

Information and Privacy Commissioner,  
Ontario, Canada



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

---

## ORDER MO-4302

Appeal MA21-00197

City of Peterborough

December 19, 2022

**Summary:** The City of Peterborough received a request for access to records relating to permits, permit applications and correspondence regarding a specified residential address. The city notified the appellants as affected parties and they objected to the disclosure of any records. The city decided to grant the requester partial access to responsive records withholding portions of the records pursuant to the mandatory personal privacy exemption in section 14(1). The appellants appealed the city's decision on the basis that disclosure would be an unjustified invasion of their personal privacy.

In this order, the adjudicator finds that some of the information at issue in this appeal was ordered disclosed in Order MO-4221, which involved the same parties. As a preliminary issue, the adjudicator finds that issue estoppel applies to the determination of the application of the personal privacy exemption to the records that were the subject of Order MO-4221 and removes them from the scope of this appeal. The adjudicator finds that the remaining information at issue does not contain "personal information" so that the mandatory personal privacy exemption in section 14(1) does not apply. She dismisses the appeal and upholds the city's decision to grant access to the unsevered portions of the records.

**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) and (2.2).

**Orders Considered:** MO-1907, P-23, PO-2225 and MO-4221.

**Cases Considered:** *Danyluk v. Ainsworth Technologies Inc.* 2001 SCC 44.

## **OVERVIEW:**

[1] This order resolves the issues arising from a request made to the City of Peterborough (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the following:

All permit applications and issued permits regarding [a specified address] between the dates of January 1, 2016 and March 1, 2020.

All internal and external correspondence regarding the Avenues and Neighbourhood Heritage Conservation District regarding [a specified address] between the dates of January 1, 2016 and March 1, 2020.

[2] The city identified 33 responsive records comprising permit applications, issued permits and email correspondence pertaining to the specified address. The city sent notice of the request under section 21(1) of the *Act* to individuals whom it had identified as parties whose interests may be affected by disclosure of those records (the affected parties). The city invited the affected parties to comment on disclosure.

[3] The affected parties objected to disclosure of the records, which they considered to be their "personal information."

[4] The city then issued a decision to the requester granting access in full to four of the responsive records and partial access to the remaining 29 records, relying on the mandatory third party information exemption in section 10(1) and the mandatory personal privacy exemption in section 14(1) of the *Act* to withhold some information in the 29 records. The city withheld the names of the property owners and their personal contact information.

[5] The affected parties (now the appellants) appealed the city's decision to the Information and Privacy Commissioner (the IPC). The original requester did not appeal the city's decision.

[6] A mediator was appointed to explore resolution of the appeal. During mediation, the mediator spoke to the appellants, the city and the original requester. The appellants advised the mediator that they believe they knew the requester's identity and maintain that they do not consent to the disclosure of the responsive records stating that disclosure would be an unjustified invasion of their privacy. The requester advised that they continue to seek access to the records that the city decided to release in its decision.

[7] The issue in this appeal is therefore the application of the mandatory personal privacy exemption in section 14(1) of the *Act* to the portions of the 29 records to which the city decided to grant the requester access. As the requester did not appeal the city's decision to withhold information under section 10(1) and 14(1), those portions of the records that the city decided to withhold are not at issue in this appeal.

[8] As a mediated resolution was not achieved, the appeal was moved to the adjudication stage. I decided to conduct an inquiry and invited the appellants to submit representations addressing the issues set out in a Notice of Inquiry. The appellants responded by stating that they are relying upon their position previously set out in their representations to the city following notification of the request and their correspondence submitted to the IPC during the mediation stage of the appeal in which they objected to the disclosure of any records.

[9] I then invited and received representations from the city addressing the issues set out in a Notice of Inquiry and responding to the appellants' representations. The parties' representations were shared in accordance with section 7 of the IPC's *Code of Procedure and Practice Direction 7*. The appellants declined to provide reply representations.

[10] While conducting my inquiry in this appeal, I issued Order MO-4221, which disposed of the issues arising in a related appeal brought by the appellants arising from a request for access to some of the records that are in issue in this appeal. I formed a preliminary view that the doctrine of issue estoppel applies to my determination of whether the mandatory personal privacy exemption in section 14(1) of the *Act* applies to the records at issue in both appeals. I proposed removing from the scope of this appeal the records that were also in issue in Order MO-4221 and invited the parties to make representations on this proposal. I deal with the application of the doctrine of issue estoppel as a preliminary issue below.

