

Information and Privacy Commissioner,
Ontario, Canada



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

FINAL ORDER MO-4205-F

Appeal MA20-00073

City of Toronto

May 27, 2022

Summary: This final order resolves the outstanding issues from Interim Order MO-4152-I. In that interim order, the adjudicator upheld, in part, the decision of the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records relating to a particular fence permit. In Interim Order MO-4152-I, the adjudicator found that certain information in the records is outside the scope of the access request. She also found that many of the responsive records include the personal information of the appellant and, therefore, must be considered under the discretionary personal privacy exemption at section 38(b) of the *Act*. As a result, the adjudicator deferred her decision in relation to these records, pending receipt of further representations with respect to section 38(b) and the application of the public interest override at section 16 of the *Act*. In this final order, the adjudicator upholds the city's decision to withhold the personal information in the records under section 38(b), and finds that section 16 does not apply to that personal information. As a result, 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), 16, 17, and 38(b).

Orders Considered: Order MO-4152-I

OVERVIEW:

[1] This final order resolves the remaining issues to be decided, after I issued Interim Order MO-4152-I. The City of Toronto (the city) received a request under the

Municipal Freedom of Information and Protection of Personal Privacy Act (the *Act*) for the following:

All records pertaining to fence PERMIT NO [specified number] that was approved by bylaw officer [specified name] and issued by [specified name], Transportation Services Department. Include records of application, requests for permit, the receipt of permit fee, sketches, drawings, notes, copy of letters and emails correspondence between applicants and the City staff.

[2] In response to the request, the city issued a decision under the *Act*, granting partial access to the responsive records, and withholding access to the remainder of the records under the mandatory exemption at section 14(1) (personal privacy) of the *Act*.

[3] The requester, now the appellant, appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC). A mediator was appointed to explore resolution. After clarifying and/or resolving some issues at mediation, the appeal moved to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. The sole issue in dispute was identified as being the application of the personal privacy exemption at section 14(1).¹

[4] In Interim Order MO-4152-I, I upheld the city's access decision, in part. I found that portions of the records are not responsive to the request and I upheld the city's decision to withhold them. I also found that some of the records (specifically, records 1-8, 11, 19, and 20) contain information that qualifies as the *personal information* of the appellant, and that the remaining responsive records contain only *personal information* belonging to one or more individuals other than the appellant. I deferred my findings on the application of section 38(b) to the records, and the application of the public interest override at section 16, pending receipt of further representations from the city and the appellant.

[5] After receiving representations from the city, I invited the appellant to provide representations in response. In doing so, I shared the non-confidential portions of the city's representations, in order to assist the appellant in providing representations. Portions of the city's representations were withheld under the confidentiality criteria of the IPC's Code of Procedure with respect to sharing of representations.² The appellant provided representations in response.

[6] For the reasons that follow, I uphold the city's decision to withhold the remaining information withheld in records 1-8, 11, 19, and 20, and dismiss the appeal.

¹ Although this was listed as the sole issue in dispute, any consideration of section 14(1) of the *Act* would require, first, a consideration of whether the records contain personal information under section 2(1) of the *Act*, and if so, to whom it relates.

² Practice Direction 7 of the IPC's *Code of Procedure*.

RECORDS:

[7] The records remaining at issue in this appeal are records 1-8, 11, 19, and 20. The city fully withheld records 1-8, which are emails or email chains. The city partially withheld record 11, which is a print-out relating to complaints made to the city, and records 19 and 20, which are emails.

[8] As I noted in Interim Order MO-4152-I, much of the content in the emails is repeated, as parts of email chains.

ISSUES:

Preliminary issue: What is the scope of the request for records? Which records (or parts of records) are responsive to the request?

- A. Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?
- B. Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption?

DISCUSSION:

Preliminary issue: What is the scope of the request for records? Which records (or parts of records) are responsive to the request?

[9] For the following reasons, I uphold the city's determination that the remaining records at issue (or portions of records) are outside the scope of the appeal, or are highly intermingled with information that is otherwise exempt under section 38(b) of the *Act*.

[10] Section 17 of the *Act* imposes certain obligations on requesters and institutions when submitting and responding to requests for access to records. This section states, in part:

1. A person seeking access to a record shall,
 - a. make a request in writing to the institution that the person believes has custody or control of the record;
 - b. provide sufficient detail to enable an experienced employee of the institution, upon a reasonable effort, to identify the record;

...

