

Information and Privacy Commissioner,  
Ontario, Canada



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

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## **ORDER MO-3886**

Appeal MA18-00714

Toronto Transit Commission

January 15, 2020

**Summary:** The Toronto Transit Commission (the TTC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* seeking the name of a vendor through which a contractor contracted to perform services for a TTC project. The TTC, relying on section 14(5) of the *Act*, refused to confirm or deny the existence of a responsive record claiming that disclosure of the record, if it exists, would constitute an unjustified invasion of the contractor's personal privacy.

In this order, the adjudicator finds that any responsive record, if it exists, would not contain the personal information of the contractor. Therefore, she finds that the TTC cannot rely on section 14(5) to confirm or deny the existence of a responsive record. The adjudicator orders the TTC to issue an access decision.

**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") and 14(5).

### **OVERVIEW:**

[1] The Toronto Transit Commission (the TTC) received the following request<sup>1</sup> under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*):

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<sup>1</sup> The requester initially made two similar requests. The requester abandoned the second request at the adjudication stage. Therefore, the appeal file associated with the second request, Appeal MA18-00715, was closed as abandoned.

Seeking information regarding a contractor, [the contractor], who was contracted to the TTC VoIP<sup>2</sup> Solutions Project (Request No. [#], Change Order No. [#], Work Assignment No. [#], start date [date]). [The contractor] was originally contracted to this project through a vendor, [requester's name]. He then switched vendors. We would like to know which vendor he switched to and when. Should you have any questions please contact me.

[2] The TTC's decision was to refuse to confirm or deny the existence of a record, relying on section 14(5) of the *Act*.

[3] The requester, now the appellant, appealed that decision.

[4] During the mediation stage, the TTC maintained its decision to refuse to confirm or deny the existence of a record, under section 14(5) of the *Act*. As mediation could not resolve the appeal, it was transferred to adjudication, where an adjudicator conducts an inquiry. Representations were sought and exchanged between the TTC and the appellant.

[5] In this order, I find that any responsive record, if it exists, would not contain the personal information of the contractor as that term is defined in section 2(1) of the *Act*. Therefore, I find that the TTC cannot rely on section 14(5) to confirm or deny the existence of any responsive record.

## **DISCUSSION:**

### **Has the TTC properly applied section 14(5) (refusal to confirm or deny the existence of a record) of the Act in the circumstances of this appeal?**

[6] Section 14(5) reads:

A head may refuse to confirm or deny the existence of a record if disclosure of the record would constitute an unjustified invasion of personal privacy.

[7] In order to determine whether section 14(5) 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) of the *Act*.

[8] 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.<sup>3</sup>

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

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<sup>2</sup> Voice over Internet Protocol.

<sup>3</sup> Order 11.

(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.

[10] 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.<sup>4</sup>

[11] 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.<sup>5</sup>

[12] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>6</sup>

### ***Representations***

[13] The TTC relies on paragraph (b) of the definition of personal information in section 2(1), which reads:

"personal information" means recorded information about an identifiable individual, including,

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.

[14] The TTC states that if the record exists, it would contain personal information relating to the employment history of employees of a company with which the TTC has contracted.

[15] The appellant states that the responsive record would not contain personal information and, in particular, that it would not reveal any person's employment history. The appellant states that:

[The contractor] owns and operates a company called [name of company (the company)]. This is known to the appellant, and a matter of public record. Enclosed with these submissions is a copy of the corporate profile

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

<sup>5</sup> Orders P-1409, R-980015, PO-2225 and MO-2344.

<sup>6</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

report of [the company]. [The company] provides services to TTC through a vendor company; in other words, [the contractor's company] has contracted with a vendor company, who, in turn, contracted with the TTC. There is no employment relationship between [the contractor] personally and the vendor company, or between [the contractor] personally and the TTC. TTC should disclose the identity of the vendor company through which it engaged the services of [this company].

[16] In reply, the TTC states that the appellant's request was for the contractor's employment information (specifically who this individual works for and since when) and not for a TTC contract or purchase order. As such, the TTC's position remains unchanged.

### ***Analysis/Findings***

[17] The appellant is a vendor of business services to the TTC. The appellant is seeking the name of the new vendor that contracted with the contractor. The contractor operates his own company through which the contractor provided business services (through a vendor) to the TTC.

[18] I find that what the appellant is seeking are details related to a business relationship between the contractor and another vendor of business services to the TTC. Specifically, the appellant is seeking this vendor's name.

[19] The contractor and the new vendor (if one exists), as was the appellant, were contracted to provide business-related services to the TTC.

[20] Based on my review of the request, I agree with the appellant that any record, if it exists, would be about the contractor in a business, not a personal, capacity.

[21] I disagree with the TTC that the appellant is seeking the employment history of the contractor, as described in paragraph (b) of the definition of "personal information" in section 2(1) of the *Act*. The publicly available corporate profile document provided by the appellant indicates that the contractor is the director, not an employee, of the company that contracted with the TTC.<sup>7</sup>

[22] I find that the appellant is seeking business-related information, not personal information, because disclosure of the name of the new vendor, if it exists, would not reveal something of a personal nature about the contractor.

[23] Therefore, I find that as any responsive record would not contain personal information, the TTC cannot rely on section 14(5) to refuse to confirm or deny the existence of a record.

[24] Before an institution may exercise its discretion to invoke section 14(5), it must provide sufficient evidence to establish both of the following requirements:

1. Disclosure of the record (if it exists) would constitute an unjustified invasion of personal privacy; and

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<sup>7</sup> Contracted through a vendor.

2. Disclosure of the fact that the record exists (or does not exist) would in itself convey information to the requester, and the nature of the information conveyed is such that disclosure would constitute an unjustified invasion of personal privacy.

[25] Under part one of the section 14(5) test, the institution must demonstrate that disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. By section 14(1)(f), an unjustified invasion of personal privacy can only result from the disclosure of personal information.<sup>8</sup>

[26] In this case, I have found that if any responsive record exists, namely a record that reveals the name of the new vendor, it would not contain the personal information of the contractor as claimed by the TTC. Therefore, the personal privacy exemption in section 14(1) cannot apply. Accordingly, I find that part 1 of the test under section 14(5) has not been met.

[27] Therefore, the TTC cannot rely on section 14(5) to refuse to confirm or deny the existence of a record that might be responsive to the appellant's request.

[28] I will order the TTC to issue an access decision for a record responsive to the appellant's request.

**ORDER:**

1. I do not uphold the TTC's application of section 14(5).
2. I order the TTC to issue an access decision to the appellant, treating the date of this order as the date of the request.

Original Signed by: \_\_\_\_\_  
Diane Smith  
Adjudicator

\_\_\_\_\_ January 15, 2020

<sup>8</sup> See Section 14(1)(f) of the *Act*, which provides that:  
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.