

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4372

Appeal MA21-00661

City of Ottawa

April 26, 2023

Summary: This appeal is about access to the identity of the individual who made a by-law complaint to the City of Ottawa (the city) about the appellant's property. The city withheld the complainant's name and personal information on the basis of the mandatory personal privacy exemption in section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act*. In the alternative, the city claimed that the withheld information is exempt under the discretionary law enforcement exemption in section 8(1)(d) (confidential source of information). The appellant raised the application of the public interest override in section 16 of the *Act*. In this order, the adjudicator finds that the information is exempt under section 14(1) and that the public interest override in section 16 does not apply. The adjudicator upholds the city's decision and dismisses the appeal.

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), 14(3)(b), and 16.

OVERVIEW:

[1] The appellant made a request to the City of Ottawa (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to records relating to a complaint about his property. The appellant sought access to the following:

I would like all records for service request #[service request number]. A graffiti complaint on my property at [address]. By all records I am asking from time of original complaint as well as all employee correspondence in the city that have been involved in this file. Plus all correspondence with complainant.

[2] The city located responsive records and granted partial access to the appellant. The city denied access to some information in the records on the basis that it was exempt under the mandatory personal privacy exemption in section 14(1), and the discretionary exemptions in section 7(1) (advice or recommendations) and section 8(1)(d) (confidential source of information). The city denied access to other information in the records on the basis that it is non-responsive to the request.

[3] The appellant appealed the city's decision to the Office of the Information and Privacy Commissioner of Ontario (IPC). The parties participated in mediation to explore the possibility of resolution. During mediation, the appellant indicated that he no longer seeks access to some information on certain pages¹ to which access was denied under section 14(1), or to information that is non-responsive to the request, although he continued to seek access to information withheld under section 7(1).

[4] The city then issued a revised decision granting access to the information that it previously withheld under section 7(1). As a result, section 7(1) was removed as an issue in this appeal.

[5] The city continued to deny access to the complainant's name and identifying information as it appears on the pages remaining at issue, on the basis that this remaining withheld information is exempt under sections 14(1) and 8(1)(d). The mediator notified the complainant of the appeal. The complainant did not consent to disclosure of any information about them. The public interest override in section 16 was also added as an issue to the appeal during mediation.

[6] When mediation did not resolve the outstanding issues, namely access to the complainant's identity, the appeal was transferred to the adjudication stage of the appeal process, where an adjudicator may conduct an inquiry.

[7] I conducted an inquiry during which the appellant, the city, and the complainant submitted representations. While the city took the position that the property identified in the complaint is a business, I nevertheless gave the parties the opportunity to comment on the application of the exemptions in sections 38(a) (right to refuse requester's own personal information) and 38(b) (personal privacy), in the event that any believed that the records contain the appellant's personal information.²

¹ On pages 3 and 27 of the responsive records.

² If the records contained the appellant's personal information, then section 38 would be relevant to my analysis about the records because section 38 sets out exemptions to an individual's general right of

[8] In this order, I find that the records do not contain the appellant's personal information but that they contain the personal information of the complainant. I find that the information at issue was compiled and is identifiable as part of an investigation into a possible violation of law, and that its disclosure is therefore presumed to be an unjustified invasion of the complainant's personal privacy pursuant to the presumption against disclosure in section 14(3)(b). I uphold the city's decision to deny access under section 14(1) and I dismiss this appeal.

RECORDS:

[9] The records consist of a two-page by-law services occurrence report (numbered pages 1 and 2 by the city) and a two-page email chain (numbered pages 12 and 13). At issue is access to information about the complainant that the city withheld from the records.

ISSUES:

- A. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption in section 14(1) apply to the information at issue?
- C. Is there a compelling public interest in disclosure of the information at issue that clearly outweighs the purpose of the section 14(1) exemption?

DISCUSSION:

Issue A: Do the records contain "personal information" as defined in section 2(1) and, if so, to whom does it relate?

[10] The city withheld the information at issue on the basis of the mandatory personal privacy exemption in section 14(1). In order to determine whether section 14(1) applies, I must first decide whether the records contain personal information and whether that personal information belongs to the appellant, to other individuals, or both.

access to their own personal information described in section 36(1) of the *Act*. If the records contained the appellant's personal information, for example, then I would consider the application of section 8(1)(d) through the lens of section 38(a). If the records contained the mixed personal information of the appellant and another individual, then I would be required to consider section 38(b). If, as I have found in this order, the records do not contain the appellant's personal information, then I can consider the personal privacy claim under section 14(1) or the application of section 8(1)(d) on its own.

[11] For the reasons that follow, I find that the records contain the complainant's personal information, but not the appellant's.

