

Information and Privacy Commissioner,  
Ontario, Canada



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

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## ORDER MO-4614

Appeal MA22-00667

Lanark County

January 15, 2025

**Summary:** An individual submitted a request to Lanark County (the county) under the *Municipal Freedom of Information and Protection of Privacy Act* for access to a specified rent form. The county issued a decision granting partial access to the rent form but withheld some personal information on the basis that its disclosure would be an unjustified invasion of personal privacy of the individuals to whom it relates.

In this order, the adjudicator upholds the county's decision not to grant access to some of the information on the rent form and dismisses the appeal.

**Statutes Considered:** *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, sections 2(1) (definition of *personal information*), 14(1), 14(3)(c), and 38(b).

### OVERVIEW:

[1] Lanark County (the county) received the following request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

... third party applicant information, and any other information that was redacted on the rent geared to income vacancy form.

[2] The county issued a decision denying access to the responsive record under the mandatory personal privacy exemption at section 14(1) of the *Act*.

[3] The appellant appealed the county's decision to the Information and Privacy Commissioner of Ontario (IPC) and a mediator was appointed to explore resolution.

[4] During mediation, the county indicated it was maintaining its decision to withhold information in the responsive record but confirmed that because the record also contains the personal information of the appellant, it is the discretionary personal privacy exemption at section 38(b) of the *Act* that should be considered.<sup>1</sup> Therefore, the issue to be decided in this appeal is whether section 38(b) applies to the withheld information.

[5] As a mediated resolution was not possible, the appeal was transferred to the adjudication stage, where an adjudicator may conduct an inquiry under the *Act*. I commenced an inquiry in which I sought representations from the parties about the issues in the appeal as set out in a Notice of Inquiry (NOI). The county submitted representations, which I shared with the appellant, inviting her representations. Despite numerous communications from the appellant, she did not respond directly to the questions set out in the NOI. The appellant made many claims and allegations in her communications. Although I have reviewed all her communications, in this order I will only refer to those most relevant to the issues in this appeal.

[6] In this order, I find that the discretionary personal privacy exemption at section 38(b) applies to the personal information at issue in this appeal, and I uphold the county's decision to withhold it.

## **RECORD:**

[7] The information at issue in this appeal is the withheld portions of the Rent-Geared-to-Income Vacancy Form (rent form).

## **ISSUES:**

- A. Does the rent form contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary personal privacy exemption at section 38(b) apply to the withheld information in the rent form?

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<sup>1</sup> When the record does not contain the appellant's personal information, it is the mandatory personal privacy exemption at section 14(1) that is considered.

## **DISCUSSION:**

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

[8] The county claims that the discretionary personal privacy exemption at section 38(b) applies to the information it withheld. For this section to apply, the IPC must first determine that the record contains “personal information,” and if so, to whom the personal information relates. 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.<sup>2</sup> Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.<sup>3</sup>

[9] Section 2(1) of the *Act* gives a list of examples of personal information.<sup>4</sup> The relevant portions are as follows:

“personal information” means recorded information about an identifiable individual, including,

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

(h) the individual’s name if 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.

[10] To qualify as personal information, it must be reasonable to expect that an individual may be identified if the information is disclosed.<sup>5</sup>

[11] 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.<sup>6</sup>

### ***Representations, analysis and findings***

[12] After reviewing the rent form at issue, I find that it contains the personal information of the appellant as well as that of three other identifiable individuals who

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<sup>2</sup> 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.

<sup>3</sup> Sections 14(1) and 38(b), as discussed below.

<sup>4</sup> 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.”

<sup>5</sup> Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

<sup>6</sup> Orders P-1409, R-980015, PO-2225, and MO-2344.

appear on the rent form.

[13] The county submits that the information at issue contains the personal information of the appellant and other identifiable individuals. The county submits that the rent form contains the names and phone numbers of the appellant and two individuals who qualify for the rent program, as well as the name and phone number of one of their close contacts.

[14] As noted above, the appellant did not respond directly to the NOI. However, the appellant claims that the rent form at issue contains her personal information.

[15] Based on my review of the rent form, I find that it contains the personal information of the appellant and three other identifiable individuals, including their phone number and their name along with other information about them. This personal information fits within paragraphs (d) and (h) of the definition of "personal information" in section 2(1) of the *Act*.

[16] From my review of the rent form, the county has disclosed all the appellant's personal information to her. The county has only withheld the personal information of the other identifiable individuals contained in the rent form, which is the only information remaining at issue in this appeal.

**Issue B: Does the discretionary personal privacy exemption at section 38(b) apply to the withheld information in the rent form?**

[17] The county submits that disclosure of the withheld personal information would be an unjustified invasion of the personal privacy of the other identifiable individuals whose information is contained in the rent form. As noted above, generally, the appellant's position is that she is entitled to her own personal information.

[18] 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.

[19] 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 information would be an "unjustified invasion" of the other individual's personal privacy.

[20] The section 38(b) exemption is discretionary. This means that the institution can decide to disclose another individual's personal information to a requester even if doing so would result in an unjustified invasion of the other individual's personal privacy.

[21] If disclosing another individual's personal information would not be an unjustified invasion of personal privacy, then the information is not exempt under section 38(b).

