

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4444

Appeal MA21-00278

Town of Iroquois Falls

September 25, 2023

Summary: The appellant submitted a six-part request under the *Act* to the town for records relating to a specific by-law. The town located records responsive to the appellant's request and issued an access decision granting them partial access. The town withheld two records under the personal privacy exemption in section 14(1) of the *Act*. The appellant appealed the town's decision and claimed additional responsive records ought to exist, thereby raising reasonable search as an issue. In this order, the adjudicator upholds the town's decision to withhold the records under section 14(1) and the town's search as reasonable. 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), and 17.

OVERVIEW:

[1] The appellant¹ submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Town of Iroquois Falls (the town) for the following records:

BL 3464-17 is understood to be the current Animal By-Law in effect as identified by the Town earlier, please provide the following records.

¹ The appellant is being represented by another individual. In this order, I will refer to the appellant and their representative as "the appellant."

- 1) All records of the Animal Control Officer declaring a vicious dog within the Municipality, with this existing by-law in effect, since 2017.
- 2) total summary of records of offences and charges under the Provincial Offences Act as identified under BL 3464-17, by individual from item #1 to #37, by the Town of Iroquois Falls Animal Control Officer in 2019 & 2020.
- 3) Dog tag serial numbers, are records of the Town (6.5), please provide all tag numbers of those animals registered at [specific address] in 2020, including the identity of the dog(s).
- 4) The record of all license fees paid for animals residing at [specific address] under BL 3464-17.
- 5) Monthly By-Law department reports or issues to Council and Administration for 2020 & 2021 with regards to animals and the animal by-law.
- 6) Council/Administration approved policy and procedures for handling of animal complaints by the Animal Control Officer.

[2] The town located a record responsive to parts 2, 3, and 4 of the appellant's request. The town denied the appellant access to it pursuant to a discretionary law enforcement exemption.² The town advised the appellant there are no records responsive to parts 1 and 5 of their request. Finally, the town provided the appellant with a copy of By-Law No. 3435/17 in response to part 6 of their request.

[3] The appellant appealed the town's decision to the Office of the Information and Privacy Commissioner (the IPC).

[4] During mediation, the appellant advised the mediator they were not pursuing part 6 of the request because the town provided them with a copy of the relevant by-law. However, the appellant confirmed they seek access to the record withheld from disclosure. The appellant also maintained their position that additional responsive records exist.

[5] The appeal was transferred to the adjudication stage of the appeals process, in which an adjudicator may conduct an inquiry under the *Act*. During adjudication, the town conducted an additional search and issued a revised access decision to the appellant, denying them access to a one-page record, in full, pursuant to the mandatory personal privacy exemption in section 14(1) of the *Act*. The town indicated this record is responsive to parts 3 and 4 of the appellant's request. The town reiterated there are no

² The town claimed section 8(1)(d) (confidential source) to withhold the record at issue. I will not be addressing section 8(1)(d) further in this decision because the town revised its decision and withdrew this exemption claim.

records responsive to parts 1, 2, and 5 of the appellant's request.

[6] The appeal was then returned to mediation, where the mediator clarified the issues with the parties. The appellant confirmed that reasonable search remains at issue and they continue to pursue access to the records withheld from disclosure. The town conducted another search and located an additional record responsive to part 2 of the request but denied the appellant access to it, claiming it was exempt under section 14(1) of the *Act*.

[7] No further mediation was possible and the appeal was transferred back to the adjudication stage. The adjudicator originally assigned to this appeal began the inquiry by inviting the town to submit representations on the issues set out in a Notice of Inquiry. The town submitted representations. The adjudicator then invited the appellant to submit representations in response to the town's representations, which were shared with the appellant in accordance with Practice Direction Number 7 of the IPC's *Code of Procedure*. The appellant did not submit representations.

[8] The appeal was then transferred to me to complete the inquiry and issue an order. I reviewed the file and the town's representations decided I did not need to hear from the parties further before issuing my decision.

