Information and Privacy Commissioner,
Ontario, Canada

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

ORDER MO-4587

Appeal MA22-00193

Ottawa Community Housing Corporation

October 29, 2024

Summary: The Ottawa Community Housing Corporation (OCH) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records related to three types of contracts. OCH took steps to clarify the request. OCH identified 26 responsive records and decided to disclose 24 of them in full. It decided it needed to withhold parts of the remaining two contracts for certain reasons (exemptions): to protect the personal privacy of individuals whose personal information in one contract [section 14(1)] and to protect third party information in both contracts [section 10(1)]. The requester appealed this decision and raised three more issues: the scope of the request (section 17), the reasonableness of OCH's search (section 17), and OCH's compliance with section 23 (which relates to giving a copy of a record or a chance to examine it).

The adjudicator allows the appeal on the issue of section 10(1) because she finds that the information withheld under that exemption does not qualify for that exemption. However, the adjudicator agrees with OCH that the information withheld under section 14(1) is personal information that cannot be disclosed. She also agrees with OCH's interpretation of the scope of the request and the reasonableness of its search. In addition, the adjudicator finds that OCH complied with section 23 and that the reasons that the appellant raised this issue do not apply in these circumstances.

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"), 10(1), 10(2) 14(1), 17, and 23; Regulation 823, section 2(2).

OVERVIEW:

[1] This order resolves an appeal arising out of a request for certain contracts. This appeal discusses the issues of the scope of the request, the reasonableness of the institution's search for responsive records, and the exemptions the institution claimed. It also addresses questions related to giving requesters a copy of a record (or partial record) that an institution is granting access to, or the chance to examine such a record.

[2] The Ottawa Community Housing Corporation (OCH) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) as follows:

> The following information is needed from Ottawa-Community Housing Corp – which will include record of the last three years [later clarified to be four years - 2018, 2019, 2020, 2023].
>
> > 1. All elevator maintenance contracts for all buildings OCH in charge of (copy from the contracts – how much money the contractor is getting every month for his labour and parts replaced)
> >
> > 2. All contracts for garage maintenance including replacing the concrete flooring and ventilation system for all buildings OCH is in charge of (detailed copy).
> >
> > 3. Copy from all roofing work contracts for all buildings OCH in charge of. The three years record will include 2018-2019-2020 and 2021 record will be added to these 3 years. See attached schedule A1 and A2.

[3] OCH identified records responsive to the request and notified certain third parties (whose interests might be affected by disclosure) to obtain their views about disclosure of the records.[1]

[4] After OCH notified the third parties, it issued two access decisions through which it disclosed 24 records in full to the requester. OCH withheld access to some information in two records (contracts 1 and 2) under the mandatory exemptions at sections 10(1) (third party information) and 14(1) (personal privacy) of the *Act*.

[5] The requester, now the appellant, filed an appeal of OCH's decision to the Information and Privacy Commissioner of Ontario (IPC).

[6] I conducted a written inquiry into the issues on appeal, including those raised by the appellant at IPC Mediation (scope of the request, reasonable search, and compliance with section 23, which deals with copies of records and examining records). OCH and the appellant sent me written replies, which I shared amongst them as necessary. I also asked two third parties whose interests may be affected by disclosure for representations

[1] Notification is required by section 21(1) of the *Act*.

about section 10(1). Only one third party responded, objecting to disclosure (and I shared that position with the appellant).

[7] For the reasons that follow, I allow the appeal in part. I will order OCH to disclose the information it withheld under section 10(1). However, I dismiss the other aspects of the appeal because I uphold OCH's interpretation of the scope and its search efforts as reasonable, and its decision to withhold personal information under section 14(1); I also do not accept the claim that OCH failed to comply with section 23.

RECORDS:

[8] OCH withheld parts of two contracts (contract 1 and contract 2):

- OCH withheld parts of each contract under section 10(1).
- OCH also withheld parts of contract 2 under section 14(1).

ISSUES:

A. What is the scope of the request for records? Which records are responsive to the request?

B. Has OCH complied with section 23 of the *Act*?

C. Did OCH conduct a reasonable search for records?

D. Does contract 2 contain "personal information" as defined in section 2(1) and, if so, whose personal information, is it?

E. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

F. Does the mandatory exemption at section 10(1) for third party information apply to the records?

DISCUSSION:

Issue A: What is the scope of the request for records? Which records are responsive to the request?

[9] For the following reasons, I uphold OCH's interpretation of the scope of the request.