2. If the request does not sufficiently describe the record sought, the institution shall inform the applicant of the defect and shall offer assistance in reformulating the request so as to comply with subsection (1).

[11] To be considered responsive to the request, records must “reasonably relate” to the request.³ Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester’s favour.⁴

[12] In Interim Order MO-4152-1, based on my review of the wording of the request and the parties’ representations, I found that:

- the scope of the request is clearly limited to the fence permit question and the property line dispute;
- the records included non-responsive information regarding what the city described as “an unrelated matter” (a by-law investigation unrelated to the fence);
- the appellant agreed that this other by-law investigation was irrelevant to the appeal;
- records 1-8, 11, 19, and 20 contained some non-responsive information;
- the *responsive* portions of records 1-4 and 11 do not contain the *personal information* of the appellant; therefore, any right of access that the appellant may have to the responsive portions of these records must still be considered under the discretionary exemption at section 38(b) of the *Act*.⁵

[13] After I issued Interim Order MO-4152-1, I invited the city to provide representations on the applicability of section 38(b). In doing so, the city made submissions about the issue of the scope of the appeal/which records (or portions of records) are responsive to the request.

The city’s representations

[14] With respect to records 1-8, in addition to the city’s submissions about section 38(b), the city states that these emails contain both responsive and non-responsive information, which is intermingled. Although it initially considered severing non-responsive information from these records, the city determined that so much severing was needed that the result would have been disclosure that was “undecipherable”

³ Orders P-880 and PO-2661.

⁴ Orders P-134 and P-880.

⁵ Order M-352 establishes that I need to determine whether the record as a whole contains the appellant’s personal information, using a “record-by-record approach”, where “the unit of analysis is the record, rather than individual paragraphs, sentences or words contained in a record.”

because of how intermingled the responsive and non-responsive information is. As a result, the city decided to withhold these records, in full.

[15] With respect to the redacted portion of record 11, in the city's non-confidential representations, the city states that record 11 pertains to matters that are not related to the application of the fence permit.

[16] Regarding the withheld portions of records 19 and 20, the city explains that these are "tied to" that redacted portion of record 11, which concerns a matter unrelated to the application for the fence permit.

The appellant's representations

[17] In reply to the city's representations, the appellant asserts that the severed records with his name should be disclosed. He states that he wants to see the full context of emails exchanged regarding the fence permit being obtained, in light of the effects this fence permit would have on his property rights.

[18] In addition, the appellant asserts that a certain city employee is related to a party whose interests may be affected by disclosure of the records (an affected party). To prove that they are related, the appellant points to the name of the employee on a city employee directory. The appellant submits that the severed records may contain email correspondence of that city employee that influenced the fence permit process.

Analysis/findings

[19] Based on my review of the records and the parties' representations, I am satisfied that the remaining information at issue in records 1-8, 11, 19, and 20 is non-responsive to the request. In my view, the city has satisfactorily explained that it withheld non- responsive information found in records 1-8 that is highly intermingled with responsive information in these records, which is subject to section 38(b). In addition, the city has now more clearly clarified that the information withheld in records 11, 19, and 20 is in regards to matters unrelated to the fence permit.

[20] With respect to the appellant's submission that severed records with his name should be disclosed, I note that in Interim Order MO-4152-I, I found that the records containing *personal information* relating to the appellant and other identifiable individuals include *personal information* such as names appearing with other *personal information*.⁶ However, I did not state that these records contain the appellant's name. In any event, the presence or absence of the appellant's name in the records is not determinative of the issue of responsiveness (or the application of the personal privacy exemption, for that matter).

[21] While I appreciate that the appellant seeks "all the communications that were

⁶ See paragraph 53 of Interim Order MO-4152-I.

gathered in which [the fence] permit was obtained" because the fence permit would affect his property rights, any right of access he may have to records held by the city have does not extend to information that is non-responsive to his request. As I already decided in Interim Order MO-4152-I, the scope of the request is limited to the fence permit question. Given this clear scope and the city's representations following the issuance of Interim Order MO-4152-I with respect to the responsiveness of the remaining information at issue, I uphold the city's decision to withhold the remaining redacted information in records 1-8, 11, 19, and 20, as non-responsive to the request.

