weight to the “public scrutiny” factor at section 14(2)(a), based on the contents of the undisclosed personal information in the letter. Similarly, under section 16, I am not persuaded that any public interest that may exist in that information is “compelling.” As well, I note that the undisclosed personal information does not relate to the municipality’s tendering processes. In addition, the confidential representations of the affected party and the circumstances of this appeal suggest that there is a compelling public interest in the non-disclosure of that information.

Accordingly, I have concluded that no compelling public interest in the disclosure of the undisclosed personal information in the record has been established. I find that section 16 does not apply.

**ORDER:**

1. I order the Police to disclose to the appellant the parts of the record that are not highlighted on the copy of the record I am sending to the Police with this order, by sending a copy to the appellant no later than **January 23, 2008**, but not before **January 18, 2008**. The highlighted portions are *not* to be disclosed.
2. In order to verify compliance with this order, I reserve the right to require a copy of the record that is disclosed to the appellant pursuant to provision 1.

Original signed by: \_\_\_\_\_  
John Higgins  
Senior Adjudicator

December 17, 2007  
\_\_\_\_\_