

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3308

Appeal MA14-281-2

City of Ottawa

April 28, 2016

Summary: The City of Ottawa received a request for information relating to the appellant, in particular, the entries made to a database by employees at an identified homeless shelter. The city disclosed the database entries, but denied access to the identities of the employees who made those entries, on the basis of the exemptions in section 38(b) (personal privacy) and section 13 (danger to safety or health) in conjunction with section 38(a) (discretion to refuse requester's own information). This order upholds the city's decision to deny access to the information under sections 38(a) and 13 of the *Act*.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) ("personal information"), 13, 38(a).

Orders and Investigation Reports Considered: Order MO-2405.

Cases Considered: *Ontario (Minister of Community and Social Services) v. John Doe*, 2015 ONCA 107.

OVERVIEW:

[1] The City of Ottawa (the city) received a six-part access request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). Part 1 of the request was for the following information:

1. Name and Title of each and every employee of [a named shelter for men (the Shelter)] who input the entries noted below into the Homeless Individuals and Family Information System (HIFIS) Client Profile-Individual for [the appellant] ...

[2] Parts 2 through 6 of the request identified the other records sought, and also identified the types of entries referred to in item 1. The references to the types of entries included a reference to certain file numbers, and read:

... Personal Information in the Homeless Individuals and Family Information System (HIFIS) "Client Profile-Individual" for "[the appellant]" which states that the record is a "profile of selected client housing and shelter history, as well as personal information such as education and occupations"...

[3] The request then identified examples of the types of information found in these entries.

[4] The city responded to each part of the request, granting access to certain information, and indicating that some records were not in its custody or control. The appellant appealed the city's decision, and appeal MA14-281 was opened.

[5] During the mediation of that appeal, the city granted access to certain additional information, and certain issues were resolved. Furthermore, on January 16, 2015, the city issued a revised decision regarding records responsive to part 1 of the request. The city granted partial access to a page of data it had retrieved from the Homeless Individuals and Family Information System (HIFIS). Access to some information was severed pursuant to sections 14(1) and 38(b) (personal privacy) of the *Act*. In its decision letter, the city also advised that certain information was not responsive to the request, and that there are no records in the custody or control of the city that are responsive to the request for job titles of the employees who entered the data, as the city does not collect this information.

[6] The appellant appealed the city's decision to deny access to the portions of the record and, as a result, the current appeal file MA14-281-2 was opened. All of the other issues raised in the earlier appeal (MA14-281) were resolved, and that appeal file was closed.

[7] During mediation of the current file, the appellant advised that he is not appealing the issue of custody or control of records relating to job titles. Also during mediation, the mediator was unable to obtain the consent of the affected parties whose information was severed from the records at issue.

[8] As mediation did not resolve the appeal, the file was transferred to the inquiry stage of the process, where an adjudicator conducts an inquiry under the *Act*.

[9] I initially sent a Notice of Inquiry to the city and two individuals whose information is contained in the withheld portions of the records (the affected parties). I also sent the Notice of Inquiry to the Shelter for its input. I received representations from the city, the Shelter and the two affected parties.

[10] In the course of processing this appeal, the possible application of the discretionary exemption in section 13 (danger to safety or health) was raised. Due to the nature of this exemption, I sent a Supplementary Notice of Inquiry to the city, the two affected parties and the Shelter, inviting representations on the possible application of this exemption. I received supplementary representations from the city and from a law firm which provided representations on behalf of the Shelter and the two affected parties (referenced below as the representations of the affected parties).

[11] I then sent the Notice of Inquiry, along with a copy of the non-confidential supplementary representations of the city and the affected parties, to the appellant. The appellant provided representations in response.

[12] In this order, I find that the disclosure of the identities of the Shelter employees could reasonably be expected to result in the harms set out in section 13, and I find that this information is exempt under section 38(a) in conjunction with section 13 of the *Act*.

RECORDS:

[13] The record at issue is a one-page printout of data from the HIFIS, relating to the appellant. The only information severed from this record is contained under the headings "User ID", "User First Name" and "User Last Name".

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 discretionary exemption at section 38(a) in conjunction with the section 13 exemption apply to the information at issue?
- C. Did the city exercise its discretion under sections 13 and/or 38(a)? If so, should this office uphold the exercise of discretion?

