

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-3030

Appeal MA13-245

Town of Greater Napanee

April 3, 2014

**Summary:** The town received a request under the *Act* for access to a building inspection report relating to a particular property. After notifying an affected party of the request and reviewing her submissions, the town advised the requester and the affected party that it would grant the requester partial access to the responsive records. The town also advised the parties that it would withhold the affected party's name from the records it proposed to disclose to the requester. The affected party appealed the town's decision, claiming that the records should be withheld in full. The appellant claimed that the mandatory exemption in section 14(1) (personal privacy) and the discretionary exemption in section 13 (health and safety) applied to withhold the records. This order finds that the records do not contain personal information within the meaning of section 2(1) of the *Act* and, as a result, section 14(1) cannot apply to them. Further, section 13 does not apply to withhold the records from disclosure. The town's decision is upheld and the appeal is dismissed.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, definition of "personal information" in section 2(1) and section 13

**Orders and Investigation Reports Considered:** Orders 23 and PO-2225.

## **OVERVIEW:**

[1] The Town of Greater Napanee (the town) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a building inspection report relating to a particular property.

[2] After notifying a third party (the affected party) of the request under section 21 of the *Act* and reviewing her submissions, the town issued a decision, advising the requester and the affected party that it would grant the requester partial access to the responsive records. The town advised the parties that it would withhold the affected party's name from the records that it proposed to disclose to the requester.

[3] The affected party (now the appellant) appealed the town's decision to this office, claiming that the records should be withheld from disclosure, in full.

[4] During mediation, the town clarified that the records responsive to the request consist of two building inspection reports and a property standards notice. The town also confirmed that it applied the mandatory exemption in section 14(1) (personal privacy) of the *Act* to withhold the appellant's name from disclosure.

[5] The requester advised the mediator that he seeks access to the portions of the records that remain at issue in this appeal. The requester also confirmed that he does not wish to pursue those parts of the records withheld from disclosure by the town, specifically, the appellant's name.

[6] The appellant advised the mediator that she continues to object to the town's decision to disclose the majority of the information in the records to the requester. She takes the position that the information at issue is her personal information, thereby raising the possible application of the personal privacy exemption in section 14(1) of the *Act*. The appellant also raises concerns for her health and safety, raising the possible application of the discretionary danger to health or safety exemption in section 13 of the *Act*.

[7] The town confirmed that it maintains its decision to grant the requester partial access to the records at issue. As mediation did not resolve the appeal, the file was moved to the adjudication stage of the appeals process where an adjudicator conducts an inquiry under the *Act*. I began my inquiry by seeking representations from the appellant and the town. Only the appellant submitted representations.

[8] In the discussion that follows, I find that the records do not contain personal information within the meaning of section 2(1) of the *Act* and, therefore, the personal privacy exemption in section 14(1) cannot apply to the records. Further, I find that section 13 does not apply to the records. The town's decision to disclose the records to the requester is upheld.

## **RECORDS:**

[9] The records at issue consist of two building inspection reports and a property standards notice. All of the information in the records is at issue in this appeal, except the appellant's name.

## **ISSUES:**

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?
- B. Does the discretionary exemption at section 13 apply to the records?

## **DISCUSSION:**

### **A. Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?**

[10] In order to determine which sections of the *Act* may apply, it is necessary to decide whether the records contain "personal information" and, if so, to whom it relates. That term is defined in section 2(1) as follows:

"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 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;

[11] 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.<sup>1</sup>

[12] 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 (2.1) 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.

[13] To qualify as personal information, the information must be about the individual in a personal capacity and it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>2</sup> 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.<sup>3</sup> However, orders of this office have found that 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.<sup>4</sup>

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<sup>1</sup> Order 11.

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

<sup>3</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

<sup>4</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

[14] The issue before me is whether the information at issue, which relates to building inspections of an identified property, is "personal information" as defined by section 2(1) of the *Act* or whether it is, instead, information about the property. In Order 23, former Commissioner Sidney B. Linden considered the wording in section 2(1) of the *Act*, which defines "personal information" as "any record information about an identifiable individual" and concluded that the record at issue in that appeal, a building plan, was information about a property and not about an identifiable individual. The former Commissioner's reasoning has been applied in numerous orders of this office.<sup>5</sup>

[15] Reviewing the information at issue, I find that the majority of the information contained in the records is not about an individual and is, instead, information about the appellant's property. The records at issue are two building inspection reports and a property standards notice. The records describe the condition of the appellant's rental property. I find that most of the information contained in the records at issue do not include information about the appellant and relate solely to the property. Accordingly, I find that the portions of the records that relate solely to the identified property and/or its condition do not contain "personal information" within the meaning of section 2(1) of the *Act*.

[16] In her representations, the appellant refers to paragraph (d) of the definition of "personal information" and submits that the records contain her address, telephone number, fingerprints or blood type. The appellant also submits that it is reasonable to expect that she may be identified if the information at issue is disclosed.

[17] Previous orders have examined the distinction between personal information and business/professional information, and Order PO-2225 sets out the IPC's current approach to the distinction. In that order, former Assistant Commissioner Tom Mitchinson addressed the issue of whether the name of an individual who operates a business is that individual's personal information or business information. The information considered in Order PO-2225 was the names of non-corporate landlords who owed money to the Ontario Rental Housing Tribunal.

[18] In his analysis, the former Assistant Commissioner posed two questions to help to illuminate the distinction between information about an individual acting in a business capacity as opposed to a personal capacity:

...the first question to ask in a case such as this is: "*in what context do the names of the individuals appear?*" Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere? ....

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<sup>5</sup> See Orders MO-2695, MO-2792, MO-2916 and Privacy Complaint No. MC-050025-1.

