

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-3299

Appeal MA14-570

The Corporation of the Township of Nairn & Hyman

March 18, 2016

**Summary:** This issues in this order are whether information contained in two records contains the personal information of an individual other than the requester, and whether that information is exempt from disclosure under section 14(1) (personal privacy). In this order, the adjudicator finds that the records contain the affected party's personal information and it is exempt from disclosure under section 14(1).

**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"), 14(1), 14(1)(d), 14(2)(d) and 14(2)(f).

### OVERVIEW:

[1] This order disposes of the issues raised as a result of an appeal of an access decision made by the Township of Nairn and Hyman (the township). The requester made an access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to an identified property, including copies of: building permits; outstanding orders under Ontario's *Building Code*; orders prohibiting occupancy of the buildings; and whether the location of the structure(s) is legal or legal but non-complying.

[2] The township identified two records that were responsive to the request, and subsequently notified a third party (the affected party) of the request. The affected party did not provide consent to disclose the responsive records. In turn, the township issued a decision to the requester denying access to the records in their entirety. The township claimed the application of the mandatory exemption in section 14(1) (personal privacy) of the *Act*.

[3] The requester (now the appellant) appealed the township's decision to this office. During the mediation of the appeal, the mediator contacted the affected party, who did not provide consent to disclose the record to the appellant.

[4] The appeal then moved to the adjudication stage of the appeals process, where an adjudicator conducts an inquiry. The affected party and the appellant provided representations which were shared in accordance with this office's *Code of Procedure* (section 7) and *Practice Direction 7*. Portions of the affected party's representations were withheld, as they met this office's confidentiality criteria. The township did not submit representations.

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

## **RECORDS:**

[6] There are two records at issue, which are from the township's building permit office.

## **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?

## **DISCUSSION:**

### **Background**

Both the appellant and the affected party provided background information setting out the circumstances of this access request. The appellant advises that it applied for and was granted an amendment to several municipal by-laws by the township, which rezoned certain Crown lands. The appellant is in the process of purchasing these lands. The appellant further advises that the affected party appealed the amendments to the by-laws on the grounds that the amendments would affect her property. This appeal, the appellant states, is now before the Ontario Municipal Board (the OMB).

The affected party states that the appellant is attempting to purchase the land in question in order to build a mobile emulsion explosives plant adjacent to her property. The affected party goes on to state that, in her view, the sale of this Crown land could compromise access roads and rights-of-way for owners of cottages located in the area.

**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 records contain *personal information* and, if so, to whom it relates. That term is defined in section 2(1). In my view, the only applicable paragraphs are paragraphs (d) and (h) which 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 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.

[8] Further, 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.<sup>1</sup>

[9] The affected party states that she is the owner of the property that is the subject matter of the request and that she has a cottage on the property, which belongs to her. The appellant’s representations do not directly address this issue.

[10] The record contains the name and home address of the affected party, which falls within the ambit of paragraph (d) of the definition of personal information. However, this does not end the analysis because the record also contains information about the property that is the subject matter of the request, which is different than the other address referred to above. In Order 23, former Commissioner Sidney Linden addressed the distinction between personal information and information concerning residential properties. He found that the information at issue, which was the municipal location of a property and its estimated market value, was about a property and not about an identifiable individual.

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<sup>1</sup> Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

[11] In Order MO-2053, Adjudicator John Higgins noted that subsequent orders further examined the distinction between information about residential properties and personal information. He stated:

. . . Several orders have found that the name and address of an individual property owner together with either the appraised value or the purchase price paid for the property are personal information (Orders MO-1392 and PO-1786-I). Similarly, the names and addresses of individuals whose property taxes are in arrears were found to be personal information in Order M-800. The names and home addresses of individual property owners applying for building permits were also found to be personal information in Order M-138. In addition, Order M-176 and Investigation Report I94-079-M found that information about individuals alleged to have committed infractions against property standards by-laws was personal information. In my view, the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals.

[12] I find that the information at issue in both records is strikingly similar to one of the examples cited above, and therefore qualifies as the affected party's personal information because it reveals something of a personal nature about her. The information at issue is not simply about the affected party's property, but consists of her name with other personal information about her, falling within the ambit of paragraph (h) of the definition of personal information. Consequently, I find that the both records contain the personal information of the affected party.

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

[13] 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. The only exceptions in section 14(1) that may apply in these circumstances are those listed in paragraphs (d) and (f), which state:

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

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

. . .

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

[14] The appellant has raised the possible application of the exception in section 14(1)(d) stating that this exception obliges the release of information if another statute authorizes disclosure. The appellant goes on to state that, as previously mentioned, the affected party has an appeal before the OMB, claiming that her land will be affected by the amendments to the by-laws. The appellant further states that if this was a matter before a court in Ontario, it would be governed by the *Rules of Civil Procedure 1990*, which would require the disclosure of any record relevant to the matter at issue. The appellant states:

There is no privilege in regards to these documents and they are essential in preparing a defence for the Appellant for the Affected Party's appeal which is now before the OMB, therefore all documents requested must be produced.