[10] To be considered responsive to the request, records must "reasonably relate" to

the request.[2] Institutions should interpret requests liberally, in order to best serve the purpose and spirit of the *Act*. Generally, if there is ambiguity in the request, this should be resolved in the requester's favour.[3]

OCH's representations

[11] OCH explains that after reviewing the original request, its lawyer phoned the appellant to clarify the request. OCH states that the appellant confirmed that he was looking for information regarding high rise buildings on that call. After that phone call, and on the same day, OCH's lawyer emailed the appellant confirming that the appellant clarified that what he was looking for was certain contracts for high-rise buildings for the last three years.

[12] The main part[4] of the lawyer's (December 8) email to the appellant said:

> As a follow up to our phone conversation earlier, I wan[t] to confirm that you indicated you are looking for a copy the documents listed below:
>
> - a copy of the contract(s) for all elevator maintenance for all OCH's high-rise buildings, for the last three years,
>
> - a copy of the contract(s) for garage maintenance/renovation (including the replacement of concrete flooring and ventilation system) of all OCH's high-rise buildings, for the last three years,
>
> - a copy of the contract(s) for all roofing work for all OCH's high-rise buildings, for the last three years.
>
> I was not able to give you an estimate of how many high-rise buildings OCH has, nor was I able to give you a date for the release of the information that may be released to you.

[13] OCH says that the appellant's December 14 email reply only corrected the number of years he was asking about (2018, 2019, 2020, and 2021), not the type of buildings he was asking about. OCH included a copy of this email with its representations, which were shared with the appellant. The main part[5] of that email says:

> I just want clear one point in regarding what you mentioned that the last 3 years . . .of data, this is not!!

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[2] Orders P-880 and PO-2661.
[3] Orders P-134 and P-880.
[4] I have omitted greetings at the beginning and end of the email.
[5] Again, only greetings are removed. I have condensed the formatting for readability.

> According the original requisition in page two, I mentioned clearly [t]hat 3 years plus the current one and I listed the year 2018, 2019, 2020 And 2021!!
>
> Therefore, this has to be taken into consideration.
>
> As you know, your call was not arranged before to have . . . a copy from the requisition filed but I assume that a copy in position of OCH legal department.
>
> Now, everything is very clear
>
> 1- documents I'm looking for
>
> 2- Which years?
>
> Records for year 2018-2019-2020-2021

[14] OCH explains that it repeated this clarified scope to the appellant in its interim decision, when it also said it needed a time extension to process the request. The appellant responded with dissatisfaction about the time extension request, but did not dispute the fact that he was seeking access to information about high-rise buildings. OCH says that, instead, the appellant clarified that by high-rise buildings, he meant five stories and up. (The email reflecting this was attached to OCH's representations.) OCH submits that there was no reason for the appellant to clarify his definition of a high-rise buildings other than to clarify the scope of the information he requested. OCH states that the email exchange also confirmed the timeframe of the request.

[15] OCH explains that its Privacy Department reviewed the responsive contracts. After it consulted affected parties, OCH granted full access to 24 of the 26 contracts, and partial access to two of them.

The appellant's representations

[16] The appellant states that he "never changed the scope of the request at any time [in the process]" and that "this is very clear" in the December 14 email. He states that this email does not mention anywhere that he is limiting the scope of his request "to only 20 contracts for High rise buildings." Rather, he says that high rise buildings were mentioned "to emphasize" that they are "part of the request as explained to the [city] solicitor" in his phone call with him.

[17] The appellant states that in the December 8 email, the OCH "did not say directly and clearly that it is going to limit the scope of the request to high rise buildings only, but in [a] sneaky way mentioned high rise buildings which supposed to be part of the request. Therefore, it was not contested."

[18] The appellant also argues that since he made scope one of the issues on appeal

and "the appeal was accepted," then OCH's insistence on the scope only being for high-rise buildings for four years is "without any legitimate ground."

[19] The appellant then sets out a scope for the request that is similar to the wording of the clarified request, but not the same.[6]

OCH's reply

[20] OCH's reply essentially summaries the exchange of emails between it and the appellant (which I noted above), so I will not set it out again.

[21] OCH also explained something about the number of contracts versus the number of properties:

> The Requester [the appellant] stated that OCH limits the request scope of disclosure to 20 contracts for 17 properties. OCH disagrees with that statement. OCH has agreed to disclose 26 contracts covering high rise building of five-floors or more. The contracts cover more than 17 properties. As an example, *Contract 0-101172 Elevators Maintenance and Repairs* covers sixty-six (66) properties as listed on page 165 of the contract.

The appellant's sur-reply

[22] In sur-reply, the appellant states that responsive records are:

> . . . all contracts belong[ing] to 176 property OCH is in charge of for any minor or major work done in these properties for years: 2018-2019-2020-2021. This work done includes construction work like roofing, garage concrete floor replacement, upgrade, retrofit and maintenance work for the heating system, plumbing, ventilation system and elevators pursuant to the filed request dated Sept-15-2021.

