

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3272

Appeal MA14-371

Toronto District School Board

December 18, 2015

Summary: The issues in this appeal are whether certain telephone numbers on invoices paid by the Toronto District School Board (the board) on behalf of a school trustee, qualify as personal information as defined in section 2(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), and whether they are exempt from disclosure under section 14(1) of the *Act*. In this order, the adjudicator finds that some of the telephone numbers qualify as the personal information of identifiable individuals and are exempt from disclosure under section 14(1) of the *Act*. She also finds that the remaining telephone numbers do not qualify as personal information for the purposes of the *Act* and she orders the board to disclose them to the appellant.

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

OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of a decision of the Toronto District School Board (the board) in response to an access request the requester made under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for invoices showing the long distance charges (invoices/telephone bills) of school trustees, including the long-distance telephone numbers listed in the invoices. The requester specified by date the invoices to which he sought access.

[2] After locating responsive records, the board issued a decision to the requester

granting partial access. The board denied access to other portions of the records, claiming the application of the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

[3] The requester, now the appellant, appealed the board's decision to this office. In his appeal letter, the appellant narrowed the scope of his request to the telephone numbers of calls made from one named country to another,¹ by a named school trustee (the affected party) contained in three specified invoices.

[4] During the mediation of the appeal, the board notified the affected party for the purpose of obtaining consent to disclose some of the information at issue in this appeal. The board could not obtain the affected party's consent. Consequently, the board confirmed that it would continue to withhold the information at issue from the appellant.

[5] The appeal was then transferred to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry under the *Act*. The adjudicator assigned to the file sought and received representations from the board and the appellant. The adjudicator also sought representations from the affected party, but they did not provide representations. The file was then transferred to me to continue the inquiry. I sought and received further representations from the board and the appellant. For the reasons that follow, I find that some of the telephone numbers qualify as the personal information of identifiable individuals and are exempt from disclosure under section 14(1) of the *Act*. I also find that the remaining telephone numbers do not qualify as personal information for the purposes of the *Act* and I order the board to disclose them to the appellant.

RECORDS:

[6] The information at issue is located in three invoices and consists of the telephone numbers of calls made between two countries from the affected party's cellular telephone.

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

¹ Both countries are outside Canada.

DISCUSSION:

Issue A: Do the records contain “personal information” as defined in section 2(1) and, if so, to whom does it relate?

[7] 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) in part, as follows:

“personal information” means recorded information about an identifiable individual, including,

(d) the address, telephone number, fingerprints or blood type of the individual,

[8] 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.

[9] 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

Representations

[10] The board states that it is unable to determine on the face of the records if one or more of the telephone calls is a personal call, or if the recipient of any given call is receiving the call in their personal capacity. On this basis, the board argues, it erred on the side of caution and assumed such calls to be personal and that the telephone numbers qualify as personal information.

[11] The appellant states that the board conducted an audit regarding long distance charges incurred by trustees, and that the calls that are the subject matter of this request were part of the audit. The appellant goes on to state that the trustee at issue

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

(the affected party) did not reimburse the board for these charges, and that this would indicate that the calls made were business-related. The appellant submits that the board cannot argue on the one hand that the calls were business-related for the purposes of the audit, and on the other hand argue that they may be personal calls for the purposes of the *Act*.

[12] Further, the appellant acknowledges that calls made to a public official by a constituent may be done in confidence. However, he states, in this case calls to a country outside of Canada would not involve someone who has a child in the Toronto school system, as the trustee does not have constituents outside of Canada. The appellant concludes that the calls at issue are not related to discussions between a trustee and the parent of a child in the Toronto school system.

[13] In reply, the board admits that it audited the expense submissions of trustees, including the affected party's phone charges. The board goes on to state that following the audit, trustees were asked to identify any personal calls and to reimburse the board for any calls that were not business-related. The board confirms that the affected party did not claim any of the responsive calls as personal. The board states that, while on its face this would appear to resolve the matter that the information at issue is not personal information, the board has two concerns that led it to deny access. The board states:

The Board is unable to independently verify the nature of the calls and whether they were in fact personal or not. It has therefore erred on the side of caution.