[11] In this order, I find that the information at issue is not "personal information" so that the mandatory personal privacy exemption in section 14(1) of the *Act* cannot apply. Accordingly, I uphold the city's decision and dismiss the appeal.

## **PRELIMINARY ISSUE:**

### **Issue Estoppel**

[12] The doctrine of issue estoppel operates to prevent the re-litigation of an issue that a court or tribunal has decided in a previous proceeding. The objective of issue estoppel is judicial finality so that issues determined in one case are conclusive and are not re-litigated, except on appeal.<sup>1</sup> For the reasons that follow, I find that the doctrine of issue estoppel applies to some of the records at issue and I have removed them from the scope of this appeal.

[13] The Supreme Court has held that the doctrine of issue estoppel applies to administrative tribunals and set out a two-step analysis for its application.<sup>2</sup> First a decision-maker must be satisfied that the following three conditions are met:

---

<sup>1</sup> *Danyluk v. Ainsworth Technologies Inc.* 2001 SCC 44 (*Danyluk*).

<sup>2</sup> *Danyluk*, at para 21.

1. That the same question has been decided,
2. That the judicial decision that creates the estoppel is final; and
3. That the parties to the judicial decision were the same as the parties to the proceedings in which the estoppel is raised or their privies.

[14] Once these conditions are met, the decision maker must determine that, as a matter of discretion, the doctrine ought to be applied to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case.<sup>3</sup>

[15] During my inquiry, I informed the parties of my preliminary view that the doctrine of issue estoppel applies to the records that are at issue in this appeal and that I ordered the city to disclose in Order MO-4221, where I determined that they did not contain personal information and that the personal privacy exemption in section 14(1) of the *Act* could not apply. I invited the parties to comment upon my proposal to remove these records from the scope of this appeal. Neither party commented or otherwise objected to my preliminary view.

[16] In the appeal before me, the question of the application of the personal privacy exemption in section 14(1) of the *Act* to the portions of the records that the city decided to release to the requester is the same issue that I decided in Order MO-4221. My findings in Order MO-4221 on the application of the personal privacy exemption to the records at issue are final. The parties in both appeals are the same, namely the same appellants and the city. I therefore find that the three conditions for the application of the doctrine of issue estoppel have been met.

[17] The IPC has previously considered the application of the doctrine of issue estoppel to its decisions.<sup>4</sup> In Order MO-1907, former Assistant Commissioner Sherry Liang held that judicial finality would be undermined if the issue of access to the same records were considered in two separate appeals.

[18] I agree with and adopt the approach of the former assistant commissioner in this appeal. In exercising my discretion to apply the doctrine of issue estoppel, I have considered the interest of judicial finality that is served by deciding not to re-open the access issues put forward by the appellants in respect of some of the records and that have been disposed of in the earlier appeal. In my view, the interests of judicial finality would be undermined by addressing those issues in respect of the same records again in this appeal.

[19] I am also satisfied that the public interest in ensuring that justice has been done between the parties is met through the reasons that I have provided for finding that the

---

<sup>3</sup> *Danyluk*, at para 62.

<sup>4</sup> In particular, see Orders PO-1676, P-1392 and MO-1907.

personal privacy exemption in section 14(1) of the *Act* does not apply to the records in Order MO-4221.

[20] Accordingly, I find that the doctrine of issue estoppel applies to the appellants' appeal of the city's decision to grant access to the portions of the records that were at issue in Order MO-4221 and are also at issue in this appeal. I have removed these records from the scope of this appeal.

## **RECORDS:**

[21] In light of my finding in the preliminary issue above, the doctrine of issue estoppel applies to the records before me in this appeal that were also the subject of Order MO-4221. These pages of the records (being pages 1, 13, 14, 33, 34, 44-51, 57-67, 69-71, 82 and 99 of the 29 responsive records) are therefore removed from the scope of this appeal.

[22] The remaining information at issue consists of the portions of the records that the city decided to disclose in response to the request giving rise to this appeal and that were not subject to Order MO-4221. These records consist of portions of pages 9-12, 15-31, 35-43, 52-56 and 68 in the 29 records. These records comprise permit applications, issued permits and email correspondence pertaining to the specified address and the Avenues and Neighbourhood Heritage Conservation District.

