

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-3554

Appeal MA17-251

The Corporation of the Town of Hawkesbury

January 30, 2018

Summary: The Corporation of the Town of Hawkesbury (the “town”) received a request under the *Act* for access to all reports issued by its by-law enforcement department relating to a particular apartment at a specific address. The town identified responsive records and after notifying an affected party, ultimately decided to grant full access to the responsive records, after severing the name of any tenants that may appear in them. The appellant appealed the town’s decision on the ground that the information requested is covered by the exemption specified in section 10(1) (third party information) of the *Act*. In this order, the adjudicator finds that section 10(1) of the *Act* does not apply and orders that the records at issue be disclosed to the requester after severing the name of any tenants that may appear in them.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) and 10(1).

OVERVIEW

[1] The Corporation of the Town of Hawkesbury (the “town”) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to all reports issued by its by-law enforcement department relating to a particular apartment at a specific address.

[2] The town identified responsive records and, after notifying a third party, because the disclosure of these records could adversely affect its interests (the “affected party”), and receiving the affected party’s position on disclosure, issued a decision regarding

access. The town decided to grant full access to the responsive records.

[3] The affected party (hereinafter referred to as the appellant) appealed the town's decision on the ground that the information requested is covered by the exemption specified in section 10(1) (third party information) of the *Act*.

[4] During mediation, the town issued a supplementary decision letter stating that it would disclose the responsive records, but would sever the name of the tenants that appeared in them.

[5] Because mediation failed to resolve the dispute, the appeal proceeded to the adjudication stage, in which an adjudicator conducts an inquiry under the *Act*.

[6] I began the adjudication by asking the town and the appellant to provide representations to me regarding the facts and issues set out in a Notice of Inquiry. The town did not provide representations. The appellant's representations do not specifically address the application of the section 10(1) exemption; they mainly provide a general description of the appellant's concerns with respect to the town's conduct, and state that the information requested is personal information concerning the appellant or confidential information, and that this information should not be disclosed to the requester. I then sent a Notice of Inquiry to the requester. In the Notice of Inquiry, I asked the requester to confirm that he was not seeking access to the name of any tenants that might appear in the records at issue. The requester provided responding representations in which he confirmed that he was not seeking access to the name of any tenants that might appear in the records at issue.

[7] In this order, I find that section 10(1) of the *Act* does not apply. I therefore uphold the city's supplementary decision and order that the records at issue be disclosed to the requester after severing the name of any tenants that may appear in them.

RECORDS

[8] The records at issue in this appeal are two letters (with enclosures) and some inspection notes.

DISCUSSION

Does the compulsory exception specified in section 10 apply to the records?

[9] Section 10(1) reads as follows:

A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information,

supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
- (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
- (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
- (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[10] Section 10(1) is designed to protect the confidential “informational assets” of businesses or other organizations that provide information to government institutions.¹ Although one of the central purposes of the *Act* is to shed light on the operations of government, section 10(1) serves to limit disclosure of confidential information of third parties that could be exploited by a competitor in the marketplace.²

[11] For the section 10(1) exemption to apply to a record, the institution or the third party must satisfy each part of the following three-part test:

1. the record must reveal a trade secret or scientific, technical, commercial, financial or labour relations information;
2. the information must have been supplied to the institution in confidence, either implicitly or explicitly;
3. the disclosure of the information must give rise to a reasonable expectation that one of the harms specified in paragraph a), b), c) or d) of section 10(1) will occur.

The appellant’s submissions

[12] As set out above, the appellant’s representations do not specifically address the application of the exemption specified in section 10(1). They mainly provide a general description of the appellant’s concerns with respect to the town’s conduct and how it

¹ *Boeing Co. v. Ontario (Ministry of Economic Development and Trade)*, [2005] O.J. No. 2851 (Div. Ct.), leave to appeal dismissed, Doc. M32858 (C.A.) (Boeing Co).

² Orders PO-1805, PO-2018, PO-2184 and MO-1706.

has impacted the appellant's businesses, and state that the information requested is personal information concerning the appellant or confidential information, and that this information should not be disclosed to the requester. In addition to letters from consulting engineers, the appellant's representations included a copy of the appellant's letter to the city at the request stage opposing disclosure in which the appellant wrote, "categorically, we do not want you to give anything that bothers our financial, personal privacy, our business and our reputation, etc."

The requester's representations

[13] The requester provided extensive representations on the application of section 10(1) of the *Act*, which can be summarized as follows:

- the information was not supplied by the appellant
- the information is not confidential
- the appellant will not suffer any of the harms specified in the *Act*

[14] The requester also provides representations on how, in his view, section 5(1) (obligation to disclose) and the factor favouring disclosure of personal information at section 14(1)(b) (access to information promotes health and safety) of the *Act* as well as a provision of the *Building Code Act, 1992*,³ could also be the foundation for disclosure. In addition, he urges that an examination of the new procedure for obtaining information from the town's Building Official should occur. However, the scope of this appeal as defined in the Mediators Report is whether section 10(1) applies to the records at issue and I will be limiting my inquiry to that issue.

Analysis and finding

[15] The requirement to show that the information was "supplied" reflects the purpose in section 10(1) of protecting the informational assets of third parties.⁴ Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or if its disclosure would permit the drawing of accurate inferences with respect to information supplied by a third party.⁵

[16] The records at issue consist of two letters (with enclosures) and some inspection notes. The information in the records was generated by the city in the context of property inspections rather than being supplied by the appellant as required by section 10(1) of the *Act*. Accordingly, I find that the appellant has failed to meet part 2 of the three-part test under section 10(1) of the *Act*.

³ SO 1992, c 23. The requester refers to section 15.2(3) of the legislation.

⁴ Order MO-1706.

⁵ Orders PO-2020 and PO-2043.

[17] As all three parts of the test must be met in order for the section 10(1) exemption to apply, it is not necessary for me to consider the other parts of the three-part test and I find that section 10(1) does not apply to the records at issue.

[18] I will therefore order that the records at issue be disclosed to the requester after severing the name of any tenants that may appear in them. After the tenants' names have been severed the information that remains in the records has no personal or private dimension to it and is about a property and not about an identifiable individual. As a result, there is no information in the records that falls within the scope of the definition of personal information set out at section 2(1) of the *Act*.⁶

ORDER:

1. I order the town to disclose the records, after severing the name of any tenants that may appear in them, to the requester by sending it to him by, **March 5, 2018** but not before **February 28, 2018**.
2. In order to ensure compliance with paragraph 1 of this order, I reserve the right to require the town to provide me with a copy of the records as disclosed to the requester.

Original Signed by: _____
Steven Faughnan
Adjudicator

_____ January 30, 2018

⁶ See in this regard the discussion in Order MO-3415.