

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3407

Appeal MA15-531

City of Brampton

February 8, 2017

Summary: The appellant made a request to the City of Brampton (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the city's file relating to a complaint made about a specified property. The city disclosed the file to him, but withheld some information in the records, relying on the mandatory personal privacy exemption at section 14(1) of the *Act*. The appellant appealed. The adjudicator upholds the city's decision in part, and finds that some of the withheld information is personal information which is exempt under section 14(1). However, she finds that pursuant to sections 2(2.1) and (2.2) of the *Act*, the name and address of the property owner is not personal information because the property owner is identified in a business capacity as landlord. Since only personal information can be withheld under section 14(1), she orders the property owner's name and address to be disclosed to the appellant. The adjudicator also upholds the city's search for records as reasonable.

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"), 2(2.1), 2(2.2) and 14(1).

Cases Considered: *London Property Management Association v City of London*, 2011 ONSC 4710 (CanLII).

BACKGROUND:

[1] The appellant submitted a request to the City of Brampton (the city) under the

Municipal Freedom of Information and Protection of Privacy Act (the *Act*) for access to the city's file pertaining to a complaint about a specified property.

[2] The city issued a decision in which it granted partial access to 34 responsive records, relying on the mandatory personal privacy exemption at section 14(1) of the *Act* to withhold portions of some of the records. Some of the information was also redacted as it was deemed to be information pertaining to unrelated by-law enforcement matters and therefore not responsive to the request. The city prepared an index of records which it shared with the appellant and this office.

[3] The appellant appealed the city's decision to this office. During the course of mediation, the appellant clarified that he is interested in records related to the property standards complaint he made about a specified property. He is not seeking access to any portions of the records marked as non-responsive or pertaining to unrelated by-law enforcement matters. As such, those portions of the records are no longer at issue.

[4] The appellant asked the mediator to notify the affected party in order to seek consent to disclose their information contained in the records, and consented to having the mediator disclose his identity as requester to the affected party. The mediator sent notice of this appeal to the affected party, who did not consent to release any of their information contained in the records at issue.

[5] The appellant also raised the issue of reasonable search, articulating his belief that some correspondence relating to the complaint has not yet been located or identified by the city as records responsive to his request. The city sent the mediator an email describing its search and asserting that its search had produced all responsive records, and that any supplementary search would not produce any additional responsive records. With permission from the city, this written description of the search was shared with the appellant.

[6] The appellant then advised the mediator that he wished to proceed with the appeal on both the search issue and the mandatory section 14(1) personal privacy exemption claimed by the city. No further mediation was possible and the file was, therefore, moved to the adjudication stage, where an adjudicator conducts an inquiry under the *Act*. In her mediation report, the mediator added the discretionary personal privacy exemption at section 38(b) as an issue in this appeal, since the records remaining at issue may contain the personal information of the appellant.¹

[7] I invited representations from the city, the affected party and the appellant. Only the city provided representations.

¹ The discretionary exemption at section 38(b), rather than the mandatory exemption at section 14(1), is the appropriate personal privacy exemption to consider where a record contains the requester's personal information along with the personal information of other individuals.

[8] In this order, I uphold the city's decision in part, and find that the personal information in the records is exempt from disclosure under section 14(1) of the *Act*. However, I find that the property owner's name and address identify him in a business capacity as landlord, rather than a personal capacity, and that sections 2(2.1) and (2.2) exclude this information from the definition of personal information. Since this information is not personal information, I find that it cannot be withheld under either the section 38(b) or 14(1) personal privacy exemptions, and I order that it be disclosed to the appellant. I uphold the city's search for records as reasonable.

RECORDS:

[9] The information remaining at issue consists of the withheld portions of the records listed in the index as records 1, 3, 4, 7, 14, 17-20, 25, 28, 30 and 34. These records include complaint information sheets, property standard inspection reports and orders, a photograph, requests for legal action, affidavits of service and a legal services memo.

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) or the discretionary exemption at section 38(b) apply to the information at issue?
- C. Did the city conduct a reasonable search for records?

DISCUSSION:

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

[10] The city claims that the mandatory personal privacy exemption at section 14(1) of the *Act* applies to the information at issue. 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;

[11] 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 To qualify as personal information, it must also be reasonable to expect that an individual may be identified if the information is disclosed.³

[12] 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 Order 11.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(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.

[13] 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.⁴ However, 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.⁵

[14] Although the city filed representations, its representations did not address this issue. Neither of the other parties filed representations.

Analysis and findings

Information relating to the appellant

[15] From my review of the records at issue, I find that records 1, 20 and 28 identify the appellant in a personal context. I cannot elaborate without disclosing the content of the record. I find, therefore, that this information constitutes his personal information under the introductory wording of the definition. Records 1 and 20 also contain the appellant’s address and telephone number, which is his personal information under paragraph (d) of the definition. The remainder of the records at issue do not contain the appellant’s personal information.