DISCUSSION:

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

[14] 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) 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;

[15] 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.¹

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

(2) Personal information does not include information about an individual who has been dead for more than thirty years.

(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.

[17] 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 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.³

[18] The only portions of the record that have been withheld relate to the name and identifying information of the affected parties (including the "User ID" information, which contains the name of the user). The record contains entries in the HIFIS relating to the appellant made by these individuals.

[19] The city takes the position that the record contains the personal information of the appellant. On my review of the information contained in the record, which consists of entries made by the affected parties about the appellant, I find that the record contains the appellant's personal information, including his name along with other personal information relating to him (paragraph (h) of the definition). As I have found that the record contains the appellant's personal information, I will consider his right of access under Part II of the *Act*.

[20] The withheld portions of the records also contain identifying information about the individual affected parties, including their names. The record also reveals the identities of the individuals with reference to the specific entries they made to the HIFIS system. Significant representations were received from all of the parties regarding

¹ Order 11.

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

³ Orders P-1409, R-980015, PO-2225 and MO-2344.

whether this identifying information constitutes the personal information of these individual affected parties; however, because of my finding below that the withheld portions of the record are exempt under sections 38(a) and 13 of the *Act*, it is not necessary for me to determine whether or not the information in the records is the personal information of the affected parties.

Issue B: Does the discretionary exemption at section 38(a) in conjunction with the section 13 exemption apply to the information at issue?

[21] Section 38(a) of the Act reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information.

[22] The city and the affected parties take the position that the exemption in section 13 applies to the withheld information. That section reads:

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] For this exemption to apply, the institution must demonstrate a risk of harm that is well beyond the merely possible or speculative although it need not prove that disclosure will in fact result in such harm. How much and what kind of evidence is needed will depend on the type of issue and seriousness of the consequences.⁴

[24] An individual's subjective fear, while relevant, may not be sufficient to establish the application of the exemption.

[25] The term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.⁵

Representations

The city's representations

[26] The city notes that for the section 13 exemption to apply, it must be established that disclosure could reasonably be expected under the circumstances to result in the

⁴ *Ontario (Community Safety and Correctional Services) v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4.

⁵ Order PO-1817-R.

harm set out in that section. It states that staff at shelters, by virtue of their occupation, are vulnerable to harassment or threats of attack from clients. The city then refers to Order MO-2405, in which Commissioner Brian Beamish applied section 13 of the *Act* to exempt records requested by a resident in a shelter for homeless individuals, noting that Commissioner Beamish found that both residents and staff at shelters were in vulnerable positions. The city then states:

The facts in Order MO-2405 were that the City staff at the shelter had a confrontational relationship with the requester and the City had submitted that disclosure of information relating to the employee could cause the employee stress and threaten the mental and even physical well being of the employee. Although the Shelter Provider employee(s) in this Appeal are not City employees, the City submits that [the situation is similar]. ... [I]n the context of shelters, it is reasonable for shelter employees to work with the assurance that certain types of internal operational information that link them to having made certain sensitive observations [and/or] determinations, including the [information at issue in this appeal], are not to be disclosed to clients from a safety best practices perspective. In other words, the application of the exemption under section 13 in the context of this appeal is based on all surrounding circumstances, rather than the sole focus being on the behavior of the Appellant.

[27] With respect to whether the disclosure of the information could reasonably be expected to seriously threaten the safety or health of an individual, the city acknowledges that it did not create the records, and refers to the representations of the affected parties. However, the city states that it is aware that the Shelter has barred the appellant from staying at the Shelter.

[28] The city also provided additional confidential representations in support of its position that section 13 applies to the withheld information.

The affected parties' representations

[29] The affected parties take the position that disclosure of the requested information "could seriously threaten the safety or health of the Shelter employees whose names are contained in the requested record."

