

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4604

Appeal MA23-00829

District of Sault Ste. Marie Social Services Administration Board

December 13, 2024

Summary: An individual requested access from a social services administration board (the board) to all records relating to an apartment unit, including complaints, emails or other correspondence. The board denied access to the records, claiming the personal privacy exemptions. In this order, the adjudicator finds the records are exempt under the personal privacy exemptions because disclosure of the personal information in those records would be an unjustified invasion of personal privacy. She upholds the institution's decision not to disclose them 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"), 4(2), 14(1), 14(2)(f), 14(2)(h), 14(3)(a), 14(3)(c), 14(3)(f), and 38(b).

OVERVIEW:

[1] The appellant submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the District of Sault Ste. Marie Social Services Administration Board (the board), for the following information:

... a copy of all electronic, digital, printed or written, documents, records, memorandums, emails, texts, records of telephone calls, meetings and complaints from other individuals or tenants, all video and audio records and security camera records with respect to [an apartment complex address and unit number].

[2] The board issued a decision denying access to all records responsive to the request under the mandatory personal privacy exemption at section 14(1) of the *Act*. The appellant subsequently clarified that his request included access to his own tenancy file as well as other information about the apartment complex. The board granted the appellant partial access to the records contained in his tenancy file withholding some information under section 14(1).

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

[4] During mediation, the appellant narrowed the scope of his appeal to specific pages¹ of the records withheld from disclosure. The board maintained its position to withhold these pages under the personal privacy exemption.

[5] The appeal was not resolved during mediation and was moved to adjudication. As the adjudicator, I reviewed the records before determining whether to conduct an inquiry. In my review I determined one record² appears to contain the appellant's personal information which raises the possible application of the discretionary personal privacy exemption in section 38(b) rather than the mandatory personal privacy exemption in section 14(1). I identified this record to the board, and it issued a revised access decision disclosing the personal information relating to the appellant to him but withholding the remainder of the record under section 38(b).

[6] I decided to conduct an inquiry and sought and received representations from both the board and the appellant.

[7] In this order, I find the information at issue is exempt under the relevant personal privacy exemption, either section 14(1) or section 38(b) of the *Act*, because disclosure would be an unjustified invasion of the personal privacy of identifiable individuals other than the appellant. I uphold the board's decision and dismiss the appeal.

RECORDS:

[8] The 39 pages of records remaining at issue found at records 9(a-f), 10 to 16, 17(a-b), 18(a-g), and 19(a-q) consist of tenant memos, letters, handwritten notes, and email correspondence. All the records were withheld in full except page 9(f), which was partially disclosed to the appellant.

¹ Specifically, records 9(a-f), 10, 11, 12, 13, 14, 15, 16, 17(a-b), 18(a-g), and 19(a-q).

² Specifically, page 9(f) of record 9.

PRELIMINARY ISSUE

Conflict of Interest

[9] In his representations, the appellant claims there is a conflict of interest on the part of the board in denying and withholding the information he requested. The appellant submits the board is directly related to the Sault Ste. Marie Housing Corporation (the Housing Corporation), which is the landlord of the apartment complex identified in his request. The appellant submits the conflict of interest is compounded because the information he seeks access to is "integral to [the] proceedings" he initiated against the Housing Corporation in relation to his health and welfare, and physical, legal, financial and property protection.

[10] A "conflict of interest" is commonly understood as a situation in which a person, such as an elected official or public servant, has a private or personal interest sufficient to appear to influence the objective exercise of his or her official duties.

[11] In this case, the appellant did not refer to a specific individual who may have a private or personal interest that would appear to influence the exercise of their duty in reviewing and responding to the appellant's access request. Rather, the appellant notes there is some relation between the board and the Housing Corporation which has resulted in a conflict of interest.

[12] According to the board's website, the board is the single shareholder and service manager of the Housing Corporation.³ The board of the Housing Corporation is appointed by the board and comprises of five councillors appointed by the Corporation of the City of Sault Ste. Marie, two representatives of the Sault North Planning Board, and one councillor appointed by the Township of Prince. While it appears the Housing Corporation has an arm's length relationship with the board, the appellant has not demonstrated how this relationship has resulted in a clear or perceived conflict of interest in relation to his access request or this appeal. Upon review of the appellant's representations, I find the appellant has not provided sufficient evidence to establish the board was in a conflict of interest in making a decision on his access request.

