

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3298

Appeal MA15-258

Township of Perth East

March 15, 2016

Summary: The names and addresses of kennel owners is not "personal information" under section 2 of the *Municipal Freedom of Information and Protection of Privacy Act*. The information is ordered disclosed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, section 2.1 (definition of personal information)

Orders and Investigation Reports Considered: PO-2225; PO-3142.

BACKGROUND:

[1] The Township of Perth East (the township) received an access request, pursuant to the *Act*, for the following records:

1. Name and address of all registered kennel owners in [the township] 2010-2014 inclusive
2. Name and address of all kennel owners who have had their kennel licence suspended or revoked by [the township] 2010-2014 inclusive
3. Name and address of all registered kennel owners in [the township] who have been investigated for suspected by-law infractions 2010-2014 inclusive

4. Name and address of all kennel owners who have been reported to Ontario Society for the Prevention of Cruelty to Animals [OSPCA] by [the township] 2010-2014 inclusive
5. Records of all communications between [two identified individuals] 2010-2014.

[2] Prior to issuing its decision, the township notified 24 kennel owners (the affected parties), in accordance with section 21(1) of the *Act*, seeking their views regarding disclosure of the information. Four affected parties responded consenting to the disclosure of their information and eleven affected parties objected to the disclosure of the record. The township subsequently issued an access decision to the requester to disclose only the information of those affected parties who consented to its disclosure. It denied access to the remaining information relying on the mandatory personal privacy exemption at section 14(1) of the *Act*. The township also advised that it had no records responsive to part 5 of the request.

[3] The requester, now the appellant, appealed the township's decision.

[4] During mediation, the appellant confirmed he was seeking access to the information withheld pursuant to section 14(1), that is the names and addresses of all kennel owners as well as those kennel owners who were investigated for bylaw infractions, have had their kennel licence suspended or revoked, and/or have been reported to OSPCA. The township confirmed that there was only one kennel owner who was investigated, had its licence suspended or revoked and was reported to the OSPCA. The township also confirmed that this kennel was one of the four affected parties who consented to disclosure of its information. Therefore, there is no information identified as responsive to parts 2, 3 and 4 of the request that remains in issue.

[5] The township explained the search it conducted to locate records in response to part 5 of the request. The appellant advised the mediator that the township's search is no longer at issue in this appeal.

[6] Accordingly, the only information that remains in issue in this inquiry is information responsive to part 1 of the appellant's request.

[7] The township confirmed its position that the information of the kennel owners who did not consent should not be disclosed under section 14 of the *Act*. The appellant confirmed with the mediator that the columns on the responsive record to which he is seeking access are those titled: "Name, Licence Suspended/revoked 2010-2014, Licence Investigated for infractions 2010-2014, Reported to the OSPCA between 2010-2014, 911, Municipal Address, Mail, Town and Postal". These columns contain the name and address of kennel owners and records whether any investigation or enforcement action has been taken against them. The remaining columns are no longer at issue in this appeal. Further, as noted above, the "Licence Suspended/revoked 2010-2014, Licence Investigated for infractions 2010-2014, Reported to the OSPCA between 2010-2014"

columns only contain information about one affected party, and that party had consented to disclosure of their information. Therefore, the only columns in issue are those containing the name and address information of kennel owners.

[8] No mediated resolution was reached regarding the outstanding information, and the appeal was moved to the adjudication stage of the appeal process, where an adjudicator conducts an inquiry under the *Act*. The inquiry began by inviting representations from the township and 20 affected parties, being the kennel owners who did not consent to disclosure of their information.

[9] Five affected parties submitted representations, three of whom objected to disclosure of the record in issue. The other two parties consented to disclosure of their information in the record, so I will order this information disclosed to the appellant.

[10] The township also submitted representations in support of its position.

RECORDS:

[11] The record at issue is a one-page spreadsheet. The columns containing kennel owners' name and address information remain at issue, specifically the columns labelled: "Name, 911, Municipal Address, Mail, Town, Postal."

DISCUSSION:

NON-RESPONSIVE INFORMATION

[12] To be considered responsive to the request, records must "reasonably relate" to the request.¹ I note that in two instances in the record, in addition to the name of the owner of the kennel the "name" field includes a name that the record indicates is the name of a tenant. I assume this is a reference to a tenant at a property where a listed kennel is located. The appellant's request was for information about owners, so the tenants' names do not reasonably relate to the request. I therefore do not consider the tenants' names to be responsive to the request and will not consider them further in this inquiry.