[30] In support of its position, the affected parties' representations describe in some detail the context in which the Shelter operates. It states that the Shelter provides food, clothing, and shelter to homeless men, serves an average of nearly 1300 meals each day, and houses an average of nearly 250 residents each night. It also indicates that the average resident's stay with the Shelter is 51 days, and the average age of residents is 43 years old. It states that the majority of residents at the Shelter deal with mental health or addiction issues, or both, and that these residents may present well at any given time, only to suddenly become violent or unstable. The representations state

that, as a result, security for both staff and residents is a constant and primary concern at the Shelter. It states:

Strict rules are followed to ensure everyone's safety. Front-line staff at [the Shelter], who are seen by residents as rule-enforcers and authority figures, work with residents on a first-name only basis because they are the focus for any discontent residents may have. While counsellors and social workers regularly disclose their full names to residents, it is a strict policy of [the Shelter] that front-line employee last names are never given to residents.

[31] The affected parties then confirm that the individuals whose information is contained in the record are front-line staff, and that they never "give their last names to residents."

[32] The affected parties also provided additional confidential representations in support of their position that section 13 applies to the withheld information.

The appellant's representations

[33] The appellant's representations on all of the issues are quite extensive. Regarding the possible application of section 13 of the *Act*, the appellant disputes that this exemption applies. He states that this claim is "absurd" and addresses a number of the points made by the city and the affected parties in their representations.

[34] With respect to the concern expressed by the Shelter that the majority of residents at the Shelter deal with mental health or addiction issues, the appellant disputes this, and provides representations which argue that "most of the individuals residing at these shelters" are there through unfortunate circumstances such as insufficient income, an inability to find work or affordable, decent housing, etc. He also states:

... this is typical of [the Shelter] to brand everyone as mentally disturbed and/or addicted. This is simply a blatant lie. While there are some clients that are dealing with mental health issues and various forms of addiction, they are a minority of the emergency shelter population.

[35] The appellant also confirms that he has no mental health issues and there are no medical records reflecting any mental health issues for him or any members of his family, and that he never threatened any employee of the Shelter with physical violence. He then argues that, to the extent that any threatening activities have taken place, it involved shelter employees threatening him.

[36] The appellant also states that he has witnessed "many other altercations between clients and front line staff" and that "in every incident" it was the front-line staff members who instigated the confrontations, which he says resulted when clients

verbally held employees to account for their misconduct.

[37] Lastly, the appellant disputes the affected parties' position that front-line staff of the Shelter operate on a first name only basis, and he disputes that they either have a policy or a practice that front-line employees' last names are never given to residents. The appellant refers to the following in support of his position:

- a copy of the Shelter's "Procedures Manual Operations and Client Services" which he states does not refer to this policy;
- a letter addressed to the appellant that was signed by a former front-line Support Worker, who had no problem providing his full name in the correspondence;
- references on the Shelter's website which profile some of their employees and include names of certain front-line workers; and
- copies from selected open social media websites which contain information about two Shelter employees. The appellant also references open personal social media accounts, some of which contain photos depicting current and former front-line employees of the Shelter, and some of their social activities.

[38] The appellant also questions whether the activities of the Shelter's employees are being properly monitored.

Analysis and Findings

[39] As set out above, for the section 13 exemption to apply, it must be shown that disclosure of the record "could reasonably be expected to" lead to the specified result. To meet this test, evidence must be provided to establish a risk of harm that is well beyond the merely possible or speculative. It must be demonstrated that the reasons for resisting disclosure are not frivolous or exaggerated.

[40] An individual's subjective fear, while relevant, may not be sufficient to establish the application of the exemption. In addition, the term "individual" is not necessarily confined to a particular identified individual, and may include any member of an identifiable group or organization.⁶

[41] On my review of the material provided by the parties, including the confidential representations, I am satisfied that disclosure of the names of the Shelter employees, in connection with the entries and/or observations made by them, could reasonably be expected to seriously threaten the safety or health of an individual. I make this finding for a number of reasons.

⁶ Order PO-1817-R.

[42] A significant reason for making this finding is the nature of the work done by the individual affected parties. These parties are “front-line” workers employed in a shelter dealing with a broad range of homeless men. I note that Commissioner Beamish in Order MO-2405 made the following observations about staff working in a similar environment, when he found that certain information qualified for exemption under section 13 of the *Act*:

... The City also submits that disclosure of the information relating to the employee of [a named shelter], with whom the affected party has had a confrontational relationship, could cause the employee stress and threaten the mental and even physical well-being of that employee. ...