Analysis/findings

[23] Based on my review of the parties' representations, I uphold OCH's interpretation of the scope of the request and do not accept the appellant's position.

[24] I find that the appellant's description of the scope of the appeal in his sur-reply

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[6] He says that the scope is for:

> Four-Year for all properties OCH is in charge [of] And these records will include the following:
> 1. All elevator maintenance contracts (copy from the contracts – how much money the contractor is getting every month for his labour and parts replaced)
> 2. All contracts for garage maintenance including replacing the concrete flooring and ventilation system for all buildings OCH is in charge of.
> 3. Copy from all roofing work contracts.

representations is different from the scope he described at the time of OCH's clarification efforts (after he filed his request). At sur-reply, and for the first time, he uses the words "minor and major work" pertaining to 176 properties, and that this "includes" certain types of work (including work listed in the original and clarified request).

[25] However, in my view, the December 8 and 14 emails clearly indicate that only three types of contracts are requested (elevator maintenance, garage maintenance/renovation, and roofing). I find that these emails do not also include a request for contracts for "minor and major work."

[26] I find that in the December 8 email, OCH clearly set out its understanding of the type of record the appellant was seeking and the time frame involved. I find that the only thing that the appellant tried to correct about that in his December 14 reply was the number of years covered by the request, not the records he was seeking. In fact, the December 14 email specifically says that of the two things that are "now . . . very clear," one of them is the "documents [the appellant is] looking for." While the appellant is now arguing that he never limited his request to just 20 contracts in that email, I do not find this persuasive because what OCH was asking about was the *type* of building he was seeking contracts about, not *how many* contracts he was requesting.

[27] For these reasons, I uphold OCH's interpretation of the scope of the request as being for elevator maintenance, garage maintenance/renovation, and roofing contracts related to all high-rise buildings that the OCH was responsible for the years 2018, 2019, 2020, and 2021. Given this scope, I will examine the reasonableness of the OCH's search efforts next.

Issue B: Did OCH conduct a reasonable search for records?

[28] The appellant believes that there are more records responsive to his request than what OCH identified as response. If a requester claims that 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*.[7] If the IPC is satisfied that the search carried out was reasonable in the circumstances, it will uphold the institution's decision. That is the case here.

[29] Below, I summarize the evidence and position of each party (though I have considered the totality of what was presented in the inquiry).

OCH's evidence

[30] OCH explains that its Privacy Department sent the original request to the Asset Management Department, asking for the requested information.

[31] After OCH's lawyer's telephone call with the appellant to clarify the request (as

[7] Orders P-85, P-221, and PO-1954-I.

described above), the Asset Management Department was told that the scope of the requested contracts was high-rise buildings.

[32] After conducting a search, Asset Management provided the responsive contracts to the Privacy Department and confirmed that all responsive contracts were provided.

[33] The Privacy Department then reviewed the contracts and issued a decision to disclose the high-rise contracts (as discussed above). It did not include records covering 4-storey buildings or less because it considered them to be non-responsive to the request.

The appellant's position

[34] The appellant asserts that the OCH's search for responsive records to his request is not reasonable. He makes many calculations, based on the number of properties involved (176 properties in total). For example, he says that OCH's website includes a list of 60 buildings that each have two elevators; he asserts that each elevator has to have a maintenance contract and that these contracts are always one-year contracts. Therefore, the appellant says that there should be at least 240 contracts in four years (60 x 4 years = 240 contracts). He submits that for more than 10 years, the same elevator contractor was used, so there is "no excuse" for OCH not to find these 240 contracts.

OCH's reply

[35] In reply, OCH reiterates the steps that it took to identify responsive records. It also submits that the appellant believes there should be more contracts because of how he believes OCH should operate (referring to the calculation that I set out above as an example). However, OCH explains that it has one maintenance contract for elevators for the period of the request, and that this contract that covers 119 elevators at 66 properties. OCH notes the name of the contract, and which page lists all the properties and elevators covered. OCH notes that this contract is amongst the contracts to be released to the appellant when he pays the fees required, as OCH has informed him.

The appellant's sur-reply

[36] In response to OCH, the appellant reiterates points previously made about scope, his calculations, and the ease with which it should be to find all the responsive records since the same contractor was used. He alleges that OCH is not reasonable and "lacking in credibility."

