

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3400

Appeal MA15-273

City of Toronto

January 18, 2017

Summary: The appellant sought access to records related to an altercation between his dog and another dog that resulted in an injury to his dog. The city identified the responsive records and issued a decision granting partial access to them. Access to portions of the records was denied pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act* and the discretionary personal privacy exemption at section 38(b) of the *Act*. The appellant appealed. In this order, the adjudicator upholds the city's decision 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, sections 2(1) (definition of "personal information"), 14(1)(f), 14(3)(b) and 38(b); *Dog Owners' Liability Act*, R.S.O. 1990, Chapter D. 16.

OVERVIEW:

[1] The City of Toronto (the city) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

I am requesting information on file regarding the attack of my dog.

I would like to know the conclusion of the investigation, if there was a decision to hold the attacking dog and his owner accountable, what decision was made by Animal Services, and whether the attacking dog and his owner have a previous file and complaint against them.

[2] The city granted partial access to the requested records. Access was denied to

portions of the records pursuant to the mandatory personal privacy exemption at section 14(1) of the *Act* and the discretionary personal privacy exemption at section 38(b) of the *Act*.

[3] The requester, now the appellant, appealed the city's decision to deny access to portions of the records.

[4] During mediation, three affected parties were notified. None of them consented to the disclosure of their personal information contained in the records.

[5] As a mediated resolution could not be reached, the file was transferred to the adjudication stage of the appeal process for an adjudicator to conduct an inquiry. Representations were sought from the city, three affected parties and the appellant. The city and the three affected parties provided representations. The city's representations were shared with the appellant in accordance with the principles set out in this office's *Practice Direction 7*. Although the affected parties' representations were not shared with any of the other parties, all three of them responded and confirmed that they do not consent to the disclosure of their personal information. Although invited to do so, the appellant chose not to submit representations.

[6] In this order, I find that the city has properly applied the personal privacy exemptions at section 14(1) and 38(b) of the *Act* to the severed information and I dismiss the appeal.

RECORDS:

[7] The records at issue consist of a Dog Bite Report, an Activity Card (with 2 additional pages of information), a Notice/Warning, a Notice and a Notice of Caution (hereinafter "the three notices"), all of which have been disclosed in part, and three emails, which have been withheld in full.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) of the *Act* and, if so, to whom does it relate?
- B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information that has been withheld?

DISCUSSION:

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

[8] Under the *Act*, different exemptions may apply depending on whether a record

at issue contains or does not contain the personal information of the requester.¹ Where the records contain the requester's own personal information, access to the records is addressed under Part II of the *Act* and the discretionary exemptions at section 38 may apply. Where the records contain the personal information of individuals other than the requester but do not contain the personal information of the requester, access to the records is addressed under Part I of the *Act* and the mandatory exemption at section 14(1) may apply.

[9] Accordingly, 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;

[10] The list of examples of personal information under section 2(1) is not exhaustive.

¹ Order M-352.

Therefore, information that does not fall under paragraphs (a) to (h) may still qualify as personal information.²

[11] 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.³

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.⁴

[13] The city submits that the personal information at issue in this appeal consists of the unit address, telephone number, and statements of the other dog owner (one of the affected parties), as well as the addresses, telephone numbers and statements of several witnesses to the incident (the other two affected parties). The city submits that this information qualifies as personal information as it falls within paragraphs (d) and (e) of the definition “personal information” in section 2(1) of the *Act*.

[14] The city submits that some of the records also contain the personal information of the appellant.

[15] From my review of the records I find that the Dog Bite Report and the Activity Card contain both the personal information of the appellant and another individual, specifically, the other dog owner. The appellant’s personal information includes his address (paragraph (d)) and his name, together with other personal information about him (paragraph (h)). The personal information of the other dog owner, includes their address and telephone number (paragraph (d)), an identifying number assigned to them (paragraph (c)), their views or opinions (paragraph (e)) and their name, together with other personal information about them (paragraph (h)).

[16] I also find that the three emails, which consist of statements from the three affected parties (the other dog owner and two witnesses), contain both the personal information of the appellant and of other identifiable individuals, as they include their names, together with other personal information about them (paragraph (h)).

[17] With respect to the three notices, I find that they do not contain the personal information of the appellant but only contain the personal information of the other dog owner, specifically, their address, telephone numbers (paragraph (d)), an identifying number assigned to them (paragraph (c)) and their name, together with other personal information about them (paragraph (h)).