DISCUSSION:

[13] The sole issue to be determined in this appeal is whether the personal privacy exemption at section 14(1) or section 38(b) of the *Act* applies to exempt the information withheld by the board, from disclosure.

[14] The board claims the application of the mandatory personal privacy exemption in section 14(1) for the records that do not contain the appellant's personal information, and the discretionary personal privacy exemption in section 38(b) for the information

³ Online at: <https://socialservices-ssmd.ca/housing/>.

withheld from record 9 which does contain the appellant's personal information. To determine whether either of these exemptions apply to the information for which it has been claimed, I must first decide whether the records contain "personal information" within the meaning of the *Act*.

[15] It is 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.⁴ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁵

[16] Based on my review, all the records at issue contain the personal information of identifiable individuals who are not the appellant, as that term is defined in section 2(1) of the *Act*. Specifically, the personal information in the records constitutes recorded information about identifiable individuals,⁶ their contact information,⁷ their personal views or opinions regarding another identifiable individual who is not the appellant,⁸ the views or opinions about an identifiable individual who is not the appellant,⁹ and their names where it appears with other personal information about them.¹⁰

[17] Record 9 contains both the appellant's personal information as well as the personal information of other identifiable individuals. Specifically, record 9 contains recorded information about the appellant and his personal views or opinions. Even though the board has disclosed the appellant's own personal information to him, I must consider whether the information withheld from this record is exempt under the discretionary personal privacy exemption at section 38(b) of the *Act*.

[18] For the remainder of the records,¹¹ which contain only the personal information of individuals other than the appellant, I will consider whether they are exempt under the mandatory personal privacy exemption at section 14(1) of the *Act*.

[19] Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. Section 38 provides some exemptions from this right. Under the section 38(b) exemption, if a record contains the personal information of both the requester and another individual, the institution may refuse to disclose the other individual's personal information to the requester if disclosing that

⁴ 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.

⁵ See sections 14(1) and 38(b).

⁶ See the introductory language of section 2(1).

⁷ Considered "personal information" under section 2(1)(d).

⁸ Considered "personal information" under section 2(1)(e).

⁹ Considered "personal information" under section 2(1)(g).

¹⁰ Considered "personal information" under section 2(1)(h).

¹¹ Namely, records 10, 11, 12, 13, 14, 15, 16, 17(a-b), 18(a-g), and 19(a-q).

information would be an “unjustified invasion” of the other individual’s personal privacy.¹²

[20] In contrast, under section 14(1), where a record contains personal information of another individual but *not* the requester, the institution cannot disclose that information unless one of the exceptions in sections 14(1)(a) to (e) applies, or the section 14(1)(f) exception applies, because disclosure would not be an “unjustified invasion” of the other individuals’ personal privacy. Based on my review, none of the exceptions in sections 14(1)(a) to (e) apply to the personal information at issue.

[21] In deciding whether either of the section 38(b) exemption or the section 14(1)(f) exception to the section 14(1) exemption applies, sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy. I will discuss these sections in more detail below.

Parties’ representations

[22] The board submits the information at issue is exempt under the personal privacy exemption in section 14(1) or, in the case of record 9, section 38(b). The board submits the records contain detailed and sensitive personal information relating to identifiable individuals who are not the appellant and disclosure of this personal information would be an unjustified invasion of the personal privacy of the individual to whom it relates.

[23] Given the type of personal information at issue, the board claims the presumptions in sections 14(3)(a), (c), and (f) apply. These sections state:

(3) A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

(a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

(f) describes an individual’s finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness;

[24] With regard to section 14(3)(a), the board submits the records contain personal information that could be classified as medical or psychiatric information.

[25] With regard to section 14(3)(c), the board submits the records contain information relating to an individual’s social assistance benefits or their application for these benefits. The board refers to Order MO-2984 in which the adjudicator found this presumption

¹² However, the requester’s own personal information, standing alone, cannot be exempt under section 38(b) as its disclosure could not, by definition, be an unjustified invasion of another individual’s personal privacy; Order PO-2560.

applied to information that might exist in relation to the determination of an individual's eligibility for social assistance benefits.

[26] Finally, the board submits record 9 contains multiple references to an individual's rent amount, rent arrears and potential charges. The board submits the presumption in section 14(3)(f) applies to this information because it relates to an individual's finances.