## **DISCUSSION:**

[23] As the appellants object to the city's decision to disclose the responsive records on the basis that their disclosure would constitute an unjustified invasion of their personal privacy, the sole issue in this appeal is whether section 14(1) applies to the records. The mandatory personal privacy exemption in section 14(1) can only apply to personal information and I must therefore first decide whether the information at issue contains "personal information."

[24] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" an individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Section 2(1) gives a list of examples of personal information:

- 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 except if they relate to another individual,
- g. the views or opinions of another individual about the individual, and
- h. the individual's name where 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.

[25] This 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>5</sup>

[26] 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>

[27] Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.<sup>7</sup> Also relevant on this point are sections 2(2.1) and (2.2), which 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.

(2.2) 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.

[28] When the appellants received notification of the request giving rise to this appeal, they provided representations to the city setting out their objection to the disclosure of any responsive records. The appellants did not directly address the issue of whether the records at issue contained personal information but stated that disclosure of the responsive records would be an unjustified invasion of their personal privacy. As noted above, the appellants were invited to make representations on the

---

<sup>5</sup> Order 11.

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

<sup>7</sup> Orders P-257, P-427, P-1412 and PO-2225.

issues in the context of this appeal, including the issue of whether the records at issue contain personal information. The appellants did not provide representations addressing this issue but rely upon their earlier correspondence setting out their objection to disclosure of the records.

[29] It is the city's position that the records at issue in this appeal do not contain personal information and it relies upon a number of orders in which the IPC has held that information relating to properties does not constitute personal information.<sup>8</sup> The city submits that the appellants' personal information is contained only in the severed portions of the records, which it has decided not to disclose.

### **Analysis and findings**

[30] As already noted, the city has removed the names, contact information and other identifying information of the property owners from the records.

[31] I have reviewed the non-severed portions of the records and I note that they include the property address and information pertaining to individuals other than the property owners, which the city has decided to disclose. I must therefore decide whether this information is the personal information of identifiable individuals.

#### ***Property address***

[32] Previous orders of the IPC have held that in certain circumstances, it is reasonable to expect that an individual may be identified from a disclosed address.<sup>9</sup> An address can be linked with an owner, resident or tenant through searches in reverse directories, and municipal property assessment rolls. Therefore, I find that the property owners are identifiable from the property address, notwithstanding the fact that the city has removed their names and contact details from the records.

[33] However, there is a distinction between information *about* an identifiable individual, which may be personal information and information *about* a property. Previous orders of the IPC have held that information about a property does not qualify as personal information as defined in section 2(1) of the *Act* if it does not reveal information *about* an identifiable individual.<sup>10</sup>

[34] In Order P-23, former Commissioner Sidney B. Linden considered the distinction between "personal information" and information concerning residential property in an appeal arising from a request for market value estimations for properties in Metropolitan Toronto. The records at issue in that appeal contained municipal property addresses and corresponding property market values. One of the issues to be decided

---

<sup>8</sup> Orders P-23, M-175, PO-1847, MO-2735 and MO-2994.

<sup>9</sup> See Orders PO-2322, PO-2265 and MO-2019.

<sup>10</sup> Orders P-23, M-175, MO-2053, MO-2081, PO-2322, MO-2695, MO-2792, MO-2994, MO-3066, MO-3125 and MO-3321.

was whether information in the records qualified as the individual property owners' "personal information." The commissioner held that:

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of section 2(1) of the *Act*, which defines "personal information" as "... any recorded information about an identifiable individual...". In my view, the operative word in this definition is "about". The *Concise Oxford Dictionary* defines "about" as "in connection with or on the subject of". Is the information in question ... **about** an identifiable individual? In my view, the answer is "no"; the information is **about a property** and not **about an identifiable individual**. [emphasis in original]

The institution's argument that the requested information becomes personal information about an identifiable individual with the addition of the names of the owners of the property would appear to raise the potential application of sub-paragraph (h) of the definition of "personal [information]".

Subparagraph (h) provides that an individual's name becomes "personal information" where it "...appears with other personal information **relating to the individual** or where the disclosure of the name would reveal other information **about the individual**" (emphasis added). In the circumstances of these appeals, it should be emphasized that the appellants did not ask for the names of the property owners, and the release of these names was never at issue. However, even if the names were otherwise determined and added to the requested information, in my view, the individual's name could not be said to "appear with other personal information relating to the individual" or "reveal other personal information about the individual", and therefore subparagraph (h) would not apply in the circumstances of these appeals.