[15] I do not accept the appellant's argument with respect to this exception. Section 14(1)(d) requires that a statute of Ontario or Canada must expressly authorize the disclosure of the information at issue. The appellant has referred to the applicability of the *Rules of Civil Procedure 1990*, which is a regulation under the *Courts of Justice Act*. However, this regulation applies to all civil proceedings in the Court of Appeal and in the Superior Court of Justice, subject to certain exceptions. This regulation does not apply to appeals before the OMB, which is the proceeding at issue between the appellant and the affected party. Therefore, I find that the *Rules of Civil Procedure 1990* have no bearing on the appeal before the OMB and, consequently, the exception in section 14(1)(d) to the personal privacy exemption in section 14(1) does not apply.

[16] The remaining exception that may apply is section 14(1)(f), which states that a head shall refuse to disclose the personal information of an individual to another unless the disclosure does not constitute an unjustified invasion of personal privacy. This exception requires a consideration of additional parts of section 14, including sections 14(2), (3) and (4).

[17] If any of the paragraphs in section 14(4) apply, disclosure of personal information is not an unjustified invasion of another's privacy and the information is not exempt under section 14(1). The appellant has not raised the possible application of any of the paragraphs in section 14(4) and I find that none of them apply in these circumstances.

[18] If any of the paragraphs in section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy unless section 14(4) or the "public interest override" in section 16 applies.<sup>2</sup> As stated above, I find that section 14(4) has no application in this appeal. With respect to the application of the presumptions in section 14(3), neither party has addressed these presumptions in their representations. On my review of the records, I find that none of the presumptions in section 14(3) apply in these circumstances.

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<sup>2</sup> *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767 (Div. Ct.).

[19] 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.<sup>3</sup> 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.<sup>4</sup>

[20] The appellant submits that the factor in section 14(2)(d), which favours disclosure, applies because it requires the information at issue to allow it a fair determination of its rights. In particular, the appellant argues that it must have access to the records in order to prepare a defence in the appeal before the OMB.

[21] For section 14(2)(d) to apply, the appellant must establish that:

- The right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- The right is related to a proceeding which is either existing or contemplated, not one which has already been completed; and
- The personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- The personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.<sup>5</sup>

[22] In contrast, the affected party submits that disclosure of the information in the records could cause her grief within the community, and could prove to be harmful. Without making specific reference to it, it appears that the affected party is raising the possible application of the factor in section 14(2)(f), which states that a factor to consider is whether the personal information is highly sensitive. This factor does not favour disclosure, and requires a reasonable expectation of significant personal distress if the information is disclosed.

[23] Regarding the factor in section 14(2)(f), I have not been provided with sufficient information from the affected party as to how disclosure of the personal information in the records would cause a reasonable expectation of *significant* personal distress. The affected party has referred to the disclosure of the records causing her grief and possible harm, but she has not provided sufficient evidence to substantiate how that

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<sup>3</sup> Order P-239.

<sup>4</sup> Orders PO-2267 and PO-2733.

<sup>5</sup> Order PO-1764; see also Order P-312, upheld on judicial review on *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

could reasonably be expected to happen. Consequently, I do not give this factor any weight in my determination of the factors in section 14(2).

[24] Turning to the factor in section 14(2)(d), while I accept that there is an appeal before the OMB dealing with a right under either the common-law or statute law, I am not persuaded by the appellant that the affected party's personal information is significant or has some bearing on the determination of the appellant's rights in respect of the OMB appeal. In particular, I find that the appellant has not provided sufficient evidence establishing a link between the contemplated proceeding before the OMB and the personal information at issue that belongs to the affected party. In other words, the appellant has not explained how access to the affected party's personal information is significant to the OMB appeal, and how this personal information is required in order for it to prepare for the appeal. Therefore, I find that the appellant has not established sufficient evidence for me to conclude that this factor is applicable.

[25] Consequently, I find that neither section 14(2)(d) or 14(2)(f) apply in these circumstances. I also find, on my review of the records, that none of the other factors in section 14(2) apply. Given that the exemption in section 14(1) is mandatory and that none of the factors favouring disclosure apply, I find that the affected party's personal information is exempt from disclosure under section 14(1).

[26] Further, the appellant has not raised the possible application of the public interest override in section 16 and I find that in these circumstances, it would not apply. While there may be a public interest in the appeal before the OMB, which is a public process, I find that there is no public interest in the affected party's personal information.

**ORDER:**

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

Original signed by: \_\_\_\_\_  
Cathy Hamilton  
Adjudicator

\_\_\_\_\_ March 18, 2016