[12] Section 2(1) of the *Act* defines personal information as "recorded information about an identifiable individual" and gives a list of examples of personal information. The following are relevant to this appeal:

(d) the address, telephone number, symbol or other particular assigned to the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

...

(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.

[13] Sections 2(2.1) and (2.2) distinguish personal information from information about an individual in a business or professional capacity. Section 2(2.1) states that:

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.

[14] To qualify as personal information, the information must be about the individual in a personal capacity. In some situations, even if information relates to an individual in a professional, official or business capacity, it may still be "personal information" if it reveals something of a personal nature about them.³

[15] It is important to know whose personal information is in the record. If the record contains a requester's own personal information, their access rights are greater than if it does not.⁴ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁵

Representations

[16] The city submits that the records contain the complainant's name, address,

³ Orders P-257, P-427, P-1412, P-1621, RE-980015, MO-1550-F and PO-2225.

⁴ As noted above, under sections 36(1) and 38 of the *Act*, a requester has a right of access to their own personal information, and any exemptions from that right are discretionary, meaning that the institution can still choose to disclose the information even if the exemption applies. By contrast, where a requester seeks access to another individual's personal information, section 14(1) prohibits an institution from disclosing this information unless an exception in paragraphs (a) to (f) of section 14(1) applies.

⁵ See sections 14(1) and 38(b).

telephone number and other personal identifying information belonging to the complainant. The complainant also submits that the records contain their personal information. The appellant concedes that the records contain the complainant's identity, (which the appellant says is the information to which he seeks access).

Analysis and findings

[17] I have reviewed the records and find that they contain the name, address, telephone number and other identifying personal information belonging to the complainant, including the complainant's gender and opinions or views about signage on a specific building. Collectively, I find that this is the complainant's personal information within the meaning of paragraphs (d), (g) and (h) of section 2(1) of the *Act*.

[18] I find that the records do not, however, contain the appellant's personal information or the personal information of individuals other than the complainant. Although the appellant has identified himself in his request as the owner of the property about which the complaint was made, the records at issue do not identify or name the appellant and do not contain any other information about him.

[19] The records also identify city employees who responded to the complaint. I find, however, that this information is not their personal information because it does not relate to them in their personal capacities but rather to them in their official capacities acting on behalf of the city, and does not reveal anything personal about them.

[20] Because the records contain the complainant's personal information but not the appellant's, I will consider whether this information – which is the information at issue – is exempt under section 14(1) of the *Act*.

Issue B: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

[21] Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to some exceptions which are set out in paragraphs (a) to (f) of section 14(1).

[22] The exceptions in sections 14(1)(a) to (e) are relatively straightforward. If any of them exist, the institution must disclose the information. The parties do not submit that any of the section 14(1)(a) to (e) exceptions apply, and I find that none do.

[23] The section 14(1)(f) exception is more complex. It requires the city to disclose another individual's personal information to a requester only if this would not constitute an "unjustified invasion of personal privacy."

[24] Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal

privacy. Section 14(3), meanwhile, lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

[25] Section 14(4) identifies circumstances in which disclosure is not an unjustified invasion of personal privacy. The parties do not rely on section 14(4), and I find that it does not apply in this appeal.

[26] If none of the presumptions in section 14(3) apply, the city must consider the application of the factors in section 14(2), as well as other considerations that may be relevant in the circumstances of a case. Some of the factors in section 14(2) weigh in favour of disclosure, while other weigh against disclosure.

[27] However, if a presumption listed in section 14(3) is established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2).⁶ In other words, if disclosure of the personal information is presumed to be an unjustified invasion of personal privacy under section 14(3), section 14(2) cannot change this presumption. A presumed unjustified invasion of personal privacy under section 14(3) can only be overcome if a section 14(4) exception (which, as noted above, does not apply in this case) or the “public interest override” at section 16 applies (discussed below).

Representations

[28] The city submits that there is a presumed invasion of the complainant’s personal privacy under section 14(3)(b) because the city collected the information at issue as part of an investigation into an allegation of a violation of the city’s graffiti management by-law.

[29] The appellant submits that the city’s failure to disclose the name of the complainant has caused him, his family, and his tenant personal distress, loss of enjoyment of the property, as well as fear for their safety and the safety of the property. The appellant says that, because the only way to view the portion of the building complained about is by entering the property’s backyard, disclosure of the complainant’s identity would help the appellant determine whether a trespass occurred. The appellant submits that he needs the complainant’s identity to determine the legal steps required to ensure his safety and that of his family and property, so that the complainant’s identity is relevant to a fair determination of the appellant’s rights (a factor in section 14(2)(d) that weights in favour of disclosure where no presumptions against disclosure apply).