Secondly, the redacted information relates to the number called and the date of the call. The Board notes that even if the purpose of the call was business related *for the affected Trustee* it is not necessarily business related information for the recipient of the call. It should be noted that the information pertains as much to the recipient as it does the caller. For example, if a Trustee called a constituent to address a constituent's personal problems with the Board, such information would be the personal information of the constituent though not necessarily the personal information of the Trustee. In the absence of evidence to verify that the information does not constitute the personal information of the recipient of the call the Board has erred on the side of caution.

[14] In sur-reply, the appellant submits that the board has not met its burden of proof,³ given that the evidence indicates that the calls were not made in a personal capacity by the trustee. Concerning the board's argument that the telephone numbers may be the personal information of others, that is, the recipients of calls made by the

³ As set out in section 42 of the *Act*.

trustee, the appellant states:

. . .[S]ince the phone number in question is calls made from the Trustee's TDSB issued phone to [the named country] the burden of proof is again not met by the TDSB to exclude this information. Constituents of the Toronto District School Board do not live in [the named country]. If the call was made to a Toronto phone number then I would concede this point. If the call was made to a Toronto cell phone number that was present in [the named country] at the time of the call then I would contest the authenticity of the number being presented on the document because I called a cell phone company and they said if a phone call was made that showed up as [the named country] it would be a [named country] phone number. The chances of the call being made to a parent in [the named country] whose child is in the TDSB is not within the realm of the balance of probabilities as being more likely than not. . . The TDSB is asking the [IPC] to error [sic] on the side of caution on the slim chance that the call was made to a parent on vacation with their child in [the named country] who had to speak to the Trustee in some emergency situation that couldn't wait until the child returned home.

[15] The appellant goes on to argue that the facts indicate that is more likely than not that the calls were business-related, and not personal.

Analysis and findings

[16] The first issue to be determined is whether the telephone numbers that were called qualify as the personal information of either the affected party or other individuals. I note that all of the calls were made from the affected party's cellular telephone number to telephone numbers that all have a Toronto-based three-digit area code.

[17] As set out in the board's representations, the affected party did not claim that any of the calls they made were personal for the purposes of the board's audit of expenses. Based on this statement by the board, and in the absence of representations from the affected party,⁴ I find that where the affected party's cellular phone appears in the record, it does not qualify as the affected party's, or anyone else's, personal information. The board paid for the trustee's cellular telephone so that the trustee would use it for business purposes. In the absence of evidence to the contrary, I find that this telephone number does not qualify as personal information and is instead associated with the affected party in a professional capacity. Moreover, I find that disclosure of the telephone number would not reveal anything of a personal nature about them. Having made this finding, this telephone number cannot be exempt from

⁴ The affected party was given an opportunity by this office to provide representations in this appeal.

disclosure under the personal privacy exemption in section 14(1) of the *Act*. As no other exemptions have been claimed with respect to this information, I order the board to disclose the affected party's cellular telephone number to the appellant as set out in the invoices.

[18] Turning to the other telephone numbers at issue listed in the invoices, one of the numbers belongs to the constituency office of a city Councillor.⁵ I find that this telephone number also does not qualify as personal information for purposes of the *Act*, because it is associated with an individual in a professional, official or business capacity, and does not reveal something of a personal nature about that individual.

[19] Because I have found that this telephone number does not qualify as the personal information of the city Councillor to whom it relates, the exemption in section 14(1) does not apply. As no other exemptions have been claimed with respect to it, I order the board to disclose this telephone number, as set out in one of the invoices, to the appellant.