PERSONAL INFORMATION

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

[13] In order to determine which sections of the *Act* may apply, it is necessary to

¹ Orders P-880 and PO-2661.

decide whether the record contains "personal information" and, if so, to whom it relates. The term "personal information" 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 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;

[14] 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.²

[15] 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

² Order 11.

individual.³

[16] 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.⁴

[17] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁵

[18] 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.

Is the information at issue personal information?

[19] The affected parties who provided representations objecting to disclosure of the information at issue do not directly address whether the information at issue constitutes their personal information under section 2(1) of the definition.

[20] The township submits that the information is personal information as that term is defined in paragraphs (a), (c), (d) and (h) of section 2(1) of the Act. It says that as kennel operations are run as part of a farm operation which includes the kennel owners' residence, their address is also their personal home address and therefore qualifies as personal information.

[21] The township's submission acknowledges that section 2(2.1) narrows the definition of personal information so that it does not include the name, title, contact information or designation of an individual that identifies that individual in a business capacity.

[22] However, the township cites Orders PO-2225, MO-2344 and PO-3142 for the position that information that relates to an individual's professional, official or business capacity may still qualify as personal information if it reveals something of a personal

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

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁵ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

nature about the individual sufficient for it to qualify as personal information. It says that the information at issue still qualifies as personal information because the information reveals something of a personal nature about the individual, namely the affected parties' home address.

[23] The township's submission did not address the effect of section 2(2.2) (set out above) on the information in issue. Section 2(2.2), states that section 2(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.

[24] The information at issue contains names and contact information for identified businesses. I recognize that in many, if not all cases, the addresses are also the individual's home address. As the information contains only the affected parties name and contact information, nothing of a personal nature is revealed about the affected parties, beyond their home address. In my view, section 2(2.2) makes it clear that where business contact information is also the contact information for an individuals dwelling, this information is not personal information.

[25] I note that this finding is also consistent with the contextual approach to deciding whether individual's names constitute personal information set out in Order PO-2225. In that Order, former Assistant Commissioner Tom Mitchinson set out the following two-step analysis for determining whether information should be characterized as "personal" or "professional":

1. In what context do the names of the individuals appear? Is it in 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?
2. 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 is inherently personal in nature?

[26] Here, the individuals names appear in a business context, namely as individuals holding a licence to operate a kennel, a business operation. Further, I note that while the addresses of home businesses was not directly in issue in Order PO-2225, that Order (at page 7) refers to a scenario involving a landlord's business being potentially no more than an individual homeowner renting out a basement apartment. Assistant Commissioner Mitchinson characterized individuals in such a scenario as having made a conscious decision to enter into a business realm, and stated that the context in which such information appears is inherently of a business nature and not personal.

[27] This finding is also consistent with Order M-454, which found that the name and address of the owner of a dog kennel that was both the business and residential address of that owner was not personal information.

[28] The second part of the analysis in Order PO-2225 provides that even if the information appears in a business context, the question is whether its disclosure would reveal something that is inherently personal in nature. The township says the information will reveal the affected parties' home addresses. However, as discussed above, section 2(2.2) makes clear that when this information is also a business address, the home address is not personal information.

[29] Having considered the representations from the township and the affected parties, and for all of the reasons outlined above, I conclude that the name and contact information at issue in this appeal does not qualify as "personal information" as that term is defined in section 2(1) of the *Act*. It is excluded from the definition of personal information under section 2(2.1) and (2.2). Further, applying a contextual approach, the information is "about" individuals in a business rather than a personal capacity.

B: If the record contains "personal information" as defined in section 2(1), does the s. 14 exemption apply?

[30] Because the exemption in section 14(1) of the *Act* can only apply to "personal information", it has no application in the circumstances of this appeal and I do not need to consider its application to the information. The information at issue does not qualify for exemption, and I will order that it must be disclosed to the appellant.

ORDER:

1. I order the township to disclose the information at issue to the appellant by April 21, 2016, but not before April 14, 2016.
2. In order to verify compliance with provision 1, I reserve the right to require the township to provide me with a copy of the record which is disclosed to the appellant.

Original Signed by: _____
Hamish Flanagan
Adjudicator

_____ March 15, 2016