[18] Accordingly, for the records that I have found to contain both the personal information of the appellant and other identifiable individuals (the Dog Bite Report, the

² Order 11.

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

⁴ Orders PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

Activity Card and the three emails), Part II of the *Act* applies and I must consider whether the severed information is exempt pursuant to the discretionary exemption at section 38(b) of the *Act*.

[19] For the records that I have found do not contain the personal information of the appellant but only that of the other dog owner (the three notices), Part I of the *Act* applies and I must consider whether the severed information is exempt pursuant to the mandatory exemption at section 14(1) of the *Act*.

Issue B: Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information that has been withheld?

[20] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right.

[21] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an “unjustified invasion” of the other individual’s personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.⁵

[22] In contrast, under section 14(1), where a record contains the personal information of another individual but *not* that of the requester, the institution is prohibited from disclosing the personal information unless one of the exceptions in sections 14(1)(a) to (e) applies, or unless disclosure would not be an unjustified invasion of personal privacy [section 14(1)(f)].

[23] In determining whether the disclosure of the personal information in the records *would not* be an unjustified invasion of personal privacy under section 14(1)(f) or *would* be an unjustified invasion of personal privacy under section 38(b), sections 14(1) to (4) provide guidance. The information at issue in this appeal does not fit within any of paragraphs (a) to (e) of section 14(1) of the *Act*.

[24] The factors and presumptions at sections 14(2) and (3) help in determining whether disclosure would or would not be an unjustified invasion of privacy. Additionally, if any of paragraphs (a) to (c) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and is not exempt under either section 14(1) or 38(b).

Sections 14(2) and (3)

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

⁵ See below in the “Exercise of Discretion” section for a more detailed discussion of the institution’s discretion under section 38(b).

information is presumed to be an unjustified invasion of personal privacy.

[26] For records claimed to be exempt under section 14(1) (i.e., records that do not contain the requester's personal information), a presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if a section 14(4) exception or the "public interest override" at section 16 of the *Act* applies.⁶ In this case, neither section 14(4) nor section 16 apply.

[27] If the records are not covered by a presumption in section 14(3), section 14(2) lists various factors that may be relevant in determining whether disclosure of the personal information would be an unjustified invasion of personal privacy and the information will be exempt unless the circumstances favour disclosure.⁷

[28] For records claimed to be exempt under section 38(b) (i.e., records that contain the requester's own personal information), this office will consider, and weigh, the factors and presumptions in both sections 14(2) and (3) and balance the interest of the parties in determining whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy.⁸

Representations

[29] The city submits that the presumption at section 14(3)(b) applies. That section reads:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[30] The city submits that in the current appeal the presumption at section 14(3)(b) applies because all of the personal information at issue was compiled by the city as part of its investigation into an alleged contravention of the city's *Municipal Code*, Chapter 349-Animals (formerly by-law 28-99), as well as the *Dog Owner's Liability Act*.

[31] The city submits that its claim that section 14(3)(b) applies in the circumstances in this appeal is in keeping with Order M-382 where Senior Adjudicator John Higgins found that section 14(3)(b) applied to personal information compiled by the City of Toronto in its investigation of an alleged contravention of the city's animal control by-law. The city submits that in that order, Senior Adjudicator Higgins stated that previous orders of this office (specifically, Order M-181) have established that personal information relating to investigations of alleged violations of municipal by-laws falls

⁶ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

⁷ Order P-239.

⁸ Order MO-2954.

within the scope of the presumption provided by section 14(3)(b) of the *Act*. The city also submits that Order MO-1598 also involved the city's animal services division and Adjudicator Rosemary Muzzi found that the presumption at section 14(3)(b) applied.

[32] With respect to the possible application of any of the factors at section 14(2), the city submits that section 14(2)(f) applies. In my view, the factor at section 14(2)(h) might also be relevant. Those sections read:

A head in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence;

[33] The city submits that the factor at section 14(2)(f) is relevant because, in the circumstances of this appeal, the disclosure of the severed information which includes the names of the witnesses, the other dog owner's unit address and the witnesses' addresses and telephone numbers, as well as their statements, could lead to unwanted contact and could reasonably cause them extreme distress.

[34] The city submits that with respect to the records that do not contain the personal information of the appellant and only contain that of other identifiable individuals, due to the application of the presumed unjustified invasion of privacy set out in section 14(3)(b), the severed information is exempt from disclosure pursuant to the mandatory personal privacy exemption at section 14(1).