[I] give significant weight to the vulnerable nature of the health of some of the residents of the City's supported housing units and the vulnerable position of the staff who work there. Having regard to these circumstances, the nature of the information contained in the records and the confidential representations that have been provided by the City, I find that the City's claim to section 13 is neither frivolous nor exaggerated. I am satisfied in all the circumstances that disclosure of this information might reasonably be expected to seriously threaten the safety or health of the appellant and other individuals. [emphasis added]

[43] I adopt the approach taken by Commissioner Beamish, and apply it to the circumstances in this appeal. I find that the vulnerable nature of the health of some of the residents of the Shelter, as well as the vulnerable position of the front-line employees, are significant factors in support of a finding that section 13 of the *Act* applies.

[44] Considering all of the circumstances, including the nature of the information at issue and the confidential representations of the affected parties, I find that the withheld portions of the record are exempt under section 13 of the *Act*.

[45] I will also address the arguments made by the appellant.

[46] Although the appellant disputes the position that “the majority” of residents at the shelter deal with mental health or addiction issues, the appellant nevertheless acknowledges that some of these clients are dealing with mental health issues and various forms of addiction. Even if I were to accept the appellant's position, I would still find that the vulnerable nature of the health of some of the residents and the vulnerable position of the staff who work there are significant factors in favour of finding that section 13 applies.

[47] With respect to the appellant's concerns about the actions of front-line staff generally, and the appropriateness of some their actions, this is not a relevant factor in making my determination of whether the exemption in section 13 applies. I do,

however, consider the appellant's concerns about the specific information contained in the records at issue as a factor to consider in reviewing the city's exercise of discretion, below.

[48] Regarding the appellant's position that a policy of not providing the last names of front-line workers does not exist, and his evidence supporting his position, based on the evidence provided by the affected parties, including the Shelter, I am satisfied that this is the practice of the Shelter. The decisions by some current or former individual Shelter employees to make their full names public or to be identified on certain social media sites does not affect this finding.

[49] I have also considered the appellant's statements that he has no mental health issues and that he has never threatened any employee of the shelter with physical violence. I have no evidence that the appellant himself has ever threatened staff with physical violence; however, it is clear from the representations of all of the parties that the appellant has had some confrontational and unpleasant interactions with Shelter staff. In addition, the appellant does not dispute the city's statement that he has been barred from staying at the Shelter.

[50] I also note that the appellant's stated intent is to pursue other remedies against the named staff, which would result in the names being made public. In that regard, I have reference to the decision in *Ontario (Minister of Community and Social Services) v. John Doe*, 2015 ONCA 107, where the Ontario Court of Appeal confirmed that "the risk that a requester will share the information provided to him or her is a relevant factor, to be assessed with all of the other relevant factors, in determining whether or not the evidentiary threshold ... has been met." I have taken this factor into account in making my finding that the withheld portion of the record is exempt under section 13 of the *Act*.

[51] Having found that the record qualifies for exemption under section 13 of the *Act*, I am satisfied that the exemption in section 38(a), in conjunction with section 13 applies, subject to my review of the city's exercise of discretion, below.

Issue C: Did the city exercise its discretion under sections 13 and/or 38(a)? If so, should this office uphold the exercise of discretion?

[52] The section 13 and 38(a) exemptions are discretionary, and permit an institution to disclose information, despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the Commissioner may determine whether the institution failed to do so.

[53] In addition, the Commissioner may find that the institution erred in exercising its discretion where, for example:

- it does so in bad faith or for an improper purpose

- it takes into account irrelevant considerations
- it fails to take into account relevant considerations.

[54] In either case this office may send the matter back to the institution for an exercise of discretion based on proper considerations.⁷ This office may not, however, substitute its own discretion for that of the institution [section 43(2)].

Relevant considerations

[55] Relevant considerations may include those listed below. However, not all those listed will necessarily be relevant, and additional unlisted considerations may be relevant:⁸

- the purposes of the *Act*, including the principles that
 - information should be available to the public
 - individuals should have a right of access to their own personal information
 - exemptions from the right of access should be limited and specific
 - the privacy of individuals should be protected
- the wording of the exemption and the interests it seeks to protect
- whether the requester is seeking his or her own personal information
- whether the requester has a sympathetic or compelling need to receive the information
- whether the requester is an individual or an organization
- the relationship between the requester and any affected persons
- whether disclosure will increase public confidence in the operation of the institution
- the nature of the information and the extent to which it is significant and/or sensitive to the institution, the requester or any affected person
- the age of the information
- the historic practice of the institution with respect to similar information.