[27] The board also claims the factors weighing against disclosure in sections 14(2)(f) and (h) apply to the personal information at issue. These sections state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(f) the personal information is highly sensitive;

(h) the personal information has been supplied by the individual to whom the information relates in confidence;

[28] In support of its section 14(2)(f) claim, the board refers to complaints and other information contained in the records which was provided by identifiable individuals who are not the appellant. I cannot provide further description of the information contained in the records due to confidentiality concerns. Regardless, the board submits this information is highly sensitive and its disclosure could reasonably be expected to result in significant personal distress if it is disclosed. Further, the board submits the details relating to the health and well-being of identifiable individuals is highly sensitive and could reasonably be expected to result in significant emotional distress if they were disclosed.

[29] With regard to section 14(2)(h), the board submits the information was submitted in confidence. The board submits some of the information at issue consists of complaints filed by identifiable individuals regarding another tenant in an apartment complex. Given these circumstances, the board submits it is clear these individuals submitted their concerns to the board and/or the Housing Corporation in confidence. Furthermore, the board submits that any information relating to these individuals' health or well-being was provided in confidence.

[30] In his representations, the appellant submits the board can redact all personal identifiers to "resolve any invasion of privacy issues." The appellant submits he pursues access to all messages, meeting records and memoranda regarding the issues of personal and property health and safety with the names and unit numbers "suitably redacted." The appellant also submits he does not seek access to information regarding "lifestyle or sexual orientation or Social Service Benefits [or] financial situation."

[31] The appellant submits the factors weighing in favour of disclosure in sections 14(2)(b) and (d) apply in the context of this appeal. These sections state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

(b) access to the personal information may promote public health and safety;

(d) the personal information is relevant to a fair determination of rights affecting the person who made the request;

[32] The appellant claims there is a current risk of “extreme danger to [his] personal health and safety as well as [to his] property and security.” He submits the records of incidents or complaints that “record the jeopardy and threat to the health, safety and property of an individual (me)” should be disclosed to him. The appellant does not elaborate on why section 14(2)(b) is relevant in this appeal other than to state his health and safety may be impacted by the disclosure of the records.

[33] With regard to section 14(2)(d), the appellant claims he requires the records to form part of his Tribunals Ontario case against the Housing Corporation. The appellant also submits there have been two other Tribunals Ontario cases involving the board and the landlord.

Analysis and findings

[34] The majority of the records at issue contain the personal information of identifiable individuals but not that of the appellant. Specifically, records 10, 11, 12, 13, 14, 15, 16, 17 (a-b), 18 (a-g), and 19 (a-q) contain personal information relating to other identifiable individuals. As such, I have considered whether the mandatory exemption at section 14(1) applies to this information. The personal information at issue in these records can only be disclosed if disclosure would not constitute an unjustified invasion of the other individuals’ personal privacy. In the circumstances, I find section 14(1)(f) does not apply to records 10, 11, 12, 13, 14, 15, 16, 17 (a-b), 18 (a-g), and 19 (a-q) and the records are exempt from disclosure under section 14(1).

[35] In the case of record 9, which contains the personal information of other individuals as well as the appellant’s personal information at page 9(f), I have considered whether the discretionary personal privacy exemption at section 38(b) applies. Below I find section 38(b) applies to record 9 and the disclosure of the personal information in this record would constitute an unjustified invasion of personal privacy.

[36] As previously noted, in deciding whether either section 14(1) or section 38(b) applies, sections 14(2), (3) and (4) help in determining whether disclosure would or would not be an unjustified invasion of personal privacy. If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy. Section 14(2) lists other factors that help in deciding whether disclosure would be an unjustified invasion of personal privacy, and section 14(4) lists situations where disclosure

would not be an unjustified invasion of personal privacy. If any of the section 14(4) situations is present, then sections 14(2) and (3) need not be considered.

[37] Generally, section 14(3) must be considered first. The board claims the application of the presumptions in sections 14(3)(a), (c) and (f). I have reviewed the records and have considered the board's representations on the presumptions that it has claimed. I find records 9, 11, 19(i), and 19(p), contain personal information relating to an individual's medical, psychiatric or psychological history (section 14(3)(a)). I also find record 9 contains personal information relating to individuals' financial situations (section 14(3)(f)) and their eligibility for social or welfare benefits (section 14(3)(c)).