[35] The city concludes its submissions by stating that, with respect to the records containing the personal information of both the appellant and the affected parties, it balanced the former's right to the information at issue against the latter's privacy concerns and concluded that the privacy concerns outweighed the appellant's right of access to the specific information at issue. As a result, it submits that it withheld the severed information in those records pursuant to the application of the discretionary personal privacy exemption at section 38(b).

Analysis and findings re: sections 14(1) and 38(b)

[36] I will first consider the application of the presumption at section 14(3)(b) to the records. Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.⁹ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹⁰ Section 14(3)(b) does not apply if the records were created after the

⁹ Orders P-242 and MO-2235.

¹⁰ Orders MO-2213, PO-1849 and PO-2608.

completion of an investigation into a possible violation of law.¹¹

[37] The presumption can apply to a variety of investigations, including those relating to by-law enforcement¹² and violations of environmental laws or occupational health and safety laws.¹³

[38] In the circumstances of this appeal, I accept that all of the personal information in the records at issue in this appeal was compiled and is identifiable as part of an investigation into a possible violation of law as contemplated by the presumption at section 14(3)(b). The records clearly identify that the city was investigating possible contraventions of the *Dog Owner's Liability Act* and City of Toronto Municipal Code/By-law, Chapter 349 – Animals, Article IV: Dogs, and that a caution was issued as a result. Accordingly, I find that the presumption at section 14(3)(b) applies to the personal information contained in the records at issue.

[39] With respect to the three notices that contain only the personal information of the other dog owner and not that of the appellant, I have found that the disclosure of the severed information (which consists only of an address unit number and a licence number) would amount to a presumed unjustified invasion of the personal privacy of the other dog owner. As neither of section 14(4) nor section 16 apply in the circumstances of this appeal, my analysis ends here; the mandatory personal privacy exemption at section 14(1) of the *Act* applies to exempt this information from disclosure.

[40] With respect to the information that contains both the personal information of the appellant and that of other identifiable individuals I must consider the presumption against disclosure at section 14(3)(b) along with other relevant factors listed in section 14(2). The factors at paragraphs (f) (highly sensitive) and (h) (supplied in confidence) are both factors weighing against disclosure.

[41] For section 38(b) to apply, the factors weighing against disclosure must outweigh the factors weighing in favour of disclosure. As no factors favouring disclosure have been established nor do they appear to be relevant it is not necessary for me to consider the relevance of the factors at section 14(2)(f) or (h) in detail. Given the application of the presumption at section 14(3)(b), and the fact that no factors favouring disclosure have been established, balancing all the interests I am satisfied that the disclosure of the personal information that remains at issue would constitute an unjustified invasion of the personal privacy of the individuals' to whom that information relates.

[42] Accordingly, I find that the personal information that has been severed from the Dog Bite Report, the Activity Card and the three emails (which have been withheld in their entirety), is exempt from disclosure under the discretionary privacy exemption at

¹¹ Orders M-734, M-841, M-1086, PO-1819 and PO-2019.

¹² Order MO-2147.

¹³ Orders PO-1706 and PO-2716.

section 38(b) of the *Act*. I am also satisfied that the undisclosed portions of the emails in particular cannot be reasonably severed, without revealing information that is exempt under section 38(b) or resulting in disconnected snippets of information being revealed.¹⁴

[43] Furthermore, I have considered the circumstances surrounding this appeal and the city's representations which also detail the factors that it considered when determining whether it should exercise its discretion to disclose any portions of the records for which section 38(b) applies. I am satisfied that the city has not erred in its exercise of discretion with respect to its application of section 38(b) of the *Act* regarding the withheld information that will remain undisclosed as a result of this order. I am satisfied that it did not exercise its discretion in bad faith or for an improper purpose. The city has considered the purposes of the *Act*, and has given due regard to the nature and sensitivity of the undisclosed information in light of the context of this appeal. Accordingly, I find that the city took relevant factors into account and I uphold its exercise of discretion in this appeal.

ORDER:

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

Original Signed By: _____
Catherine Corban
Adjudicator

January 18, 2017

¹⁴ See Order PO-1663 and *Ontario (Minister of Finance) v. Ontario (Information and Privacy Commissioner)* (1997), 102 O.A.C. 71 (Div. Ct.).