⁷ Order MO-1573.

⁸ Orders P-344 and MO-1573.

Representations

[56] The city submits that it properly exercised its discretion when deciding to deny access to the record at issue. It provides the following background information about the record:

By way of background, the record at issue was not created by [the city], but rather employees/former employees of [the Shelter]. [The Shelter] is a registered charity that provides shelter for homeless men and is separate and apart from the City Housing Services Branch.

[The Shelter] receives funding from the city pursuant to a funding agreement. As a condition of the funding that the Shelter receives, the city requires that [the Shelter] use a database known as the Homeless Individuals and Family Information System (HIFIS). The HIFIS software is owned by Human Resources and Skills Development Canada (HRSDC). ... HIFIS as a comprehensive data management system that helps service providers with their day-to-day operations and supports data sharing to increase understanding of homelessness while ensuring information security and privacy.

HIFIS automatically creates logs that includes which user made certain entries or which user was the last to make a change to entries found in a client profile. The record at issue in this appeal was created in this manner. The city, as the host of HIFIS, provides [Shelter] employees with HIFIS user accounts. Each user profile includes the first and last name of [the Shelter employee] with the employee's corresponding access rights. Although the user logs reside on city servers, the city as the HIFIS host does not access or monitor these logs. It is also not the role of the city to access personally identifiable client data as the city does not provide shelter services to the appellant or operate homeless shelters for men such as the one operated by [the Shelter].

[57] In support of its position that it properly exercised its discretion to deny access to the information, the city notes that the information provided to it supports the view that disclosure of the identity of the employees could reasonably be expected to seriously threaten the safety or health of an individual. Elsewhere in its representations it states that the information is sensitive information and that disclosure may expose the employees to pecuniary or other harm. The city also submits that, in the context of shelters, it is reasonable for shelter employees to work with the assurance that certain types of internal operational information that link them to having made certain sensitive observations and determinations, including the information at issue, are not to be disclosed to clients from a "safety best practices perspective." The city submits that its exercise of discretion in applying the exemption at section 13 of the *Act* was not made for improper purposes or otherwise made in bad faith, and that it considered relevant

factors in making its decision to exempt portions of the record from disclosure.

[58] The appellant's main arguments in support of his position that he ought to have access to the records include the following:

- employees of the [Shelter] are violating his privacy rights by falsely reporting information into HIFIS personal information profile;
- the data is inaccurate and input with the intent to libel, and he needs the information to investigate the matter further;
- the purpose of obtaining the names of the employees of the Shelter who deliberately falsified his personal HIFIS record is to bring legal actions to expose and hold accountable the city, the Shelter and the employees;
- his overall motive is to stop the "crimes and torts" being perpetrated by the city and the Shelter against marginalized individuals, and to obtain court orders requiring these organizations to comply with their statutory, regulatory and common law duties;
- he has a right to know the names of the individuals in the employ of the Shelter who blatantly falsified his personal HIFIS record;
- the Shelter and their employees have a fiduciary obligation to ensure that all personal information being collected, used, disclosed and recorded is accurate and current at all times; and
- that all of the material entries have been falsified.

Findings

[59] On my review of the representations of the parties, I am satisfied that the city properly exercised its discretion in deciding not to disclose the record at issue. I am satisfied that the city has not made this decision in bad faith or for an improper purpose, nor has it taken into account irrelevant considerations or failed to take into account relevant ones. I note that the city granted access to all of the specific entries that relate to the appellant, and has only withheld the names of the employees who input the data.

[60] I have also considered the extensive representations of the appellant. Although it is clear that the appellant is concerned about the accuracy of the information contained in the records, he was provided with all of the actual information relating to him. In that respect, even without the names, he is able to commence many of the complaints

and/or legal actions he has referenced.⁹

[61] In the circumstances, I find that the city properly exercised its discretion to deny access to the record under sections 38(a) and 13.

ORDER:

I uphold the city's decision to deny access to the withheld portions of the record, and dismiss this appeal.

Original Signed by: _____
Frank DeVries
Senior Adjudicator

_____ April 28, 2016

⁹ See also M-1146.