The property owner’s name and address

[16] Records 1, 3, 14, 17-20, 25, 28, 30 and 34 contain the name and address of the owner of the specified property. From my review of the disclosed portion of the records, I observe that this property is a rental property and that the name and address of the property owner appear in the records in the property owner’s business capacity as landlord. In accordance with sections 2(2.1) and (2.2) of the *Act*, cited above, I find that this information is not the personal information of the property owner.⁶ I also find that the disclosure of the landlord’s name and address would not reveal other personal information about him.

[17] Since only personal information can be exempt from disclosure under sections 38(b) or 14(1), and the city has not claimed any other exemptions for this information, I will order that it be disclosed to the appellant.

⁴ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁵ Orders P-1409, R-980015, PO-2225 and MO-2344.

⁶ See *London Property Management Association v City of London*, 2011 ONSC 4710 (CanLII).

Information relating to other individuals

[18] Records 3, 4 and 17 contain the name of the tenant. Disclosure of this information would reveal the tenant's address, and is the tenant's personal information under paragraphs (d) and (h) of the definition. Further, the vehicle licence plate number that appears in record 7 is personal information of another individual under paragraph (c) of the definition of personal information, since vehicle registration numbers are unique identifiers which are assigned to individuals.

[19] Record 30 contains mortgage information about another identifiable individual, which is personal information according to paragraph (b) of the definition.

Summary of findings

[20] I find that records 1, 20 and 28 contain the appellant's personal information.

[21] The property owner's name and address found in records 1, 3, 14, 17-20, 25, 28, 30 and 34 is not personal information, and I will order that it be disclosed to the appellant.

[22] Some of the withheld information in records 3, 4, 7, 17 and 30 consists of the personal information of individuals other than the appellant. I will now consider whether the personal privacy exemption at section 14(1) or 38(b) applies to this information.

B. Does the mandatory exemption at section 14(1) or the discretionary exemption at section 38(b) apply to the information at issue?

[23] 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, one of which is the discretionary personal privacy exemption found at section 38(b). However, the only information remaining at issue appears in records 3, 4, 7, 17 and 30, and none of these records contain the personal information of the appellant. Therefore, the discretionary personal privacy exemption at section 38(b) has no application here.

[24] Under the mandatory personal privacy exemption at section 14(1), where a record contains personal information of another individual but *not* the requester, the institution is prohibited from disclosing that 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 (paragraph 14(1)(f)).

[25] If any of paragraphs (a) to (e) of section 14(1) apply, the personal privacy exemption is not available. None of the parties raised the application of any of these paragraphs and I find that none apply. In particular, none of the individuals to whom the personal information relates has consented to the disclosure of their personal information (paragraph 14(1)(a)). Therefore, the only exception that could apply is that

found in section 14(1)(f), which states:

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

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

[26] To determine whether disclosure would be an unjustified invasion of personal privacy, the factors and presumptions in sections 14(2) and (3) are considered. Also, section 14(4) lists situations that would not be an unjustified invasion of personal privacy. None of the situations listed in section 14(4) is present in this appeal.

Sections 14(2) and (3)

[27] If any of paragraphs (a) to (h) of section 14(3) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy.

Section 14(3)(b) presumption: investigation into violation of law

[28] Section 14(3)(b) states:

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;

[29] 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.⁷ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.⁸

[30] The presumption can apply to a variety of investigations, including those relating to by-law enforcement⁹ and violations of environmental laws or occupational health and safety laws.¹⁰ However, section 14(3)(b) does not apply if the records were created after the completion of an investigation into a possible violation of law.¹¹

⁷ Orders P-242 and MO-2235.

⁸ Orders MO-2213, PO-1849 and PO-2608.

⁹ Order MO-2147.

¹⁰ Orders PO-1706 and PO-2716.

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

[31] I have reviewed the records and find that the information at issue in records 3, 4, 7 and 17 was compiled and is identifiable as part of an investigation into a possible by-law infraction. I find, therefore, that the presumption at section 14(3)(b) applies to this information.

[32] The Divisional Court has found that, for records claimed to be exempt under section 14(1), 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 applies.¹² I have found above that no section 14(4) exceptions apply, and the appellant has not raised the public interest override. As a result, I find that the disclosure of this information to the appellant would constitute an unjustified invasion of the personal privacy of the individuals to whom the information relates. Therefore, the section 14(1)(f) exception does not apply to this information.

