

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4137

Appeal MA20-00455

Municipality of Casselman

December 15, 2021

Summary: The Municipality of Casselman (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* for a copy of the building inspection reports for a specific property. The municipality located four pages consisting of inspection reports and an engineer's letter and denied access to them on the basis that the discretionary personal privacy exemption in section 38(b) applies to them.

In this order, the adjudicator finds that the records are not exempt under section 38(b), as they do not contain personal information of identifiable individuals. She orders the municipality to disclose the records to the appellant.

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 2(2.1).

OVERVIEW:

[1] This order determines whether inspection reports and a related letter from an engineer are exempt from disclosure under section 38(b) the *Act*, because they contain personal information of individuals other than the requester.

[2] The Municipality of Casselman (the municipality) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (*MFIPPA* or the *Act*) for a copy of the building inspection reports for a specified address (the property).

[3] The municipality issued a decision denying access to the records it identified as responsive to the request, pursuant to the discretionary personal privacy exemption in

section 38(b) of the *Act*.

[4] The requester, now the appellant, appealed the municipality's decision to the Information and Privacy Commissioner (the IPC) and a mediator was appointed to resolve the issues in the appeal.

[5] During mediation, the appellant advised the mediator that he was pursuing access to the content of the inspection reports for the specified address, but not any personal information, such as the names or addresses of affected parties. Upon being advised of this, the municipality declined to change its decision relating to the records.

[6] As mediation did not resolve the issues in this appeal, the appellant advised the mediator that he wished to pursue access to the specified withheld information. Accordingly, this appeal proceeded to the adjudication stage, where an adjudicator may conduct an inquiry. I decided to conduct an inquiry.

[7] I sought the municipality's representations initially. The municipality provided representations. I then sought the developer's and the appellant's representations separately and provided them with a copy of the municipality's representations. Both the appellant and the developer provided representations in response.

[8] In this order, I find that the records do not contain personal information and are not exempt under the section 38(b) exemption. I order the records disclosed to the appellant.

RECORDS:

[9] There are four pages of records, consisting of three pages of inspection reports and a one-page engineer's letter.

DISCUSSION:

Do the records contain "personal information" that is exempt as claimed by the municipality?

[10] In order to determine which sections of the *Act* may apply, including in this case whether the personal privacy exemption in section 38(b) applies as the municipality claims, 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.¹

[12] 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 Indeed, there is an exception to the personal information definition in section 2(2.1) of the *Act* for the name, title, contact information or designation of an individual that identifies them in a business capacity. I discuss that exception below.

[13] 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

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.

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

Representations

[15] The municipality states that the developer is the building permit holder. The municipality's only mention in its representations of whether the records contain personal information is the following:

[The records contain] personal information of the permit holder who requested to not disclose such document to his clients. The common practice of the building department is to provide a service to the permit holder. This practice is adopted by Council ...in building by-law 2019-035 section 4.

Personal information would also potentially include some content of the engineer's letter (coordinates and professional opinion which was provided specifically to the permit holder).

[16] The developer did not address whether the records contain personal information. It did confirm that it was both the owner and the builder of the property at the time the records were created.

[17] The appellant also did not address whether the records contain personal information. He did state that he is not seeking access to personal information and that all he wants access to is factual and technical building documents.

Analysis/Findings

[18] The records consist of three reports of inspections of the identified property that were conducted by the municipality, along with one engineer's letter. All of the records are addressed to the developer, which is clearly operating as a business, and concern the physical condition of the property. As set out in the municipality's representations, the municipality provides services to the holder of the building permit, which in this case is the developer.

[19] In addition, I find that the engineer that provided the engineer's letter is also operating as a business. The engineer's letter is on the engineer's business letterhead and is addressed to the developer as a business.

[20] Although the municipality relies on the discretionary personal privacy exemption

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

in section 38(b),⁵ the records do not even mention the appellant. I find that the records do not contain the personal information of the appellant.

[21] I also find that none of the records contain or reveal the personal information of identifiable individuals.

[22] Although the engineer's letter is addressed to the developer (a business), it also identifies both the developer's and the engineer's contact persons, who are individuals. These individuals are the only individuals listed in any of the records. The inspection reports contain no information about individuals, only the property. I find that the exception in section 2(2.1) applies to these individuals' names in the engineer's letter. This section states:

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.

[23] Further to my conclusion that the developer's and the engineer's contacts' names in the engineer's letter is information about them in a business capacity, I am also satisfied that disclosure of the information would not reveal anything about them of a personal nature.⁶

[24] As the records do not contain personal information of identifiable individuals, neither the mandatory personal privacy exemption in section 14(1),⁷ nor the

⁵ Section 38(b) reads:

A head may refuse to disclose to the individual to whom the information relates personal information, if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

⁶ Order PO-2225.

⁷ Section 14(1) provides that:

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

(a) upon the prior written request or consent of the individual, if the record is one to which the individual is entitled to have access;

(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

(c) personal information collected and maintained specifically for the purpose of creating a record available to the general public;

(d) under an Act of Ontario or Canada that expressly authorizes the disclosure;

(e) for a research purpose if,

(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained,

(ii) the research purpose for which the disclosure is to be made cannot be reasonably accomplished unless the information is provided in individually identifiable form, and

(iii) the person who is to receive the record has agreed to comply with the conditions relating to security and confidentiality prescribed by the regulations; or

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

discretionary personal privacy exemption in section 38(b), apply to this information, and I find that the records are not exempt under these sections. Under the *Act*, disclosure of the records would not be an unjustified invasion of another individual's personal privacy.

[25] Only the discretionary exemption in section 38(b) has been claimed by the municipality in denying access to the records at issue in this appeal, and I have found that this exemption does not apply. I have also found that the mandatory personal privacy exemption in section 14(1) does not apply to the records, as they do not contain personal information of identifiable individuals.

[26] The municipality did not claim any other discretionary exemptions or any mandatory exemptions to deny access to the records. However, I have considered whether the mandatory third party information exemption in section 10(1)⁸ applies. Based on my review of the parties' representations and the records, I find that section 10(1) does not apply to the records.

[27] As the records are not exempt, I will order the municipality to disclose them to the appellant.

ORDER:

I order the municipality to disclose the records to the appellant by **January 25, 2022** but not before **January 20, 2022**.

Original Signed by: _____

December 15, 2021

Diane Smith
Adjudicator

⁸ Section 10(1) reads:

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.