

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-2761

Appeal MA11-332-2

City of Ottawa

July 5, 2012

Summary: The appellant made an access request to the City of Ottawa, seeking the identity of the requester in a previous access request. The city located a responsive record and denied access, claiming the application of the exemption in section 14(1) (personal privacy) of the *Act*. In this order, the adjudicator finds that the record contains the personal information of the first requester and upholds the city's decision to deny the appellant access to it.

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

Orders and Investigation Reports Considered: Orders P-539, PO-2488 and PO-2764.

OVERVIEW:

[1] The City of Ottawa (the city) received an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

Identification of the party(ies) requesting information on File A-20011-00161.¹

¹ The city's decision in response to access request A-20011-00161 was appealed to this office and disposed of by way of Order MO-2684.

[2] The city located one responsive record and denied access to it, claiming the application of the exemption in section 14(1) (personal privacy) of the *Act*.

[3] The requester, now the appellant, appealed the city's decision to this office.

[4] During the mediation of the appeal, the mediator notified an individual for the purpose of obtaining consent to disclose the withheld information to the appellant. The individual (the affected party) did not provide consent to have their identity disclosed to the appellant.

[5] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. Representations were received from the city and the affected party, and were shared with the appellant in accordance with this office's *Practice Direction 7*, along with a Notice of Inquiry, providing him with the opportunity to provide representations in response to the issues in the appeal. The appellant advised staff of this office that he would not be providing representations.

[6] For the reasons that follow, I uphold the city's decision and dismiss the appeal.

RECORD:

[7] The record is a completed access/correction form submitted by the affected party to the city as an access request under the *Act* for general records.

ISSUES:

A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

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

DISCUSSION:

Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[8] 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. The relevant parts of the term "personal information" defined in section 2(1) state:

“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 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;

[9] Sections 2(2.1) and (2.2) also relate to the definition of personal information. These sections state:

(2.1) Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.

(2.2) For greater certainty, subsection (3) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

[10] 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.²

[11] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

[12] The city submits that the affected party’s name on the access form consists of their personal information, as defined in section 2(1) of the *Act*. In particular, the city states that the request was made in the affected party’s personal capacity, and not in a professional or business capacity. In addition, the city states that in Order 27, former Commissioner Sidney Linden found that where an individual name appears in the

² Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

context of an access request, disclosure of the requester's name would reveal both the fact that an identifiable individual made a request under the *Act*, as well as the nature of the request and is, accordingly, personal information as defined in the *Act*.

[13] The affected party states that he/she made the access request as a private citizen concerned about storm management practices in the Carp River floodplain and that the request was not made in a professional or business capacity. The affected party submits that their name, address and telephone number on the access form is their personal information.

[14] As previously stated, the record at issue is the access form the affected party submitted to the city as part of an access request under the *Act*. The record contains the affected party's name, address, telephone number and a description of the nature of the request.

[15] Previous orders and privacy complaint reports issued by this office have found that an individual's identity as a requester under the *Act* qualifies as that individual's personal information⁴ where the request is not made in a professional or business capacity.⁵

[16] I accept the arguments of the city and the affected party that the request was made in the affected party's capacity as a private citizen. In addition, I have reviewed the record and I am satisfied that the affected party's name, address and telephone number qualify as their personal information under both paragraphs (d) and (h) of the definition of personal information in section 2(1) of the *Act*.

[17] Disclosing the affected party's name would reveal the fact that they made a request under the *Act*, with the result that disclosing the name would reveal "other personal information" about the affected party. Accordingly, I find that the record at issue contains the personal information of the affected party under paragraph (h) of the definition.

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

[18] 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.

[19] If the information fits within any of paragraphs (a) to (f) of section 14(1), it is not exempt from disclosure under section 14. The section 14(1)(a) to (e) exceptions are relatively straightforward. The section 14(1)(f) exception is more complex, and

⁴ Orders P-27, P-539, PO-2488, Privacy Complaint Reports MC-040012-1, MC-05005-1 and MC-050034-1.

⁵ PO-2764.

requires a consideration of additional parts of section 14. In the circumstances of this appeal, the only paragraph that could apply is in section 14(1)(f), which states:

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

...

(f) if the disclosure does not constitute an unjustified invasion of personal privacy.

[20] In order for the section 14(1)(f) exception to the mandatory exemption in section 14(1) to apply, it must be established that disclosure would *not* be an unjustified invasion of personal privacy. The factors and presumptions in sections 14(2), (3) and (4) help in making this determination.