[22] Due to the city's representations that the information withheld in records 1-8 is intermingled with responsive *personal information* that is exempt under section 38(b), I will go on to discuss this.

Issue A: Does the discretionary personal privacy exemption at section 38(b) apply to the information at issue?

[23] In Interim Order MO-4152-I, I determined that records 1-8 contains *personal information* belonging to the appellant and one or more identifiable individual(s), as the term *personal information* is defined at section 2(1) of the *Act*. Given that finding in Interim Order MO-4152-I, I do not need to repeat the analysis about that issue in this order. As a result, the relevant personal privacy exemption to consider is the discretionary personal privacy exemption at section 38(b) of the *Act*. For the reasons that follow, I find that the information remaining at issue in records 1-8 is exempt under the discretionary personal privacy exemption at section 38(b) of the *Act*.

[24] 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 some exemptions from this right.

[25] Under the section 38(b) exemption, if a record contains the *personal information* of both the requester and another individual, the institution may refuse to disclose the other individual's *personal information* to the requester if disclosing that information would be an "unjustified invasion" of the other individual's personal privacy.

[26] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's *personal information* to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.⁷

[27] If disclosing another individual's *personal information* would not be an unjustified invasion of personal privacy, then the information is not exempt under section 38(b).

[28] Also, the requester's own *personal information*, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified

⁷ See below in the "Exercise of Discretion" section for a more detailed discussion of the institution's exercise of discretion under section 38(b).

invasion of another individual's personal privacy.⁸

[29] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of the other individual's personal privacy.

Section 14(1) – do any of the exceptions in sections 14(1)(a) to (e) apply?

[30] If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy and the information is not exempt from disclosure under section 38(b).

[31] Neither the city nor the appellant have claimed that any of the exceptions at sections 14(1)(a) to (e) are relevant in the circumstances of this appeal. Based on my review of the evidence before me, there is no basis for my finding that any of the exceptions at sections 14(1)(a) to (e) apply in the circumstances of this appeal.

Sections 14(2), (3) and (4)

[32] Sections 14(2), (3) and (4) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). Section 14(4) lists situations where disclosure would *not* be an unjustified invasion of personal privacy, in which case it is not necessary to decide if any of the factors or presumptions in sections 14(2) or (3) apply.

[33] Otherwise, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), the decision-maker must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.⁹ The decision-maker is the institution or, on appeal, the IPC.

Section 14(3) - is disclosure presumed to be an unjustified invasion of personal privacy?

[34] Sections 14(3)(a) to (h) list several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy under section 38(b).

[35] In its latest representations (provided following Interim Order MO-4152-I being issued), the city did not claim that any of the section 14(3) presumptions apply to the responsive information at issue in records 1-8.

[36] However, in Interim Order MO-4152-I, when I was considering the city's representations about all of the records at issue in this appeal, I noted the city's position that section 14(3)(f) was relevant. The presumption at section 14(3)(f) covers

⁸ Order PO-2560.

⁹ Order MO-2954.

information related to an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness. For this presumption to apply, information about an asset must be specific and must reveal, for example, its dollar value or size.¹⁰ In Interim Order MO-4152-I, the city submitted that "a portion of the records reveal information relating to an asset, liabilities incurred as well as related insurance liabilities;" I then noted that, "[t]his description appears to be in relation to one or more records that must be considered under section 38(b)."¹¹

[37] Similarly, I am able to conclude that the presumption at section 14(3)(f) (information relating to finances) applies to some of the information withheld in these records. More specifically, I find that some of the information withheld in records 1-8 is *personal information* that describes the finances, assets, liabilities, financial history or activities of an individual other than the appellant. The fact that the presumption at section 14(3)(f) applies to some of the *personal information* withheld in records 1-8 weighs significantly against the disclosure of that information.

Section 14(2): Do any factors in section 14(2) help in deciding if disclosure would be an unjustified invasion of personal privacy?

[38] Section 14(2) lists several factors that may be relevant to determining whether disclosure of *personal information* would be an unjustified invasion of personal privacy.¹² Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[39] The list of factors under section 14(2) is not a complete list. The institution must also consider any other circumstances that are relevant, even if these circumstances are not listed under section 14(2).¹³

[40] Each of the first four factors, found in sections 14(2)(a) to (d), if established, would tend to support disclosure of the personal information in question, while the remaining five factors found in sections 14(2) (e) to (i), if established, would tend to support non-disclosure of that information.