Analysis/findings

[37] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, they still must provide a reasonable basis for concluding that such records exist.[8] I find that the appellant has not done so here. I agree with OCH

[8] Order MO-2246.

that the appellant is using his belief about how OCH should run as a basis for his belief that there are more responsive records, and I find this to be unreasonable. OCH has explained that it uses one contract to cover many properties and does not enter contracts as the appellant envisioned and calculated that it does.

[38] The *Act* does not require the institution to prove with certainty that further records do not exist.[9] However, the institution must provide enough evidence to show that it has made a reasonable effort to identify and locate responsive records;[10] that is, records that are "reasonably related" to the request.[11]

[39] I find that OCH has provided enough evidence to show that it conducted a reasonable search in the circumstances. A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request makes a reasonable effort to locate records that are reasonably related to the request.[12] I find that OCH's engagement of the Asset Management Department to search for the requested contrasts was reasonable, given the subject matter of the request. The appellant has not provided me with a reasonable basis to question the department engaged in the search, and I have already found that the scope that it used to search was appropriate (under Issue A).

[40] For these reasons, I uphold OCH's search as reasonable in the circumstances.

Issue C: Has OCH complied with section 23 of the Act?

[41] The appellant submits that OCH has not complied with sections 23(1), 23(2), and 23(3) of the *Act*, but these claims are unfounded, as I explain below.

[42] Section 23 of the *Act* is about a requester's right to get a copy of a requested record or have the chance to examine it.

[43] Section 23(1) of the *Act* says:

> Subject to subsection (2), a person who is given access to a record or a part of a record under this Act shall be given a copy of the record or part *unless* it would not be reasonably practicable to reproduce it by reason of its length or nature, in which case the person shall be given an opportunity to examine the record or part. [Emphasis added.]

[44] Section 23(2) of the *Act* says:

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[9] *Youbi-Misaac* v. *Information and Privacy Commissioner of Ontario*, 2024 ONSC 5049 at para 9.
[10] Orders P-624 and PO-2559.
[11] Order PO-2554.
[12] Orders M-909, PO-2469, and PO-2592.

> *If a person requests the opportunity to examine a record or part* and it is reasonably practicable to give the person that opportunity, the head shall allow the person to examine the record or part. [Emphasis added.]

[45] Section 23(3) of the *Act* says:

> A person *who examines a record or a part* and wishes to have portions of it copied shall be given a copy of those portions unless it would not be reasonably practicable to reproduce them by reason of their length or nature. [Emphasis added.]

[46] For the institution to consider giving a requester a chance to *examine* a record, one of two things must be true:

- providing a copy of the record (or part of the record) "would not be reasonably practicable" because of its "length or nature" (under section 23(1) of the *Act*), or
- "a person requests the opportunity to examine a record or part" as section 23(2) says, along with certain other conditions.

[47] Neither of these scenarios is relevant here:

- As the appellant acknowledges, OCH offered a copy of the records in pdf format. Therefore, section 23(1) is not relevant. Also, section 23(1) does not require OCH to organize the records in a certain way, as the appellant appears to believe it does, given certain representations.
- The appellant asked OCH what it was going to disclose and why certain records did not qualify for disclosure, but I find that this is not a request to examine records. Since the appellant did not request an opportunity to examine the records (or partial records), section 23(2) is not relevant. (Neither is section 23(3), which is only relevant to "a person who examines a record or part" and wants to have a copy of that record or partial record.)

[48] In addition, for the benefit of the appellant (given what appears to be his belief that OCH was required to offer him a chance to examine the records), I also note section 2(2) of Regulation 823, which is to be read with section 23. Section 2(2) of Regulation 823 gives an institution the *option* of *requiring a requester* to examine a record: "A head *may require* that a person who is granted access to an original record examine it at premises operated by the institution" [emphasis added]. This does not mean that the institution is required to offer such an opportunity in response to every request.

[49] For these reasons, I dismiss the appellant's claim that OCH did not comply with section 23 of the *Act*.

Issue D: Does contract 2 contain "personal information" as defined in section 2(1) and, if so, whose personal information, is it?

[50] In order to decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates.

What is "personal information"?

[51] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual."

[52] "Recorded information" is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.[13]

[53] Information is "about" the individual when it refers to them in their personal capacity, which means that it reveals something of a personal nature about the individual. Generally, information about an individual in their professional, official or business capacity is not considered to be "about" the individual.[14] 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 the individual.[15]

[54] 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.[16]

What are some examples of "personal information"?

[55] Section 2(1) of the *Act* gives a list of examples of personal information:

> "personal information" means recorded information about an identifiable individual, including,
>
> (a) information relating to the . . . family status of the individual,
>
> (b) information relating to the education or the . . . employment history of the individual . . .,

[13] See the definition of "record" in section 2(1).
[14] Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.
[15] Orders P-1409, R-980015, PO-2225, and MO-2344.
[16] Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

> (c) any identifying number, symbol or other particular assigned to the individual[.]