The analysis does not end here. I must go on to ask: "*is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual?*" Even if the information appears in a business context, would its disclosure reveal something that it inherently personal in nature?

[19] With respect to the first question, former Assistant Commissioner Mitchinson concluded that the names of the non-corporate landlords appear in a business context:

In my view, when someone rents premises to a tenant in return for payment of rent, that person is operating in a business arena. The landlord has made a business arrangement for the purpose of realizing income and/or capital appreciation for real estate that he/she owns. Income and expenses incurred by a landlord are accounted for under specific provisions of the *Income Tax Act* and, in my view, the time, effort and resources invested by an individual in this context fall outside the personal sphere and within the scope of profit-motivated business activity.

... it is reasonable to characterize even small scale, individual landlords as people who have made a conscious decision to enter into a business realm. As such, it necessarily follows that a landlord renting premises to a tenant is operating in a context that is inherently of a business nature and not personal.

[20] I agree with the reasoning in Order PO-2225 and adopt it for the purposes of this appeal. The appellant submits that the records contain her "personal information", including her address and roll number. I disagree. Reviewing the records at issue, I find that the appellant, in her role as a landlord, is operating in a business context and not a personal context. Although the appellant is concerned that her address will be disclosed, section 2(2.2) of the *Act* states that an individual's home address is not "personal information", if that individual carries on business or professional responsibilities from home. Further, the roll number was assigned to the appellant in relation to her role as a landlord, and is, therefore, related to her in a professional or business, as opposed to some personal, context. Finally, I find that while there is information in the records that relates to the appellant as an individual, this information relates to her in her role as a landlord and is, therefore, related to her in a professional or business, and not personal, context. Accordingly, I find that the records do not contain her personal information, as that term is defined in section 2(1) of the *Act*.

[21] As the mandatory exemption in section 14(1) can only apply to personal information, I find that the disclosure of the records at issue would not constitute an unjustified invasion of personal privacy. I will now consider whether the discretionary exemption in section 13(1) applies to the records.

**B. Does the discretionary exemption at section 13 apply to the records?**

[22] Section 13 of the *Act* states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[23] During mediation, the appellant raised the application of the discretionary exemption at section 13 to withhold the information at issue. I note that this office has found that, generally, parties other than the institution are not permitted to raise discretionary exemptions not raised by the institution<sup>6</sup>. However, given the nature of the section 13 exemption, I will consider the appellant's arguments with regard to its application to the records.

[24] In her confidential representations, the appellant describes her relationship with the requester and raises concerns regarding the manner in which the requester will use the information contained in the records, should I uphold the town's decision. The appellant also submits that she will be harmed and/or threatened should these records, particularly her address and roll number, be disclosed. The appellant is also concerned with any potential legal action and subsequent financial harms that may result from the disclosure of the records. The appellant also raises concerns with the possibility that her contact information may be disclosed to the requester and, by extension, the public.

[25] For the exemption in section 13 to apply, the party claiming the exemption must demonstrate that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, the party claiming the exemption must provide evidence to establish a reasonable basis for believing that endangerment will result from disclosure. In other words, the party claiming the exemption must demonstrate that the reasons for resisting disclosure are not frivolous or exaggerated.<sup>7</sup>

[26] An individual's subjective fear, while relevant, may not be sufficient to establish the application of the exemption.<sup>8</sup>

[27] Based on my review of the appellant's representations and the records, I am not satisfied that the records qualify for exemption under section 13 of the *Act*. Although the appellant has raised concerns with regard to the disclosure of the records, she has not provided me with sufficient evidence to establish a reasonable basis for the belief that her health or safety may be endangered as a result of the disclosure. I also find that the nature of the records at issue, which contain only information relating to the condition of a particular property, does not lead me to find that their disclosure could

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<sup>6</sup> See Orders MO-2792, PO-1705 and P-1137.

<sup>7</sup> *Ontario (Information and Privacy Commissioner, Inquiry Officer) v. Ontario (Minister of Labour, Office of the Worker Advisor)* (1999), 46 O.R. (3d) 395 (C.A.).

<sup>8</sup> Order PO-2003.

reasonably result in a threat to the appellant's health or safety. Further, I have reviewed the appellant's description of her relationship with the requester and find that their history does not establish a reasonable expectation that the appellant's health or safety may be seriously threatened if the records are disclosed. While the appellant may feel threatened by the requester's possible reactions to the disclosure of the record, an individual's subjective fear is only one of a number of relevant factors, and is not determinative on its own of the application of the exemption in section 13.<sup>9</sup>

[28] In addition, I find that the harms the appellant alleges will occur if the records are disclosed, such as possible legal proceedings, are not harms captured within section 13.

[29] Finally, with regard to the appellant's contact information, I note that the requester already knows the appellant's name and address. Regardless, I find that I have not been provided with sufficient evidence to demonstrate that the requester has exhibited any conduct that could reasonably be expected to form the basis of an expectation of the serious threat to the appellant's health or safety. Furthermore, I find that the appellant has not provided me with sufficient evidence to demonstrate that the harms contemplated by section 13 could reasonably be expected to arise should these particular records be disclosed.

[30] Therefore, I find that the records do not qualify for exemption under section 13 of the *Act* and should be disclosed to the requester.

**ORDER:**

1. I uphold the Town's decision and dismiss the appeal.
2. I order the Town to disclose the records to the requester by **May 9, 2014**, but not before **May 5, 2014**.

Original Signed By: \_\_\_\_\_  
Justine Wai  
Adjudicator

\_\_\_\_\_ April 3, 2014

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<sup>9</sup> Order PO-2003.