[41] The city did not cite any section 14(2) factors for or against disclosure in its representations regarding the application of section 38(b). However, it repeatedly stated that disclosure of the withheld information (which is highly intermingled with non-responsive information) would be an unjustifiable invasion of another individual's personal privacy, under section 38(b). The city provided some further explanations for its position in confidential representations. While I have considered the city's

¹⁰ Order PO-2011.

¹¹ In Interim Order MO-4152-I, I also assessed whether the presumption at section 14(3)(f) also applies to records that must be assessed under section 14(1); the portion of the appeal relating to those records has already been dismissed in Interim Order MO-4152-I.

¹² Order P-239.

¹³ Order P-99.

confidential representations, I will not be setting them out in this public order, due to confidentiality concerns.

[42] In response to the city's representations about section 38(b), as mentioned, the appellant asserts that the fence permit would affect his property rights. He also states: "As a matter of public interest this would support openness and transparency in how the City conducts its operations." Although the appellant raised the issue of the public interest override at section 16 in the appeal, which I will discuss below (Issue C), I have also decided to consider whether the factor favouring disclosure at section 14(2)(a) may apply.

Section 14(2)(a): disclosure is desirable for public scrutiny

[43] This factor supports disclosure when disclosure would subject the activities of the government (as opposed to the views or actions of private individuals) to public scrutiny.¹⁴ It promotes transparency of government actions.

[44] The issues addressed in the information that is being sought do not have to have been the subject of public debate in order for this section to apply, but the existence of public debate on the issues might support disclosure under section 14(2)(a).¹⁵

[45] The public has a right to expect that spending by employees of government institutions when performing their employment-related responsibilities is in line with established policies and procedures.¹⁶

[46] An institution should consider the broader interests of public accountability when considering whether disclosure is "desirable" or appropriate to allow for public scrutiny of its activities.¹⁷

[47] Based on my review of the *personal information* withheld in records 1-8, I am not persuaded that the appellant's assertion that "as a matter of public interest this would support openness and transparency in how the City conducts its operations." In my view, such an assertion is insufficient to establish that disclosure of the *personal information* at issue is desirable for the purpose of subjecting the activities of the city to public scrutiny. To better understand why I am not persuaded the appellant's statement about transparency is enough to engage section 14(2)(a), it is helpful to review my findings in Interim Order MO-4152-I regarding the types of *personal information* that I found to exist in records 1-8:

This includes information that falls within paragraphs (b) (financial history), (d) (address or email address), (f) (correspondence sent in

¹⁴ Order P-1134.

¹⁵ Order PO-2905.

¹⁶ Orders P-256 and PO-2536.

¹⁷ Order P-256.

confidence to the institution), (g) (views or opinions about the requester), and/or (h) (name, with other identifying information) of the definition of "personal information" at section 2(1) of the *Act*. These records also contain other personal information belonging to the appellant and one or more identifiable individual(s), under the introductory wording of the definition of that term ("recorded information about an identifiable individual").

[48] In my view, *personal information* such as that relating to an individual's personal financial history, their personal email address, correspondence to the city, views or opinions about the appellant, appearing with their name, is not *personal information* that is desirable for the purpose of subjecting the activities of the city to public scrutiny, in the circumstances. Based on my review of the *personal information* at issue in records 1- 8 in its full context, I find that by its nature, it relates to the activities of one or more private individuals (other than the appellant), and not the city's activities. I find that disclosing this *personal information* would not promote transparency in the city. As a result, I find that the factor at section 14(2)(a) is not relevant in this appeal.

[49] In addition to the appellant's statement that disclosure would promote transparency, under section 14(2)(a), I have also considered the appellant's stated belief that a specified city employee "may have had correspondence that influenced the fence permit process and these communications were severed." As mentioned, he asserts that this employee has a specified relationship to one or more parties whose interests may be affected by disclosure, and points to the name of the employee on a city directory in support to his assertion about the relationship between these individuals. However, I am not persuaded that the evidence before me sufficiently establishes that the two individuals referenced by the appellant are related as he says, and that even if they were, this would warrant finding that disclosure of the types of personal information withheld in records 1-8 is desirable for the purpose of subjecting the activities of the city to public scrutiny.