[56] The list of examples of personal information under section 2(1) is not a complete list. This means that other kinds of information could also be "personal information."[17]

[57] Section 2(2.1) of the Act *excludes* some information from the definition of personal information. It says: "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."

Whose personal information is in the record?

[58] It is important to know whose personal information is in the record. If the record contains the personal information of other individuals, as I find (below) that it does here, one of the personal privacy exemptions might apply.[18] The dispute here is whether portions of the contract that OCH withheld qualify as the personal information of the employees to whom that information relates.

Analysis/findings

[59] I agree with OCH's determination that information on pages 113, 114, 134, 150, 151, 152 of contract 2 is "personal information" within the meaning of that term in section 2(1) of the *Act*.

[60] The appellant relies on section 2(2.1) of the *Act* (set out above) which excludes information like names and titles from the definition of personal information. He submits that there is no personal information at issue here because the information withheld is in a contract, and it is common business practice to include, for example, someone's name, title, and contact information in a business document.

[61] However, this is not the type of information that has been withheld. The names of the employees and titles (where applicable) have been disclosed.

[62] Instead, most of the information withheld is information on pages 113, 114, 134, 150, 151, 152 of contract 2 relates to education or employment history. This is "personal information" under paragraph (b) of the definition of that term. That is:

- On pages 113 and 114, OCH withheld information about courses taken. Page 114 also contains a withheld number that appears to be an employee or training number (the name of the individual to whom this number relates was disclosed).

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[17] Order 11.
[18] See sections 14(1) and 38(b).

- On page 134, OCH withheld information in a chart relating to full or part time status, the number of years of experience, WSIB coverage, courses taken, and whether a background check was completed.

- On pages 150-152, OCH withheld short summaries relating to each employee's employment history.

[63] The apparent employee or training number withheld on page 114 is also that employee's personal information under paragraph (c) of the definition of "personal information."

[64] Finally, OCH also withheld information that I find relates to an employee's family in one of the employment history summaries withheld on page 150. In my view, this is "personal information" of this employee under paragraph (a) or the introductory wording of that definition ("recorded information about an identifiable individual").

[65] Since the personal information withheld is not in a record containing the appellant's personal information, I must consider whether the appellant has any right of access to it under the mandatory personal privacy exemption at section 14(1) of the *Act*.

Issue E: Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue in contract 2?

[66] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions.

[67] 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.

[68] The five exceptions at sections 14(1)(a) to (e) are relatively straightforward. Neither OCH nor the appellant claim that any of these exceptions apply. Based on my review of the information at issue, I find no basis for concluding otherwise.

[69] The sixth exception, at section 14(1) is more complicated than the ones at section 14(1)(a) to (e). I consider that exception next.

Section 14(1)(f) exception: disclosure is not an unjustified invasion of personal privacy

[70] The section 14(1)(f) exception requires the institution to disclose another individual's personal information to a requester only if this would not be an "unjustified invasion of personal privacy." Under section 14(1)(f), if disclosure of the personal information would *not* be an unjustified invasion of personal privacy, the personal information is not exempt from disclosure.

[71] Sections 14(2), (3) and (4) help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy. Sections 14(3)(a) to (h) should generally be considered before the factors at section 14(2) are considered.

Section 14(3): is disclosure presumed to be an unjustified invasion of personal privacy?

[72] Sections 14(3)(a) to (h) outline several situations in which disclosing personal information is presumed to be an unjustified invasion of personal privacy.

[73] If any of the section 14(3) presumptions are apply:

- they cannot be rebutted by the factors in section 14(2) for the purposes of deciding whether the section 14(1) exemption has been established, and

- the personal information cannot be disclosed unless one of two exceptions apply (either because one of the situations in section 14(4) exists or the public interest override at section 16 applies). (Neither of these exceptions has been claimed here, and there is no basis to find otherwise.)

[74] If the personal information being requested does *not* fit within any presumptions under section 14(3), one must next consider the factors set out in section 14(2) to determine whether or not disclosure would be an unjustified invasion of personal privacy.

14(3)(d): employment or educational history

[75] This presumption covers several types of information connected to employment or education history, including, for example: start and end dates of employment and number of years of service.[19] The employee or training number withheld on page 114 is connected to the named employee's employment or education history, so the presumption at section 14(3)(d) applies to it.