[20] With respect to the remaining telephone numbers, I note that some of them appear to be residential numbers listed on Canada 411. The remaining numbers are unlisted. I find that the disclosure of this information would allow one to ascertain the identity of the individual to whom the number belongs by either referring to Canada 411 or calling the numbers.⁶ Therefore, I find that these telephone numbers qualify as the personal information of identifiable individuals other than the affected party, falling within paragraph (d) of the definition of personal information in section 2(1) of the *Act*. I will go on to determine whether the exemption in section 14(1) applies to these telephone numbers.

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

[21] 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, it appears that the only exception that could apply is section 14(1)(f), which allows disclosure if it would not be an unjustified invasion of personal privacy.

[22] The factors and presumptions in sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy under section 14(1)(f).

[23] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the

⁵ This telephone number is listed on the city's website as the number of the Councillor's constituency office.

⁶ See also Order MO-2771.

information is presumed to be an unjustified invasion of personal privacy under section 14(1). 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.⁷

Representations

[24] The board submits that the mandatory exemption in section 14(1) applies to the information at issue and that the factor section 14(2) of the *Act* should be weighed heavily because it assumes that the calls were of a sensitive nature and made in confidence, subject to the representations of the sender and recipients of the calls.

[25] The appellant submits that if the calls made are related to the board of a business in that country, this is a board issue that should be subject to public scrutiny. Further, the appellant submits that if the telephone numbers in the receiving country were personal in nature, these numbers should be disclosed to hold the affected party and the board to account for the “behaviour of its trustees,” given that the trustee did not pay the charges related to the calls.

Analysis and findings

[26] I find that none of the exceptions listed in sections 14(1)(a) through (e), the limitations in section 14(4), and the presumptions in section 14(3) apply in the circumstances of this appeal. Therefore, the only exception that could apply is section 14(1)(f), which allows disclosure of personal information if it would not be an unjustified invasion of personal privacy.

[27] If no section 14(3) presumption applies and the exception in section 14(4) does not apply, which is the case at hand, 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.⁸ In order to find that disclosure does not constitute an unjustified invasion of personal privacy, one or more factors and/or circumstances favouring disclosure in section 14(2) must be present. In the absence of such a finding, the exception in section 14(1)(f) is not established and the mandatory section 14(1) exemption applies.⁹

[28] It would appear from the appellant’s representations that he has raised the application of the factor in section 14(2)(a) which favours disclosure, in determining whether disclosure of personal information constitutes an unjustified invasion of personal privacy. Section 14(2)(a) states that a head should consider whether “the disclosure is desirable for the purpose of subjecting the activities of the institution to

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

⁸ Order P-239.

⁹ Orders PO-2267 and PO-2733.

public scrutiny.”

[29] In his representations, the appellant states that the telephone calls may have been made to the board of a company or related to the board of a company in the named country, and that these telephone numbers should be subject to public scrutiny. As previously stated, the calls remaining at issue were made to telephone numbers with a Toronto-based area code, which I have found to be the personal information of individuals other than the affected party. In light of this, I find that disclosure of these telephone numbers would not be desirable for the purpose of subjecting the activities of the board to public scrutiny, because in my view, that objective would not be met. Therefore, I do not place any weight on the factor in section 14(2)(a).

[30] I also find that none of the other factors in section 14(2) that favour disclosure are applicable in the circumstances.¹⁰ Having concluded that none of the factors in section 14(2) apply, I further find that the exception in section 14(1)(f) is not established. Consequently, in view of the fact that section 14(1) is a mandatory exemption, I find that the remaining telephone numbers are exempt from disclosure under section 14(1).

ORDER:

1. I uphold the board’s decision, in part. I order the board to disclose two of the telephone numbers to the appellant. I have enclosed a copy of the invoices and highlighted the numbers that are to be disclosed to the appellant by **January 25, 2016** but not before **January 20, 2016**.
2. I reserve the right to require the board to provide me with copies of the records it discloses to the appellant.

Original Signed by: _____

Cathy Hamilton
Adjudicator

December 18, 2015 _____

¹⁰ Similarly, I find that none of the factors in section 14(2) that weigh against disclosure are applicable.