[38] When considering the mandatory exemption at section 14(1), if a presumption in section 14(3) applies, that presumption can only be overcome if one of the exceptions to the exemption in section 14(4) applies or when there is a compelling public interest in the disclosure of the information as contemplated by section 16. None of the parties have claimed that any of the exceptions in section 14(4) apply and from my review of the records I find that, in the circumstances of this appeal, none of them do. The appellant has not claimed there is a compelling public interest in the disclosure of the records and from my review there is no evidence that one might exist. Therefore, I find records 11, 19(i) and 19(p) are exempt from disclosure under section 14(1) of the *Act*.

[39] As none of the presumptions in section 14(3) apply to records 10, 12, 13, 14, 15, 16, 17 (a-b), 18 (a-g), and 19 (a-h, j-o, and q), which I am considering under section 14(1), I must go on to consider whether any of the factors weighing for or against disclosure in section 14(2) apply to the personal information in those records.

[40] I have found the presumptions at section 14(3)(a), (c) and (f) apply to record 9. However, this record is subject to section 38(b) because it contains the appellant's personal information. Therefore, in deciding whether the disclosure of the personal information in the records would be an unjustified invasion of personal privacy under section 38(b), I must consider and weigh the factors and presumptions in sections 14(2) and (3) and balance the interests of the parties.¹³

[41] Section 14(2) lists factors that help in deciding whether disclosure would be an unjustified invasion of personal privacy. The factor at section 14(2)(f) weighs against disclosure if the personal information is highly sensitive. The board claims section 14(2)(f) applies to the personal information that remains at issue. I agree. The records that remain at issue¹⁴ contain personal complaints filed by tenants at an apartment regarding another tenant. The nature of the circumstances surrounding these complaints and the views of these individuals about their fellow tenant are, by their very nature, sensitive. Upon review of the records, and specifically these complaints, I find there is a reasonable expectation that the complainants will experience significant distress if their complaints

¹³ Order MO-2954.

¹⁴ Specifically records 9, 10, 12, 13, 14, 15, 16, 17 (a-b), 18 (a-g), and 19 (a-h and j-q).

and concerns and other personal information is disclosed to the appellant. I find this factor weighs heavily against disclosure of the personal information at issue.

[42] The board claims the factor weighing against disclosure at section 14(2)(h) is relevant because the personal information was supplied to the board by the individual to whom it relates in confidence. I accept the board's evidence in this respect. Given the nature of the personal information at issue, it is clear the tenants who submitted complaints and concerns about another tenant did so in confidence. Therefore, I find section 14(2)(h) weighs against disclosure of the personal information at issue.

[43] The appellant raises the application of the factors in sections 14(2)(b) and (d) in his representations, both of which weigh in favour of disclosure. Section 14(2)(b) is intended to weigh in favour of disclosure where disclosure of the personal information would promote public health and safety. In his representations however, the appellant focuses on his own personal health and safety. He does not provide any evidence to demonstrate how the disclosure of the personal information of other identifiable individuals would promote the health and safety of the public. In the absence of any further evidence, I find the factor weighing in favour of disclosure in section 14(2)(b) is not relevant in this appeal.

[44] Section 14(2)(d) weighs in favour of disclosure where the personal information is needed to allow the requester to participate in a court or tribunal process. The IPC uses a four-part test to decide whether this factor applies. For the factor to apply, all four parts of the test must be met:

1. Is the right in question a right existing in the law, as opposed to a non-legal right based solely on moral or ethical grounds?
2. Is the right related to a legal proceeding that is ongoing or might be brought, as opposed to one that has already been completed?
3. Is the personal information significant to the determination of the right in question?
4. Is the personal information required to prepare for the proceeding or to ensure an impartial hearing?¹⁵

[45] In his representations, the appellant asserts he needs the personal information at issue to help bolster his case before Tribunals Ontario. While I accept the appellant is or was a party to an ongoing proceeding with Tribunals Ontario, I find he did not provide evidence to demonstrate the specific personal information at issue in this appeal is required for him to prepare for the proceeding or to ensure an impartial hearing. I also find the appellant has not clearly explained how the specific personal information he is

¹⁵ See Order PO-1764; see also Order P-312, upheld on judicial review in *Ontario (Minister of Government Services) v. Ontario (Information and Privacy Commissioner)* (February 11, 1994), Toronto Doc. 839329 (Ont. Div. Ct.).

seeking access to is significant to the determination of the legal right in question. As all four parts of the test under section 14(2)(d) have not been met, I find the factor at section 14(2)(d) does not apply in the circumstances of this appeal.