Other factors or relevant circumstances

[50] Other considerations (besides the ones listed in sections 14(2)(a) to (i)) must be considered under section 14(2) if they are relevant. These may include, for example, inherent fairness issues,¹⁸ or ensuring public confidence in an institution.

[51] Here, as mentioned, the appellant explains the reason he wants the redacted information: "[g]iven" the effects of the fence permit on his property rights, he wants to "interpret *all* the communications that were gathered in which this permit was obtained" (emphasis mine). I have considered this as an unlisted factor that may favour disclosure.

¹⁸ Orders M-82, PO-1731, PO-1750, PO-1767 and P-1014.

[52] However, without details about the effects of the fence permit on which property rights might be engaged, I am prepared to give this factor only some weight. When I consider the appellant's previously submitted representations (pre-interim order), I note that he believes property rights were violated in the decision to grant a fence permit. I also note that he attached articles about "laneway housing" in support of his view that the public interest override applies.

[53] Since the appellant did not provide more specific information about his property rights, the only "given" I am prepared to accept is that the location of a fence may have some (unspecified) effect on one or more of the appellant's property rights. Anything else would be speculation on my part, on the limited evidence before me. In the circumstances, I am therefore only prepared to give some weight to the unlisted factor of the (unspecified) effect of disclosure on the appellant's (unspecified) property rights. Based on my review of the records and the parties' positions, I find that no other factors favouring disclosure apply.

[54] With respect to factors that do not favour disclosure, as mentioned, the city did not specify any in its post-interim order representations. However, as noted in Interim Order MO-4152-I,¹⁹ the city submitted that the factors at sections 14(2)(e), 14(2)(f), and 14(2)(h) apply, and it did so in the context of treating all of the records as not containing the appellant's *personal information* (and thus considered them under the mandatory personal privacy exemption at section 14(1)). Due to my findings in Interim Order MO- 4152-I, it was not necessary to address the city's submissions about the factors not favouring disclosure at sections 14(2)(e), 14(2)(f), and 14(2)(h) of the *Act*.

[55] Here, I am to consider all the relevant factors and circumstances in relation to whether the remaining records at issue are subject to the discretionary exemption at section 38(b) of the *Act*. In the circumstances, it is sufficient for me to consider the factor at section 14(2)(f).

14(2)(f): the personal information is highly sensitive

[56] This section is intended to weigh against disclosure when the evidence shows that the *personal information* is highly sensitive. To be considered "highly sensitive," there must be a reasonable expectation of significant personal distress if the information is disclosed.²⁰ For example, *personal information* about witnesses, complainants or suspects in a police investigation may be considered highly sensitive.²¹

[57] Based on my review of the remaining records at issue, I find that the *personal information* withheld by the city qualifies as highly sensitive because I find that there is a reasonable expectation of significant personal distress if the withheld responsive *personal information* of one or more affected parties is disclosed to the appellant. This

¹⁹ See paragraph 109 of Interim Order MO-4152-I.

²⁰ Orders PO-2518, PO-2617, MO-2262 and MO-2344.

²¹ Order MO-2980.

view is consistent with the confidential representations of the city, which I cannot elaborate on in this public order without revealing their contents. However, I would like to emphasize that even if the city had not provided these details, I would have still found the factor at section 14(2)(f) to be relevant in the circumstances of this appeal. I give this factor significant weight.

Are any of the situations listed in section 14(4) present?

[58] If any of the paragraphs in section 14(4) of the *Act* apply, disclosure of personal information is *not* an unjustified invasion of personal privacy under section 38(b), even if one of the section 14(3) presumptions exists.

[59] There is no claim before me that any of the situations listed in section 14(4) apply to the records remaining at issue. Based on my review of the records, I find that none of the situations listed in section 14(4) apply.

Weighing the presumptions and factors, for and against disclosure

[60] As mentioned, in determining whether disclosure of the remaining *personal information* would constitute an unjustified invasion of personal privacy, I have considered the factors and presumptions at sections 14(2) and 14(3) of the *Act*, and an unlisted factor, in the circumstances of this appeal. I have found that the presumption at section 14(3)(f) applies to some of the information in the records, and that the factor at section 14(2)(f) applies. The application of this presumption and factor weigh significantly against disclosure. Turning to the section 14(2) factors, I have found that an unlisted factor has some weight favouring disclosure, but that no other factors favouring disclosure apply.