[30] The balance of the appellant’s representations describes the part of the property the appellant says was the subject of the by-law complaint, includes other documents the city disclosed to the appellant in response to other access requests, as well as photographs intended to demonstrate means of access to the property. Although I have

⁶ Including the factor in section 14(2)(d) (fair determination of rights), on which the appellant relies.

reviewed the appellant's representations in their entirety, I have only summarized those portions that are relevant to my findings regarding the application of the section 14(1) exemption to the information at issue.

Analysis and findings

[31] As I have noted above, at issue is access to the complainant's name and personal information that the city withheld from the records it disclosed to the appellant. Below, I find that this information is exempt under section 14(1) of the *Act* and must therefore not be disclosed.

Section 14(3)(b): investigation into possible violation of law

[32] Under section 14(3)(b), a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

...was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

[33] I find that the complainant's personal information in the records was compiled and is identifiable as part of an investigation into a possible violation of a city by-law. The occurrence report and emails were created after the city received and responded to a complaint alleging a by-law infraction at a specific address. In response to the complaint, the city began an investigation. The records also reveal the result of the investigation and the manner in which the by-law infraction was resolved. Whether or not charges were laid is immaterial, since the presumption only requires that there be a investigation into a possible violation of law.⁷ The IPC has found that this presumption can apply to different types of investigations, including those relating to by-law enforcement, as is the case here.⁸ Because I find that the records were compiled and are identifiable as part of an investigation into an alleged violation of a city by-law, I find that the presumption against disclosure in section 14(3)(b) applies, and that disclosure of the complainant's personal information at issue is therefore presumed to constitute an unjustified invasion of the complainant's personal privacy.

[34] As I have noted above, the presumption against disclosure in section 14(3)(b) cannot be rebutted by any factors in section 14(2) that may apply and weigh in favour of disclosure. As a result, the information at issue is exempt under section 14(1) and the city must not disclose it to the appellant.

[35] Because I have found that the information at issue is exempt under the mandatory personal privacy exemption in section 14(1), it is not necessary for me to consider the city's alternative claim that the discretionary exemption in section 8(1)(d)

⁷ Orders P-242 and MO-2235.

⁸ Order MO-2147.

also applies. However, as also noted above, the “public interest override” in section 16 can overcome the presumption in section 14(3).⁹ Because the appellant raised the public interest override, I must next therefore consider whether it applies in this case. For the reasons that follow, I find that it does not.

Issue C: Is there a compelling public interest in disclosure of the records that clearly outweighs the purpose of the section 14(1) exemption?

[36] The “public interest override” in section 16 of the *Act* provides for the disclosure of records that are otherwise exempt under section 14 if two requirements are met: first, there must be a compelling public interest in disclosure of the records; second, this interest must clearly outweigh the purpose of the exemption.

[37] In considering whether there is a “public interest” in disclosure of a 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.¹⁰ 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 population 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.¹¹ The IPC has defined “compelling” as “rousing strong interest or attention.”¹²

[38] A “public interest” does not exist where the interests advanced are essentially private in nature.¹³

Representations

[39] The city submits that there are no facts or circumstances in this appeal that would give rise to a public interest in disclosure of the withheld information. The city argues that the appellant’s interest in the information at issue is private in nature.

[40] Although the appellant raised the issue of the public interest override, neither he nor the complainant made representations on its application to this appeal.

Analysis and findings

[41] I accept and agree with the city’s submission that there are no facts or circumstances in this case that would give rise to a public interest in disclosure of the withheld information.

⁹ *John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767.

¹⁰ Orders P-984 and PO-2607.

¹¹ Orders P-984 and PO-2556.

¹² Order P-984.

¹³ Orders P-12, P-347 and P-1439.

[42] The information at issue relates to a private complaint about a by-law matter. Based on the parties' representations and the information in the records themselves, I find no basis to conclude that there is a relationship between the withheld information – namely, the complainant's personal information – and the *Act's* central purpose of shedding light on the operations of government; that disclosure of the complainant's personal information would serve the purpose of informing the public about the activities of municipal government; or that it would add in any way to the information the public has of which to make effective use of expressing public opinion or making political choices. Finally, I find that there is no interest in the complainant's personal information withheld from the record that would rouse strong interest or attention outside of the appellant's desire to know the complainant's identity.

[43] For these reasons, I uphold the city's decision to deny access to the complainant's name and personal information withheld from the records. I find that the complainant's name and personal information are exempt under section 14(1), and that disclosure of this information is presumed to constitute an unjustified invasion of the complainant's personal privacy by operation of section 14(3)(b) because it was compiled and is identifiable as part of an investigation into a by-law infraction. Accordingly, the appellant's appeal is dismissed.

ORDER:

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

Original Signed By: _____
Jessica Kowalski
Adjudicator

_____ April 26, 2023