[76] Information contained in resumes[20] and work histories[21] falls within the scope of section 14(3)(d). I find that all the remaining personal information withheld is the type of information that can be found in resumes or work histories (except for the information withheld on page 150 about an employee's family). As this is information about courses taken and employment history summaries, the presumption at section 14(3)(d) applies to all the remaining personal information withheld on pages 113, 114, 134, 151, 152, and most of page 150. The disclosure of this personal information is presumed to be an unjustified invasion of the personal privacy of the individuals to whom it relates.

[77] Regarding the small amount of personal information withheld on page 150, I find that no section 14(3) presumptions apply, so I will consider whether there are section

[19] Orders M-173, MO-1332, PO-1885, and PO-2050; see also Orders PO-2598, MO-2174, and MO-2344.
[20] Orders M-7, M-319, and M-1084.
[21] Orders M-1084 and MO-1257.

14(2) factors that apply, next.

Section 14(2): Do any factors in section 14(2) help in deciding if disclosure would be an unjustified invasion of personal privacy?

[78] 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.[22] Some of the factors weigh in favour of disclosure, while others weigh against disclosure.

[79] Neither OCH nor the appellant raised any section 14(2) factors applying, and based on the evidence before me, I find no basis for concluding otherwise.

[80] Since there are no factors favouring disclosure of the family information withheld on page 150, 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.[23]

[81] For these reasons, I uphold OCH's decision to withhold the personal information on pages 113, 114, 134, and 150-152 of contract 2. Given my finding about pages 150-152 of contract 2, I will not consider OCH's additional claim that these pages are exempt from disclosure under section 10(1) of the *Act*.

Issue F: Does the mandatory exemption at section 10(1) for third party information apply to the records?

[82] OCH withheld parts of contract 1 and 2 under section 10(1), but for the reasons that follow, I do not uphold that decision.

[83] The purpose of section 10(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,[24] where specific harms can reasonably be expected to result from its disclosure.[25]

[84] Section 10(1) states:

> A head shall refuse to disclose a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, if the disclosure could reasonably be expected to,

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[22] Order P-239.
[23] Orders PO-2267 and PO-2733.
[24] *Boeing Co. v. Ontario* (*Ministry of Economic Development and Trade*), [2005] O.J. No. 2851 (Div. Ct.)], leave to appeal dismissed, Doc. M32858 (C.A.) (*Boeing Co.*).
[25] Orders PO-1805, PO-2018, PO-2184, and MO-1706.

> (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;
>
> (b) result in similar information no longer being supplied to the institution where it is in the public interest that similar information continue to be so supplied;
>
> (c) result in undue loss or gain to any person, group, committee or financial institution or agency; or
>
> (d) reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute.

[85] For section 10(1) to apply, the party arguing against disclosure must satisfy each part of the following three-part test:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information;

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; and

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in paragraph (a), (b), (c) and/or (d) of section 10(1) will occur.

[86] In this case, the parties resisting disclosure are OCH and the third party that responded to the IPC's Notice of Inquiry. The other third party (which previously opposed disclosure of the pricing grids) may also oppose disclosure, but it did not respond to the IPC's Notice of Inquiry.

Section 10(2): exception to the exemption

[87] Section 10(2) states:

> A head may disclose a record described in subsection (1) if the person to whom the information relates consents to the disclosure.

[88] This section gives an institution the choice of disclosing information that would otherwise meet the three-part test for section 10(1) if the third party to whom the information relates gives consent to the disclosure.

[89] This section does not mean that an institution *requires* consent to disclose information simply on the basis that a third party to whom the information relates has

not consented to disclosure. Therefore, I do not accept OCH's position that because it did not obtain consent, this information is exempt under section 10(1) of the *Act*.

Representations

[90] OCH submits that pages 28-31, 44, and 45 of contract 1 and pages 95-97, 110, 141-145, 147, 183-198 of contract 2 contain information that cannot be released under section 10(1) of the *Act*.

[91] OCH states that the third parties have submitted financial information in confidence and expected it to be treated confidentially. It did not elaborate on why the information it withheld is financial information. OCH also notes that neither third party consented to the release of information. It notes that the third party for contract 1 agreed to the total value of its contract being released but objected to the pricing grid information in on pages 28-31 on the basis that this information "includes Trade-Secret Unit Rates which could affect [their] future work."

[92] The third party for contract 1 did not provide representations in the inquiry.

[93] The third party for contract 2 did not make representations on the issues under appeal but stated its objection to any disclosure.

[94] The appellant objects to the characterization of prices as a trade secret. He also disagrees with the idea that information in contracts can be withheld because of a lack of consent of the third parties involved.