[35] I agree with the former commissioner's approach that distinguishes information about a property from information about an identifiable individual. I adopt this approach in this appeal. The records before me in this appeal consist of building permits, permit applications and other building related records and correspondence pertaining to a specified address. I find that these records contain information that is predominantly *about* the property specified in the request and the information is not *about* an individual. Accordingly, I find that the information at issue does not contain information "about" the property owners.

### ***Information relating to individuals other than the property owners***

[36] The non-severed portions of the records also include information relating to other individuals engaged in the building permit application process for the specified



address. These individuals include the contractor authorised to act as agent for the property owner in the permit applications, the designer and the building inspectors from the city. The information about these individuals includes names and contact information and, in respect of the contractor, financial information in an invoice for building services provided by a commercial third party.

[37] As noted above, section 2(2.1) and (2.2) of the *Act* provides that "personal information" does not include information about an individual in their professional or business capacity. In Order PO-2225, former Assistant Commissioner Tom Mitchinson set out a two-step analysis for determining whether information should be characterized as "personal" or "professional":

1. In what context do the names of the individuals appear? Is it in a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?
2. Is there something about the particular information at issue that, if disclosed, would reveal something of a personal nature about the individual? Even if the information appears in a business context, would its disclosure reveal something that is inherently personal in nature?

[38] Adopting this two-step analysis, in my view, the information relating to the contractor, the designer and the building inspectors, as they appear in the records, are properly characterized as their professional information.

[39] Considering step one, the contractor's name is associated with two contracting companies that are identifiable in the records. These details appear on permit documents, site plans, an invoice and in correspondence with the city regarding the specified property and the building work being undertaken. The designer's name and business details, including the logo, similarly appear in the permit application and site plans pertaining to the proposed works that are the subject of the permit applications. The designer's details also appear in correspondence with the city with the site plans attached. The building inspectors' names appear throughout the permit documents. I find that the context of this information is the individuals' involvement in the building permit processes and am satisfied that this context is not inherently personal.

[40] Turning to the second step in the analysis, I am satisfied that, if disclosed, the information pertaining to the contractor, the designer and the building inspectors would not reveal something of a personal nature about these individuals. Notwithstanding that the building permit process is not an inherently personal context for the information about the individuals to appear, I also find that the nature of the information, if disclosed, would only reveal details of the individuals' businesses and profession. I therefore find that the information about these individuals is not their personal information.

## ***Signatures***

[41] I must now consider whether the contractor's and the designer's signatures, which appear in unsevered portions of the records, constitute personal information for the purposes of the definition in section 2(1) of the *Act*. These signatures appear on a building permit application.

[42] The IPC has previously held that whether handwriting and signatures are to be treated as personal information depends upon context and the circumstances.<sup>11</sup> As I have already noted, the context of the signatures is a municipal building permit application. I have reviewed the building permit application and am satisfied that the application is made by the contractor as agent for the property owners, in the contractor's business capacity and not in their personal capacity. Similarly, the designer completed a schedule to the building application as the party responsible for the design work to be undertaken and their signature appears as part of a declaration regarding that work. I am satisfied that the designer completed the schedule to the building permit application in their business capacity and not in their personal capacity.

[43] Accordingly, I find that the contractor's and the designer's signatures do not qualify as their personal information within the meaning of section 2(1) of the *Act*.

## ***Summary of findings***

[44] For the reasons set out above, I find that the non-severed portions of the records that are at issue in this appeal do not contain "personal information" within the meaning of the definition in section 2(1) of the *Act*.

[45] As I have found that the portions of the records at issue do not contain personal information, the mandatory personal privacy exemption in section 14(1) of the *Act* cannot apply to them.

[46] Accordingly, I uphold the city's decision and dismiss this appeal.

## **ORDER:**

1. I dismiss this appeal and uphold the city's decision to grant access to the information at issue.
2. By January 30, 2023 but not before January 25, 2023, I order the city to disclose the responsive records except for the information it withheld pursuant to section 14(1). The responsive records I am ordering to be disclosed in this provision include those responsive records already ordered to be disclosed in Order MO-4221.

---

<sup>11</sup> See Order MO-1194.

3. In order to verify compliance with this order, I reserve the right to require the city to provide me with a copy of the records disclosed pursuant to provision 2 above.

Original Signed By: \_\_\_\_\_

Katherine Ball  
Adjudicator

December 19 , 2022 \_\_\_\_\_