Severance

[46] Section 4(2) of the *Act* obliges an institution to disclose as much of any responsive record as can be reasonably severed without disclosing material which is exempt. In his representations, the appellant claims the personal identifiers of individuals, such as their names or contact information could be disclosed without resulting in an unjustified invasion of personal privacy. I disagree. As stated above, the personal information at issue is not limited to the names or contact information of identifiable individuals. Rather, the information at issue also contains these individuals' views or opinions and other individuals' views or opinions about them. These records relate to complaints relating to a tenant in an apartment complex. Given these circumstances, I find the redaction of names and contact information would not serve to de-identify the individuals whose personal information is contained in the records.

Conclusion

[47] I have found that disclosure of the personal information in records 11, 19(i) and 19(p) would amount to a presumed unjustified invasion of personal privacy under sections 14(3)(a), (c) and (f). As a result, I find records 11, 19(i) and 19(p) are exempt under section 14(1).

[48] With regard to records 10, 12, 13, 14, 15, 16, 17 (a-b), 18 (a-g), and 19 (a-h, j-o, and q), I find the factors weighing against disclosure in sections 14(2)(f) and (h) apply and none of the factors favouring disclosure apply. Given these circumstances, I find records 10, 11, 12, 13, 14, 15, 16, 17 (a-b), 18 (a-g), and 19 (a-q) are exempt from disclosure under section 14(1) of the *Act*.

[49] With regard to record 9, I find the presumptions in sections 14(3)(a), (c), and (f) and the factors weighing against disclosure in sections 14(2)(f) and (h) apply. I further find none of the factors weighing in favour of disclosure apply. Overall, I find the balance weighs in favour of protecting the personal information at issue, rather than the appellant's access rights. As a result, subject to my consideration of the board's exercise of discretion, I find record 9 is exempt under section 38(b) of the *Act*.

Exercise of Discretion

[50] Section 38(b) of the *Act* is a discretionary exemption, which means the board can decide to disclose some or all of record 9 even if the information qualifies for exemption. Where an institution claims a discretionary exemption such as section 38(b), it must exercise its discretion.

[51] The board submits it considered the circumstances of the request, the purposes

of the *Act*, the nature of the exemptions, the importance of transparency, and the preservation of confidentiality of personal information especially in light of the sensitive nature of the circumstances surrounding the creation of the records and the personal information in question. The board submits that even if the information would be useful to the appellant, this fact does not diminish the privacy rights of the other identifiable individuals' whose personal information is in the records. The board submits there is no general value to the information to justify the disclosure of the personal information at issue to the appellant. Further, the board submits the safety of these individuals is paramount. The board takes the position that it exercised its discretion in good faith.

[52] The appellant did not submit representations on the board's exercise of discretion.

[53] Based on my review, I find the board exercised its discretion to withhold the personal information in record 9 properly. I find it considered the purposes of the *Act*, the sensitive nature of the personal information at issue, and balanced the appellant's right to access his personal information with the privacy interests of other individuals. I note the board disclosed all the appellant's personal information to him and only the personal information relating to other identifiable individuals remains at issue. I also find the board did not exercise its discretion to withhold the information in bad faith or for any improper purpose, and that there is no evidence that it failed to take relevant factors into account or considered irrelevant factors. Accordingly, I uphold the board's exercise of discretion in denying access to the personal information at issue in record 9.

Summary conclusion

[54] Above, I have found that the mandatory exemption section 14(1) applies to records 10, 11, 12, 13, 14, 15, 16, 17 (a-b), 18 (a-g), and 19 (a-q). I have also found that the discretionary exemption section 38(b) applies to the personal information at issue in record 9 and the board properly exercised its discretion in deciding not to disclose this information. Accordingly, I uphold the board's decision and dismiss the appeal.

ORDER:

The appeal is dismissed.

Original Signed by: _____

Justine Wai
Adjudicator

December 13, 2024 _____