

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4490

Appeal MA21-00665

Township of Wainfleet

February 14, 2024

Summary: The Township of Wainfleet received a request under the *Act* for access to records relating to a septic system inspection at a specified address. The property owner objected to disclosure of the responsive records and the township decided to deny access to the records citing the exemption in section 14(1) (personal privacy). The requester appealed the township's decision, confirming that she was not interested in any personal information in the records. The township maintained its decision not to release the records.

In this order, the adjudicator finds that the information remaining at issue is not exempt under section 14(1). The adjudicator allows the appeal and orders the township to disclose the records with names and contact information severed.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, section 2(1) (definition of "personal information").

Order Considered: Order P-23.

OVERVIEW:

[1] This appeal considers the Township of Wainfleet (the township's) decision to deny access to records relating to a septic system inspection on the basis of the personal privacy exemption in section 14(1) of the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*).

[2] By way of background, in 2013, the township mandated private inspections of

wells and septic systems on residential properties situated along the shore of Lake Erie in an area that was subject to a Boil Water Advisory. These inspections were performed by a third party.

[3] The township received a request under the *Act* for access to records relating to the mandated inspection carried out on a specified property, including:

A copy of the septic system including the information on the sewage inspection indicating the location of the septic tank and the septic bed at [a specified address].

[4] The township located two responsive records comprising a two-page letter and a three-page septic system inspection report, which includes a hand drawn plan showing the location of the septic tank. The township notified the current property owner of the specified address of the request and invited comments on disclosure.

[5] The property owner objected to the disclosure of the records.

[6] The township then issued a decision to the requester refusing access to the responsive records citing the mandatory personal privacy exemption in section 14(1) of the *Act* and citing the presumption in section 14(3)(b).¹

[7] The requester, now appellant, appealed the decision to the Information and Privacy Commissioner of Ontario (IPC) challenging the township's application of the personal privacy exemption to the responsive records.

[8] A mediator was appointed to explore possible resolution. During mediation, the appellant advised that she was not seeking access to any name or contact information in the records and this information is therefore not at issue in the appeal.

[9] The township maintains its decision to refuse access to the records pursuant to section 14(1) of the *Act*.

[10] As a mediated resolution was not achieved, the file was transferred to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry. I decided to conduct an inquiry, which I began by inviting and receiving representations from the township addressing the facts and issues set out in a Notice of Inquiry. The township's representations were shared with the current property owner who was invited to submit representations.

[11] The property owner responded, explaining why they do not consent to the records being disclosed to the appellant. The property owner sought and was granted

¹ Section 14(3)(b) provides that the disclosure of personal information compiled as part of an investigation into a possible violation of law is presumed to be an unjustified invasion of personal privacy. The presumption in section 14(3)(b) can only apply to information that qualifies as "personal information."

an extension of time to submit more detailed representations. However, they did not submit additional representations by the extended deadline nor seek a further extension of time.

[12] I did not invite representations from the individual who was the property owner at the time that the inspection was carried out (the previous property owner) despite their name and mailing address appearing in the records. The appellant has confirmed that she is not seeking access to any contact information in the records. The previous property owner's name and contact information is therefore not at issue in this appeal.

[13] The township's severed representations were shared with the appellant, with confidential portions withheld in accordance with *Practice Direction 7* to the IPC's *Code of Procedure*. I invited and received representations from the appellant addressing the issues set out in the Notice of Inquiry and responding to the township's representations.

[14] For the reasons that follow, I find that the information that remains at issue is not personal information so that the mandatory personal information exemption in section 14(1) cannot apply. Accordingly, I order the township to disclose the records to the appellant with the previous property owner's name and contact information severed.

RECORDS:

The records at issue comprise a letter (two pages) and a septic system inspection report and hand drawn plan (three pages). As indicated above, the name and contact information of the previous property owner is not at issue.

DISCUSSION:

[15] As the township has decided to refuse to disclose the responsive records to the appellant on the basis of the mandatory personal privacy exemption in section 14(1), the sole issue in this appeal is whether section 14(1) applies to the records. The mandatory personal privacy exemption can only apply to personal information, and I must therefore first decide whether the information at issue in the records contains "personal information."

[16] 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.

[17] 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.²

[18] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.³

[19] Generally, information about an individual in their professional, official, or business capacity is not considered to be "about" the individual.⁴

[20] The township does not directly address the issue of whether the records contain "personal information" as defined in section 2(1) of the *Act*. However, the township states that the records identify the owners of the property and their mailing address. The township's representations focus on the application of the personal privacy exemption in 14(1).

² Order 11.

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

⁴ Sections 2(2.1) and (2.2) of the *Act*. See also Orders P-257, P-427, P-1412 and PO-2225.

[21] As already noted, the current property owners, who were notified of the request and this appeal, object to the disclosure of the records to the appellant but have not submitted representations addressing the issues in the Notice of Inquiry.

[22] The appellant's position is that they cannot address the question of whether the records contain personal information because they have not seen the records. However, the appellant reiterates that she is not pursuing access to personal information in the records and that her request is focused on information about the specified property, which is the inspection report and related documents of its septic and well system.

Analysis and findings

[23] As noted above, the records contain the name and contact information of an identifiable individual, who was the property owner at the time that the inspection was carried out. As the appellant is not pursuing access to names and contact information, this information is not at issue, and I will order the township to sever it from the records.

[24] I now consider whether the remainder of the records, the portion at issue, contains personal information of identifiable individuals. In other words, whether the remaining information would disclose information relating to an identifiable individual.

[25] The records comprise a letter and an inspection report relating to a residential septic and well system. At the time that the inspection was conducted the septic system served two properties on a shared plot of land and the property addresses of both properties appear in the report. The appellant is seeking access to the inspection report in respect of one of these two properties. From my review of the records, I find that the records do not contain any other names, including the name of the current property owner of either property.

[26] 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.⁵ 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 may be identifiable from the property addresses alone notwithstanding that the previous property owner's name and contact information is to be severed from the records.

[27] 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

⁵ PO-2322, PO-2265 and MO-2019.

information about an identifiable individual.⁶

[28] 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 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.

[29] I agree with the former commissioner’s approach that distinguishes information about a property from information about an identifiable individual and adopt it for the purposes of this appeal.

⁶ Orders P-23, M-175, MO-2053, MO-2081, PO-2322, MO-2695, MO-2792, MO-2994, MO-3066, MO-3125 and MO-3321.

[30] The records before me in this appeal consist of a letter and an inspection report, including a plan, concerning the septic system and well serving two properties on a plot of land. The information in the letter concerns a mandated private sewage inspection as part of a public program to improve the quality of drinking water. I find that these records contain information predominantly about the sewage system at the property specified in the request, which is information about the property. Accordingly, I am satisfied that the information remaining at issue does not contain information "about" the property owners notwithstanding that they might be identifiable from the property addresses.

[31] 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.

[32] Accordingly, I allow this appeal and order the township to disclose the records with the name and contact information of the previous property owner severed. This information is to be severed from the first page of the letter and the first page of the inspection report.

ORDER:

1. I order the township to disclose to the appellant the responsive records, except for the name and contact information on page 1 of the letter and page 1 of the inspection report, by March 21, 2024 but not before March 18, 2024.
2. To confirm compliance with order provision 1, I reserve the right to require the township to provide me with a copy of the record as disclosed to the appellant.

Original signed by: _____
Katherine Ball
Adjudicator

February 14, 2024 _____