Analysis/findings

[95] As I mentioned, to be withheld under section 10(1), the information at issue must meet all three parts of the test for section 10(1). So, if information does not meet a part of the test, it is not necessary to discuss any other parts of the test. Based on my review of the information I find the following:

- Page 110 of contract 2 fails part one of the test,
- Pages 28-31 and 44-45 of contract 1 and pages 95-97 and 183-198 of contract 2 fail part two of the test, and
- Pages 141-145 and 147 of contract 2 fail part three of the test.

[96] Given these findings about parts of the test that are failed, I make no findings about whether the information at issue meets the other parts of the test.

Page 110 of contract 2

[97] Based on my review of page 110 of contract 2, it does not meet part one of the test.

[98] To meet part one of the test, the information withheld must be a trade secret or scientific, technical, commercial, financial or labour relations information.

[99] The third party for contract 2 did not identify which type of information protected by section 10(1) is contained on page 110.

[100] OCH withheld information contained in a chart on page 110 of contract 2 and at the top of the page; it decided that the rest of the page can be released so I can describe those parts of the page in more detail, to give context. The page is an injury summary report generated by the Workplace Safety and Insurance Board (WSIB) in relation to the third party as a firm. As noted, OCH only stated that the information it withheld is financial information. It did not elaborate any this characterization for any specific pages of the contract that it withheld.

[101] The IPC has described financial information protected under section 10(1) as follows:

> ***Financial information*** is information relating to money and its use or distribution. The record must contain or refer to specific data. Some examples include cost accounting methods, pricing practices, profit and loss data, overhead and operating costs.[26]

[102] I find that neither party objecting to disclosure established that any type of information protected by section 10(1) is at issue on page 110 of contract 2. As indicated, the third party did not argue which type of information is at issue. For the reasons that follow, I reject OCH's argument that this information is financial.

[103] Based on my review of the information withheld on page 110 of contract 2, I am not persuaded that it can reasonably be described as financial information. To be financial information, the information needs to relate to "money and its use or distribution." But here, the information withheld at the top of page 110 is assigned numbers (not banking account numbers), and the information in the chart summarizes data such as lost time injury frequency, also in the form of numbers. While such data has a general connection to a business, I am not persuaded that this information qualifies as "information relating to money and its use or distribution," based on the evidence before me. Therefore, I find that page 110 of contract 2 does not meet part one of the test. As a result, it is not necessary to discuss parts 2 and 3 of the test for this information and I will order OCH to disclose it.

Pages 28-31 and 44-45 of contract 1 and pages 95-97 and 183-198 of contract 2

[104] The requirement that the information have been "supplied" to the institution reflects the purpose in section 10(1) of protecting the informational assets of third

[26] Order PO-2010.

parties.[27] Information may qualify as "supplied" if it was directly supplied to an institution by a third party, or where its disclosure would reveal or permit the drawing of accurate inferences with respect to information supplied by a third party.[28]

[105] OCH and the appellant agree, and I find, that the records at issue are contracts.

[106] This characterization of the records is important because of the long-standing treatment of contracts requested under the *Act*: the contents of a contract between an institution and a third party will not normally qualify as having been "supplied" for the purpose of section 10(1). Contractual provisions are generally treated as mutually generated, rather than "supplied" by the third party, even where the contract is preceded by little or no negotiation or where it reflects information that originated from one of the parties.[29]

[107] There are two exceptions to this general rule:

1. **the "inferred disclosure" exception**. This exception applies where disclosure of the information in a contract would permit someone to make accurate inferences about underlying non- negotiated confidential information supplied to the institution by a third party.[30]

2. **the "immutability" exception.** This exception applies where the contract contains non-negotiable information supplied by the third party. Examples are financial statements, underlying fixed costs and product samples or designs.[31]

[108] OCH did not address these exceptions, and neither did the third parties. Without representations about these exceptions, I am unable to conclude that any of the information withheld on pages 28-31 and 44-45 of contract 1 and pages 95-97 and 183-198 of contract 2 is the "informational asset" of either third party, respectively.

[109] I have also considered the content of this information itself. Based on my review of the information withheld on pages 28-31 and 44-45 of contract 1 and on pages 95-97 in contract 2, I find that it is pricing information. Based on my review of the information withheld on pages 183-198 in contract 2 also relates to pricing and other agreed upon terms of the contract (in the form of an email exchange between OCH and the third party, and minutes of their meeting). I find that the pricing information on the above pages reflects the prices that the respective third parties agreed to charge and which OCH

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[27] Order MO-1706.
[28] Orders PO-2020 and PO-2043.
[29] This approach was approved by the Divisional Court in *Boeing Co.*, cited above, and in *Miller Transit Limited v. Information and Privacy Commissioner of Ontario et al.,* 2013 ONSC 7139 (CanLII) (*Miller Transit*).
[30] Order MO-1706, cited with approval in *Miller Transit*, cited above at para. 33.
[31] *Miller Transit*, cited above at para. 34.

agreed to pay, which is a form of negotiation (as a long line of IPC orders have held).[32]

[110] Since the information withheld consists of agreed upon terms between the contracting parties, and in the absence of representations from the parties on this, I find that the general rule applies, that information in a contract is negotiated not "supplied."

