

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4388

Appeal MA21-00692

City of Toronto

May 31, 2023

**Summary:** This order resolves an appeal flowing from a request about the identity and contact information about the individual who made a by-law complaint about the appellant's property. The City of Toronto (the city) withheld the complainant's name and contact information under the mandatory personal privacy exemption at section 14(1) of the *Act*. In this decision, 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), and 14(3)(b).

### OVERVIEW:

[1] The appellant submitted a request for access to the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for the following information:

All records, inspection records, complaints filed, photos, correspondence, Warning Letter (not received), mailing information, field notes, contacts, etc. pertaining to a [specified Notice of Violation] by [named inspector]. Re: Inoperable vehicles. I request the identity of the complainant...

[2] The city issued a decision granting partial access to the responsive records. The city withheld information under the mandatory personal privacy exemption in section 14(1) of the *Act*.

[3] The appellant appealed the city's decision to the Information and Privacy

Commissioner of Ontario (the IPC).

[4] Mediation did not resolve the appeal. The file was transferred to the adjudication stage of the appeals process where an adjudicator may conduct an inquiry under the *Act*. I decided to conduct an inquiry and sought representations from the appellant initially. As the information at issue contained information relating to the complainant that possibly qualified as personal information, and the city's decision was to withhold this information from disclosure, I determined that the appellant must provide reasons why disclosure of the information would not be an unjustified invasion of the complainant's personal privacy. The appellant did not provide representations.

[5] In this order, I find that the withheld information is exempt under section 14(1) and I dismiss the appeal.

### **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 mandatory personal privacy exemption at section 14(1) apply to the information at issue?

### **RECORDS:**

[6] The records at issue in this appeal are the withheld portions of investigation services records – specifically pages 2, 21, 23, 27, and 32.

### **DISCUSSION:**

[7] The primary issue in this appeal is whether the withheld information is exempt under section 14(1) of the *Act*. During mediation, the appellant confirmed that he is only interested in the name and contact information of the individual who complained against his business (the complainant). As stated above, the city withheld this information under section 14(1). For the reasons that follow, I find the withheld information is the complainant's personal information and it is exempt from disclosure under section 14(1).

#### **Issue A: Does the record contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?**

[8] As the mandatory personal privacy in section 14(1) can only apply to the personal information of an identifiable individual, I must first consider whether the information at issue is personal information. It is also important to know whose personal information is in the record. If the record contains the requester's own

personal information, their access rights are greater than if it does not.<sup>1</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>2</sup>

[9] Personal information is defined in section 2(1) of the *Act* as:

...recorded information about an identifiable individual, including,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

[10] Information is about an "identifiable individual" if it is reasonable to expect that an individual can be identified from the information either by itself or if combined with other information.<sup>3</sup>

### ***Analysis and finding***

[11] As noted above, I did not receive representations from any of the parties. Based on my review of the investigation records, I find that the records do not contain information that qualifies as the appellant's personal information. The investigation records relate to a complaint about the appellant's business, a commercial property. I find that disclosure of the investigation records would not reveal anything of a personal nature about the appellant. On the other hand, I find that the withheld information, specifically the name and the contact information of the complainant qualifies as this individual's personal information.

[12] As the information at issue qualifies as the complainant's personal information and the record at issue does not contain the appellant's personal information, I will consider the appellant's access to the information under Part I of the *Act*.

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

[13] 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 a number of exceptions set out in section 14(1).

[14] The section 14(1)(a) to (e) exceptions are relatively straightforward. If any of the five exceptions covered in sections 14(1)(a) to (e) exist, the city must disclose the information. In this case, none of the exceptions in sections 14(1)(a) to (e) apply to the withheld information.

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<sup>1</sup> Under sections 36(1) and 38 of the *Act*, contained in Part II 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.

<sup>2</sup> See sections 14(1) and 38(b).

<sup>3</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

[15] The section 14(1)(f) exception is more complicated. It requires the city to disclose the complainant's personal information to the appellant only if this would not be an "unjustified invasion of personal privacy." Other parts of section 14 must be looked at to decide whether disclosure of the other individual's personal information would be an unjustified invasion of personal privacy.

[16] 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) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

[17] Section 14(4) identifies circumstances in which disclosure is not an unjustified invasion of personal privacy. Section 14(4) does not apply in the circumstances of this appeal.

[18] 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 particular circumstances. Some of the factors in section 14(2) weigh in favour of disclosure, while others weigh against disclosure.

[19] Although the parties did not submit representations, the records at issue are before me. Based on my review of the records, I find that the presumption in section 14(3)(b) applies to the complainant's name and contact information. Section 14(3)(b) states:

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;

[20] The section 14(3)(b) presumption can apply to different types of investigations, including those relating to by-law enforcement.<sup>4</sup> The presumption requires only that there be an investigation into a *possible* violation of law.<sup>5</sup>

[21] In the present appeal, I find that the city's by-law enforcement department was investigating a complaint about the appellant's property and the complainant's name and contact information were taken down as part of that investigation. Accordingly, I find the complainant's name was compiled and is identifiable as part of an investigation into a possible violation of the city's by-law and disclosure of this information is presumed to constitute an unjustified invasion of the complainant's personal privacy.

[22] As I have found the presumption in section 14(3)(b) applies to the withheld personal information, I find that its disclosure would constitute an unjustified

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<sup>4</sup> Order MO-2147.

<sup>5</sup> Orders P-242 and MO-2235.

invasion of personal privacy under section 14(1)(f) and it is therefore exempt from disclosure under section 14(1).

**ORDER:**

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

Original Signed by: \_\_\_\_\_

Stephanie Haly  
Adjudicator

\_\_\_\_\_ May 31, 2023