[21] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 14. Once established, a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if section 14(4) or the "public interest override" at section 16 applies.⁶ In the present appeal, none of the presumptions in section 14(3) are relied upon by the city, and none would apply.

[22] If any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 14. In my view, section 14(4) is not applicable in the present appeal.

[23] If no section 14(3) presumption applies, 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.⁷ The list of factors under section 21(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).⁸

[24] Section 14(2) states:

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;

⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

⁷ Order P-239.

⁸ Order P-99.

- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (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.

[25] The city submits that the record is exempt under the mandatory exemption in section 14(1) of the *Act* and that none of the exceptions in paragraphs (a) to (f) of section 14(1) apply. In particular, the city submits that the disclosure of the affected party's name would constitute an unjustified invasion of that individual's privacy.

[26] In addition, the city submits that none of the factors in section 14(2) that favour disclosure of the record apply. Specifically, the city states that the factor in section 14(2)(d) is not applicable, as disclosure of the affected party's name is not relevant to a fair determination of rights affecting the appellant, given that the record that gave rise to Order MO-2684 was a storm water management report and interim design brief that was required to be provided to the city and conservation authority under the *Planning Act*.

[27] The city also submits that three factors in section 14(2) which favour privacy protection are relevant, specifically referring to the factors in section 14(2)(f), (h) and (e).

[28] With respect to the factor in section 14(2)(e), the city states that it defers to the affected party to provide any facts regarding pecuniary or other harms, but goes on to state that financial harm or other harms, such as personal distress, may result from the disclosure of the affected party's identity.

[29] The city also submits that the factor in section 14(2)(f) applies, as the identity of the affected party is highly sensitive in this context, as the affected party is an individual and the appellant is a corporation.

[30] Lastly, with respect to the factor in section 14(2)(h), the city submits that when an individual submits an access request, they usually understand that city staff will ensure that their identity is not disclosed to third parties or to city staff who do not require their identity to process the access request.

[31] The affected party submits that:

- none of the exceptions in section 14(1)(a) through (e) apply;
- that disclosure of their identity would constitute an unjustified invasion of their personal privacy;
- that none of the limitations in section 14(4) apply;
- that none of the factors favouring disclosure of their identity apply; and
- the factors in section 14(2)(f) and (h) which favour privacy protection apply.

[32] In particular, the affected party states that while their identity is not highly sensitive, they take reasonable precautions to prevent identity theft or invasion of privacy and, accordingly, object to its disclosure.

[33] In addition, the affected party submits that their personal information contained in the record was supplied in confidence to the city, and that the city's access form does not state that personal information will be disclosed to third parties. The form, the affected party argues, asserts that personal information would be protected and states:

Personal information contained on this form is collected under section 17 of the *Municipal Freedom of Information and Protection of Privacy Act* and will be used to respond to your request.

[emphasis added]

[34] Lastly, the affected party submits that a finding ordering the city to disclose their identity will not promote the legitimate use of the *Act* by private citizens who wish to reasonably access public records and might result in fewer access requests being made by private citizens.

[35] Where a record contains the personal information of an individual other than the appellant, the only way that such a record can be disclosed is if I find that disclosure would *not* be an unjustified invasion of the personal privacy of that individual. I have already found that none of the presumptions in section 14(3) apply, and that none of the exceptions in section 14(4) apply. I have received representations from the city and the affected party who argue that the factors in section 14(2) which favour privacy protection apply. As previously indicated, the appellant did not provide representations.

[36] In the circumstances of this appeal, therefore, the only representations I have been provided with weigh in favour of finding that the section 14(1)(f) exception does not apply. I find that the factor favouring privacy protection in section 14(2)(h) is applicable in the circumstances of the appeal, as requesters do have an expectation that their personal information will not be disclosed to third parties.

[37] In addition, I have not found any factors that would favour disclosure of the record at issue and in the absence of any evidence or argument to the contrary, I find that the exception provided by this section is not present, and that disclosure of the record would constitute an unjustified invasion of the affected party's privacy.

[38] Accordingly, I find that the mandatory exemption provided by section 14(1) of the *Act* applies, and that the record is exempt from disclosure under section 14(1).

ORDER:

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

Original signed by: _____
Cathy Hamilton
Adjudicator

_____ July 5, 2012