[61] Weighing the factors and interests of the parties, in the circumstances, I find that the factors and presumptions favouring non-disclosure outweigh the factor favouring disclosure, in the circumstances. As a result, I find that the remaining *personal information* at issue is exempt under section 38(b) of the *Act*.

[62] I find that the city exercised its discretion to withhold the *personal information* at issue under section 38(b), and I uphold that exercise of discretion. The city submits that under section 38(b) of the *Act*, where a record contains the *personal information* of both the appellant and other individuals, if it is determined that the disclosure of the information would constitute an unjustified invasion of personal privacy of another individual's *personal information*, the city has the discretion to deny access to that information. The city states that it did so with these records, and submits that its exercise of discretion should be upheld. The appellant did not address the exercise of discretion. In my view, the city has established that it considered the facts that the appellant was seeking *personal information* belonging to him and other individuals, and that the purpose of the section 38(b) exemption is to protect against the unjustified invasion of the personal privacy of individuals. I find that these are relevant factors,

considered in good faith. There is no evidence before me that irrelevant considerations factored into the city's exercise of discretion, or that this exercise was done in bad faith. Accordingly, I uphold the city's exercise of discretion under section 38(b) of the *Act*.

Issue B: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 38(b) exemption?

[63] Section 16 of the *Act*, the "public interest override," provides for the disclosure of records that would otherwise be exempt under another section of the *Act*. It states:

An exemption from disclosure of a record under sections 7, 9, 9.1, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

[64] For section 16 to apply, two requirements must be met:

- there must be a compelling public interest in disclosure of the records; and
- this interest must clearly outweigh the purpose of the exemption.

[65] The *Act* does not state who bears the onus to show that section 16 applies. The IPC will review the records with a view to determining whether there could be a compelling public interest in disclosure that clearly outweighs the purpose of the exemption.²²

Compelling public interest

Public interest

[66] In considering whether there is a "public interest" in disclosure of the record, the first question to ask is whether there is a relationship between the record and the *Act's* central purpose of shedding light on the operations of government.²³ In previous orders, the IPC has stated that in order to find a compelling public interest in disclosure, the information in the record must serve the purpose of informing or enlightening the citizenry about the activities of their government or its agencies, adding in some way to the information the public has to make effective use of the means of expressing public opinion or to make political choices.²⁴

[67] A "public interest" does not exist where the interests being advanced are essentially private in nature.²⁵ However, if a private interest raises issues of more

²² Order P-244.

²³ Orders P-984 and PO-2607.

²⁴ Orders P-984 and PO-2556.

²⁵ Orders P-12, P-347 and P-1439.

general application, the IPC may find that there is a public interest in disclosure.²⁶

Compelling

[68] The IPC has defined the word “compelling” as “rousing strong interest or attention”.²⁷

[69] The IPC must also consider any public interest in *not* disclosing the record.²⁸ A public interest in the non-disclosure of the record may bring the public interest in disclosure below the threshold of “compelling.”²⁹

Examples of “compelling public interest”

[70] A compelling public interest has been found to exist where, for example:

- the records relate to the economic impact of Quebec separation;³⁰
- the integrity of the criminal justice system is in question;³¹
- there are public safety issues relating to the operation of nuclear facilities;³²
- disclosure would shed light on the safe operation of petrochemical facilities³³ or the province’s ability to prepare for a nuclear emergency;³⁴
- the records contain information about contributions to municipal election campaigns;³⁵
- the records show how much Ontarians are paying for electricity generated by a nuclear power station over a 49-year period;³⁶ and
- the records show the salaries of top administrators employed by a municipal institution.³⁷

²⁶ Order MO-1564.

²⁷ Order P-984.

²⁸ *Ontario Hydro v. Mitchinson*, [1996] O.J. No. 4636 (Div. Ct.).

²⁹ Orders PO-2072-F, PO-2098-R and PO-3197.

³⁰ Order P-1398, upheld on judicial review in *Ontario (Ministry of Finance) v. Ontario (Information and Privacy Commissioner)*, [1999] O.J. No. 484 (C.A.).

³¹ Order PO-1779.