Section 14(3)(f) presumption: financial history

[33] Section 14(3)(f) states:

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

describes an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[34] From my review of the personal (mortgage) information in record 30, I find that the presumption at section 14(3)(f) applies to it. As a result, I find the disclosure of this information to the appellant would constitute an unjustified invasion of the personal privacy of the individual to whom the information relates. Therefore, the section 14(1)(f) exception does not apply to this information.

[35] Since the presumptions at section 14(3) cannot be overcome by any factors in favour of disclosure in section 14(2), I do not need to consider whether any such factors are present. In any event, the appellant did not file representations and from my review of the records themselves, I find that there are no factors present that would weigh in favour of the disclosure of the personal information in the records to the appellant.

Conclusion

[36] I conclude that disclosing the personal information in the records (that is, the personal information that appears in records 3, 4, 7, 17 and 30) would constitute an unjustified invasion of personal privacy of the individuals to whom the information

¹² *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

relates. As a result, the section 14(1)(f) exception does not apply and the information is exempt from disclosure pursuant to section 14(1) of the *Act*.

C. Did the city conduct a reasonable search for records?

[37] Where a requester claims that additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.¹³ If I am satisfied that the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[38] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show that it has made a reasonable effort to identify and locate responsive records.¹⁴ To be responsive, a record must be "reasonably related" to the request.¹⁵

[39] A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably related to the request.¹⁶ A further search will be ordered if the institution does not provide sufficient evidence to demonstrate that it has made a reasonable effort to identify and locate all of the responsive records within its custody or control.¹⁷

[40] A requester's lack of diligence in pursuing a request by not responding to requests from the institution for clarification may result in a finding that all steps taken by the institution to respond to the request were reasonable.¹⁸

Representations

[41] The city submits that the appellant was very clear that his request was to gain access to the property standards file related to complaints about the property in question. The city states:

The search for responsive records was assigned to the Manager of By-Law Enforcement (who is responsible for Property Standards). She completed and signed a tracking sheet, which details information about the search and confirms that:

- A reasonable effort was made to identify and locate all records responsive to this request;

¹³ Orders P-85, P-221 and PO-1954-I.

¹⁴ Orders P-624 and PO-2559.

¹⁵ Order PO-2554.

¹⁶ Orders M-909, PO-2469 and PO-2592.

¹⁷ Order MO-2185.

¹⁸ Order MO-2213.

- Staff with sufficient qualifications and knowledge of records was assigned to search for responsive records; and,
- Complete, unaltered, original records were conveyed to the Freedom of Information and Privacy Coordinator.

The tracking sheets detail the following:

The AMANDA database was searched for responsive records. Two files were located which were retrieved from the Enforcement and By-Law Services file room.

[42] The city submits that it is city practice to place any records relating to a property standards matter in the city's paper file system, and all properties and the relevant files are then tracked in the city's digital system, AMANDA. The city goes on to submit:

All of the located records were provided to the Freedom of Information Coordinator. The Freedom of Information Coordinator then reviewed the records and compiled the records for disclosure to the requester. All records provided to the Freedom of Information Coordinator were disclosed in some form.

It is clear from this evidence that the City assigned the search to the person in charge of the specific files the requester sought, the Manager of By-Law Enforcement. There is no one at the City more qualified than the Manager to oversee a search of the Property Standards files. The searches were then conducted by actual By-Law staff with direct experience with the Property Standards files.

In the end, all records that were located and related to the property in question were provided to the head for review. All records were released to the requester, albeit with some severances. This constitutes a reasonable, thorough search by the most qualified individuals at the institution. No further search is required.

Analysis and findings

[43] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding that such records exist.¹⁹ The appellant did not file representations. Although he stated during mediation that he believes that further correspondence and emails should exist, he has not, in my view, provided a reasonable basis for concluding that further records exist. From my review of the responsive records and the city's

¹⁹ Order MO-2246.

representations, I am satisfied that the individuals who conducted the search, the Manager of By-Law Enforcement and her staff, are knowledgeable in the subject matter of the request and expended a reasonable effort to locate records which were reasonably related to the request.

[44] I uphold the city's search as reasonable.

ORDER:

1. I uphold the city's decision, in part, and find that the personal information that appears in records 3, 4, 7, 17 and 30 is exempt from disclosure under section 14(1) of the *Act*.
2. I order the city to disclose the withheld information relating to the property owner in records 1, 3, 14, 17-20, 25, 28, 30 and 34. With the city's copy of this order, I am enclosing a copy of these pages, with the information to be disclosed highlighted in yellow.
3. The disclosure referred to in paragraph 2 is to take place by **March 16, 2017** but not before **March 9, 2017**.
4. In order to ensure compliance with provisions 2 and 3 of this order, I reserve the right to require the city to provide me with copies of the information disclosed to the appellant.

Original Signed by: _____
Gillian Shaw
Adjudicator

February 8, 2017 _____