[9] In the discussion that follows, I find the records are exempt from disclosure under section 14(1) of the *Act* and uphold the town's search as reasonable. I dismiss the appeal.

RECORDS:

[10] There are two records at issue in this appeal. The first record is a Dog License; the town claims this record is responsive to parts 3 and 4 of the appellant's request. The second record is responsive to part 2 of the appellant's request.

ISSUES:

- A. Do the records contain *personal information* as defined in section 2(1) of the *Act* 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?
- C. Did the town conduct a reasonable search for records?

DISCUSSION:

Issue A: Do the records contain *personal information* as defined in section 2(1) of the *Act* and, if so, whose personal information is it?

[11] In order to decide which sections of the *Act* may apply, the IPC must first decide whether the records contain *personal information*, and if so, to whom it relates. It is important to know whose personal information is in the records. If the records contain the requester's personal information, their access rights are greater than if it does not.³ Also, if the records contain the personal information of other individuals, one of the person privacy exemptions might apply.⁴ The term *personal information* is defined in section 2(1) as "recorded information about an identifiable individual."

[12] To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be *about* an individual.⁵ However, even if information relates to an individual in a professional, official or business capacity, it may still qualify as personal information if the information reveals something of a personal nature about the individual.⁶

[13] To qualify as personal information, it must be reasonable to expect an individual will be identified if the information is disclosed.

[14] The town submits the records contain the personal information of identifiable individuals. The town submits the Dog License includes an identifiable individual's name, signature, address and phone number. The town submits the other record includes an identifiable individual's name, address and details relating to a by-law offence. The town submits the information in the records relate to identifiable individuals who are not the appellant.

[15] The appellant did not make submissions in response to the Notice of Inquiry.

[16] I reviewed the records and find they contain the personal information of identifiable individuals. Specifically, I find the records contain these individuals' names (considered to be *personal information* under paragraph (h) of the definition of that term in section 2(1)), and their contact information (paragraph (d)).

[17] I find the records do not contain any personal information relating to the appellant. Accordingly, I will consider whether the appellant is entitled to access the

³ 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.

⁴ Section 14(1) of the *Act*, discussed in Issue B.

⁵ See sections 2(3) and (4) of the *Act* and Orders P-257, P-427, P-1621, R-98005, MO-1550-F and PO-2225.

⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

records under Part I of the *Act*.

Issue B: Does the mandatory personal privacy exemption in section 14(1) apply to the records?

[18] The town relies on the personal privacy exemption in section 14(1) to deny the appellant access to the records. For the reasons that follow, I find the records are exempt under section 14(1) and uphold the town's decision to withhold them.

[19] One of the purposes of the *Act* is to protect the privacy of individuals with respect to their personal information held by institutions.⁷ The mandatory personal privacy exemption in section 14(1) creates a general rule prohibiting an institution from disclosing another individual's personal information to a requester. The *Act* also allows for exceptions to this general rule, which are set out in sections 14(1)(a) to (f). If any of the exceptions exist, the institution is required to disclose the information to the requester.

[20] The town did not raise any exception other than section 14(1)(f) and I find this is the only exception relevant in the circumstances. This exception requires disclosure of personal information where disclosure is not an unjustified invasion of privacy.

[21] Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of the information at issue would be an unjustified invasion of personal privacy. Section 14(2) sets out a list of considerations, or factors, that help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy for the purpose of section 14(1)(f). Section 14(3) lists the types of information of which disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) lists circumstances in which the disclosure of personal information does not constitute an unjustified invasion of personal privacy, despite section 14(3).

[22] None of the circumstances in section 14(4) is relevant to the information at issue in this appeal.

[23] 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.⁸ Some of the factors weigh in favour of disclosure, while others weigh against disclosure. If no factors favouring disclosure are present, the section 14(1) exemption — the general rule that personal information should not be disclosed — applies because the exception in section 14(1)(f) has not been proven.⁹

[24] The appellant did not raise any factors favouring disclosure of the records and I find none apply. In the absence of any submissions from the appellant on the factors in

⁷ Section 1(b) of the *Act*.