³² Order P-1190, upheld on judicial review in *Ontario Hydro v. Ontario (Information and Privacy Commissioner)*, [1996] O.J. No. 4636 (Div. Ct.), leave to appeal refused [1997] O.J. No. 694 (C.A.), Order PO-1805.

³³ Order P-1175.

³⁴ Order P-901.

³⁵ *Gombu v. Ontario (Assistant Information and Privacy Commissioner)* (2002), 59 O.R. (3d) 773.

³⁶ Reconsideration Order PO-4044-R.

³⁷ Order MO-3844 and Interim Order MO-3684-I.

[71] A compelling public interest has been found *not* to exist where, for example:

- another public process or forum has been established to address public interest considerations;³⁸
- a significant amount of information has already been disclosed and this is adequate to address any public interest considerations;³⁹
- a court process provides an alternative disclosure mechanism, and the reason for the request is to obtain records for a civil or criminal proceeding;⁴⁰
- there has already been wide public coverage or debate of the issue, and the records would not shed further light on the matter;⁴¹ and
- the records do not respond to the applicable public interest raised by appellant.⁴²

[72] The city submits that the appellant has not provided any evidence throughout the entire process that the request or resulting appeal is of public interest, and therefore outweighing the purpose of the exemption. The city submits that this is a personal rather than public interest.

[73] In response to the city's representations, after stating that he wants to examine the full context of the communications withheld due to the effect of the fence on his property rights, the appellant asserts, "As a matter of public interest this would support openness and transparency in how the City conducts its operations."

[74] Based on my review of the *personal information* withheld by the city, and the parties' representations, I find that there is insufficient evidence that there is a public interest in disclosure of the remaining records at issue. Rather, I find that the information withheld in the records relates to a personal matter, not one of public interest. The appellant himself has identified his own property rights as being the reason that he should be given full access to the records withheld. His assertion that this disclosure would "support openness and transparency" in how the city operates is not sufficiently supported by the evidence before me. At most, the records would provide the appellant with additional information regarding the fence permit that is the subject of his request, which itself is intermingled with unrelated matters.

[75] If I am to also consider the evidence put forward by the appellant earlier on in the inquiry in relation to the records exempt under section 38(b), I find no reason to depart from my reasons for rejecting that section 16 applies to the records withheld under section 14(1). In Interim Order MO-4152-I, I stated the following about the

³⁸ Orders P-123/124, P-391 and M-539.

³⁹ Orders P-532, P-568, PO-2626, PO-2472 and PO-2614.

⁴⁰ Orders M-249 and M-317.

⁴¹ Order P-613.

⁴² Orders MO-1994 and PO-2607.

personal information that was withheld under the mandatory exemption at section 14(1):

I find that the public interest identified by the appellant relates to transparency and decision-making regarding the city's issuance of fence permits and determinations about property boundaries that in turn, could affect the ability to build "laneway housing."

While I acknowledge that the appellant has provided many news articles discussing the issue of "laneway housing," which include information about the city's consideration of this issue, I find that the personal information at issue in records 12, 14, 16-18, and 21-25 does not respond to the applicable public interest raised by the appellant.

Based on the evidence before me, I am not satisfied the appellant has established that any public interest there may be in "laneway housing" in the City of Toronto extends to the personal information withheld in records 12, 14, 16-18, and/or 21-25.

In addition, I find that the fact that one or more identifiable individual(s) may personally be able to benefit from the city's determination of the property boundary in these circumstances is not sufficient to establish that there is a public interest in the name(s), signature, contact information, and financial information that I have found to be exempt in records 12, 14, 16-18, and 21-25.

For these reasons, I find that there is no public interest, let alone a *compelling* public interest, in the disclosure of the personal information that I have found to be exempt under section 14(1) in records 12, 14, 16-18, and 21-25.

Given my finding that there is no compelling public interest in the disclosure of the personal information at issue in records 12, 14, 16-18, and 21-25, it is not necessary to discuss the part of the test for section 16 dealing with the purpose of the exemption at section 14(1).

[76] In my view, this analysis applies equally to the remaining records at issue (records 1-8), withheld under section 38(b), taking into consideration the wording of the request, the representations of the parties (both pre- and post-interim order), and my review of the remaining information withheld.

[77] As a result, I uphold the city's decision, and dismiss the appeal.

ORDER:

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

Original Signed By: _____ May 27, 2022
Marian Sami
Adjudicator