[111] As a result, it is not necessary for me to consider the other element of part two of the test ("in confidence"). Since this information does not meet part two of the test, it is not exempt under section 10(1) of the *Act*, and I will order OCH to disclose it to the appellant.

Pages 141-145 and 147 of contract 2

[112] Parties resisting disclosure of a record cannot simply assert that the harms under section 10(1) are obvious based on the record. They must provide *detailed* evidence about the risk of harm if the record is disclosed. While harm can sometimes be inferred from the records themselves and/or the surrounding circumstances, parties should not assume that the harms under section 10(1) are self-evident and can be proven simply by repeating the description of harms in the *Act.*[33]

[113] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.[34] However, they do not have to prove that disclosure will in fact result in harm. How much and what kind of evidence is needed to establish the harm depends on the context of the request and the seriousness of the consequences of disclosing the information.[35]

[114] In applying section 10(1) to government contracts, the need for accountability in how public funds are spent is an important reason behind the need for detailed evidence to support the harms outlined in section 10(1).[36]

[115] OCH and the third party were advised of the above, but neither provided representations about harms.

[116] Without representations about why this information meets part three of the test, I have considered the information itself.

[117] OCH disclosed information on page 140, which includes a general description of the information it withheld on the next few pages (pages 141-145 and 147) - "significant contracts." Based on my review of the information withheld on these pages, I am not

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[32] See, for example, Orders PO-3499, PO-3972, PO-3892, and MO-4591.
[33] Orders MO-2363 and PO-2435.
[34] *Merck Frosst Canada Ltd.* v. *Canada* (*Health*), [2012] 1 S.C.R. 23.
[35] *Ontario* (*Community Safety and Correctional Services*) *v. Ontario (Information and Privacy Commissioner)*, 2014 SCC 31 (CanLII) at paras. 52-4; *Accenture Inc. v. Ontario* (*Information and Privacy Commissioner*), 2016 ONSC 1616.
[36] Order PO-2435.

satisfied that disclosure of it could reasonably be expected to result in the harms contemplated by part three of the test. I cannot elaborate further without divulging the information withheld about these "significant contracts."

[118] Given the nature of the information, I find that it is difficult to see how its disclosure could reasonably be expected to be exploited in the marketplace, under sections 10(1)(a) and/or 10(1)(c). If, for example, the effect of knowing that this third party worked on these "significant contracts" is that there is increased competition for contracts with them in the future, that is not a harm that qualifies under section 10(1)(a) or 10(1)(c). Past IPC orders have found that the fact that disclosure results in more competition is not considered to significantly prejudice a competitive position or result in any loss or gain to the third party that can be considered undue.[37] I agree with the reasoning in those orders and adopt it here.

[119] Since the information about the third party's work history was attached to the contract, it is reasonable to believe that that this was either a requirement set by OCH or a proactive decision on the part of the third party. Either way, given the nature of the information, the purpose of providing it to OCH would be so that OCH could review other project history of this third party, contact references, and gain insight into the money spent on the work. As a result, I am not persuaded that disclosure of this information would reasonably be expected to result in similar information no longer being supplied to OCH, under section 10(1)(b). A third party that wants to contract with OCH in the future will seek to provide information if required or would reasonably be expected to provide it proactively to boost its chance of winning the government contract.

[120] I also find that there is no basis for concluding that any of the information at issue was supplied in a labour relations dispute, so section 10(1)(d) is not relevant here.

[121] Since there is insufficient evidence to establish that the information withheld on pages 141-145 and page 147 of contract 2 meets part three of the test, this information is not exempt from disclosure under section 10(1) of the *Act*, and I will order OCH to disclose it to the appellant.

ORDER:

1. I allow the appeal, in part. I order OCH to disclose the information it withheld under section 10(1) of the *Act* to the appellant by **December 03, 2024**, but not before **November 28, 2024**.

2. I dismiss the remaining aspects of the appeal because I uphold OCH's interpretation of the scope of the request, its search as reasonable in the

[37] See, for example, Orders PO-2435, PO-4529, MO-2833, and MO-4497.

circumstances, and its decision to withhold personal information under section 14(1) of the *Act*; I also find that it complied with section 23 of the *Act*.

Original Signed by: October 29, 2024

Marian Sami
Adjudicator