⁸ Order P-239.

⁹ Orders PO-2267 and PO-2733.

section 14(2) or in support of disclosure, I find the records are exempt under section 14(1) of the *Act*.

[25] I uphold the town's decision to withhold the records under section 14(1) of the *Act*.

Issue C: Did the town conduct a reasonable search for records?

[26] The town submits it conducted a reasonable search for records responsive to the appellant's six-part request. The appellant claims additional responsive records should exist. For the reasons that follow, I find the town has conducted a reasonable search for records.

[27] If a requester (in this case, the appellant) claims additional records exist beyond those found by the institution, the issue is whether the institution has conducted a reasonable search for records as required by section 17 of the *Act*.¹⁰ If the IPC is satisfied the search carried out was reasonable in the circumstances, it will uphold the institution's decision. Otherwise, it may order the institution to conduct another search for records.

[28] The *Act* does not require the institution to prove with certainty that further records do not exist. However, the institution must provide enough evidence to show it made a reasonable effort to identify and locate responsive records.¹¹ Responsive records are records *reasonably related* to the request.¹² The IPC will order a further search if the institution does not provide enough evidence to show it made a reasonable effort to identify and locate all of the responsive records within its custody or control.¹³

[29] The town submits it conducted a reasonable search for records responsive to the appellant's request. The town provided an affidavit sworn by its Chief Administrative Officer (the CAO) that summarizes the searches conducted in response to the appellant's request. The CAO stated he joined the town in March 2021 and became involved with this matter following the departure of the town's Clerk-Treasurer (the clerk). The CAO stated the clerk was involved in the initial search and response for this appeal, but the CAO took over the file when the clerk left. The CAO states he conducted an independent search for responsive records by examining all the physical boxes and documents relating to this file.

[30] In addition, due to the number of requests submitted by the appellant regarding possible town by-law violations, the CAO contacted the town's by-law officer to review the appellant's request to identify whether there were any additional responsive records. The CAO states this discussion resulted in locating and identifying the second

¹⁰ Orders P-85, P-221 and PO-1954-I.

¹¹ Orders P-624 and PO-2559.

¹² Order PO-2554.

¹³ Order MO-2185.

record, which is responsive to part 2 of the appellant's request. The CAO affirms no other responsive records exist and that he and his predecessors conducted a diligent and thorough search.

[31] The appellant did not make any submissions to support their view that additional responsive records ought to exist.

[32] I reviewed the town's representations and affidavit and am satisfied it made a reasonable effort to locate responsive records in fulfillment of its obligations under the *Act*. I am satisfied experienced employees knowledgeable in the subject matter of the request expended a reasonable effort to locate records responsive to the appellant's request. Specifically, I am satisfied the CAO, the clerk, and by-law officer are experienced employees knowledgeable in the subject matter of the request. I am also satisfied these individuals made a reasonable effort to locate records responsive to the appellant's request. The CAO confirmed he searched a number of locations, including physical boxes and documents related to the appellant's file, and records that may be with the by-law officer.

[33] As noted above, the *Act* does not require an institution to prove with absolute certainty that additional records do not exist. Additionally, the town is not required to go to extraordinary lengths to search for responsive records. Upon review of the town's representations and the CAO's affidavits, I am satisfied employees knowledgeable in the subject matter of the request expended a reasonable effort to locate records responsive to the appellant's request.

[34] Further, the appellant did not submit any representations to support their claim. In the absence of any representations, I am not satisfied there is a reasonable basis for the appellant's belief that additional records exist.

[35] Therefore, in light of the town's submissions regarding the searches conducted in response to the appellant's request, I am satisfied the town's searches were reasonable.

ORDER:

I uphold the town's decision and search. I dismiss the appeal.

Original Signed By: _____
Justine Wai
Adjudicator

September 25, 2023 _____