[22] Sections 14(1) to (4) provide guidance in deciding whether disclosure would be an unjustified invasion of another individual's personal privacy. If any of the section 14(1)(a) to (e) exceptions apply, disclosure would not be an unjustified invasion of personal privacy, and the information is not exempt from disclosure under section 38(b). Similarly, if any of the situations in section 14(4) apply, disclosure would not be an unjustified invasion of personal privacy under 38(b). In this appeal, neither party claims that the withheld information fits within any of the section 14(1) exceptions or that any of the situations in section 14(4) apply. From my review, I am satisfied that neither sections 14(1) nor (4) apply in the circumstances before me and will not discuss them further in this order.

[23] Sections 14(2) and (3) also help in deciding whether disclosure would or would not be an unjustified invasion of personal privacy under section 38(b). If any of sections 14(3)(a) to (h) apply, disclosure of the information is presumed to be an unjustified invasion of personal privacy under section 38(b). Section 14(2) lists various factors that may be relevant in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.<sup>7</sup> The list of factors is not exhaustive. The institution must also consider circumstances that are relevant, even if they are not listed under section 14(2).<sup>8</sup>

[24] 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.<sup>9</sup>

### ***Section 14(3)(c) presumption***

[25] The county submits that the section 14(3)(c) presumption applies to the withheld information. Section 14(3)(c) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information, relates to eligibility for social service or welfare benefits or to the determination of benefit levels[.]

[26] Previous IPC decisions have found that this presumption applies to information revealing an individual's eligibility for social service benefits related to rental subsidies<sup>10</sup> or rent-geared-to-income (RGI) housing.<sup>11</sup>

[27] Based on my review of the withheld personal information, I am satisfied that it

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<sup>7</sup> Order P-239.

<sup>8</sup> Order P-99.

<sup>9</sup> Order MO-2954.

<sup>10</sup> Order MO-1584-F.

<sup>11</sup> Order MO2594.

relates to eligibility for social service benefits, specifically RGI housing. The record at issue is an RGI Vacancy Form, which contains the withheld information at issue. The other identifiable individuals on the rent form are listed as applicants to an RGI housing program or a close contact of an applicant to the program. As noted above, RGI housing programs are considered social benefits. Therefore, I find that the withheld personal information is subject to section 14(3)(c) and its disclosure is presumed to be an unjustified invasion of the personal privacy of the other identifiable individuals in the rent form.

[28] Under section 38(b), the presumptions in section 14(3) must be weighed and balanced with any factors in section 14(2) that are relevant, as well as the interests of the parties.

[29] The appellant did not argue that any of the section 14(2) factors weighing in favour of disclosure apply to the withheld personal information, and I find that none apply in the circumstances of this appeal. I also considered whether any unlisted factors favouring disclosure, such as inherent fairness issues, apply, and I find that none apply in the circumstances of this appeal.

[30] The county argues that the factors at sections 14(2)(e) (pecuniary or other harm), 14(2)(f) (highly sensitive), 14(2)(h) (supplied in confidence), and 14(2)(i) (unfair damage to reputation) apply to the withheld personal information. These factors weigh against disclosure, if they are found to apply.

***Section 14(2)(h) (supplied in confidence)***

[31] Section 14(2)(h) states:

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, the personal information has been supplied by the individual to whom the information relates in confidence[.]

[32] The county argues that the section 14(2)(h) (supplied in confidence) factor applies to weigh against disclosure of the withheld personal information, because it was supplied by the other identifiable individuals to the county in confidence. The county submits that under the "Declaration and Consent to Collect, Use, and Disclose Personal Information" section of the RGI housing form, which the applicants signed, the use of personal information is very clearly laid out and does not mention the release of their personal information to other individuals. The county submits that based on the form, the applicants would have an expectation of confidentiality except for the clear exemptions provided in the form.

[33] As past orders have established, section 14(2)(h) applies if both the individual supplying the information and the recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Section

14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.<sup>12</sup>

[34] I find that the section 14(2)(h) factor applies in the circumstances and weighs against disclosure. The withheld personal information at issue is contained in an RGI housing form that includes the appellant and other identifiable individuals. In my view, a reasonable person would expect that the information the other identifiable individuals supplied to the county would be kept confidential, especially given the language used in the RGI housing form that they signed. Based on my review of the withheld personal information and the representations of the county, I am satisfied that the personal information was provided in circumstances where there was a reasonable expectation of confidentiality. Therefore, I find that the factor in section 14(2)(h) applies to the withheld personal information in this appeal and weighs against its disclosure.

### ***Conclusion***

[35] I have found that the presumption against disclosure at section 14(3)(c) applies to the withheld information and the section 14(2)(h) factor applies to weigh against disclosure. As no factors, listed or unlisted, weighing in favour of disclosure apply, I do not need to consider whether all the other section 14(2) factors argued by the county weighing against disclosure apply to the personal information at issue.

[36] Balancing the interests of the parties, the facts of this appeal weigh against disclosure of the withheld personal information at issue. I find that disclosure of the withheld personal information would constitute an unjustified invasion of the personal privacy of identifiable individuals other than the appellant whose personal information is contained in the rent form. Therefore, subject to my finding on the county's exercise of discretion below, I find that the withheld personal information is exempt from disclosure under the discretionary personal privacy exemption at section 38(b) of the *Act*.

### ***Exercise of discretion***

[37] The section 38(b) exemption is discretionary, meaning that the county can decide to disclose information even if the information qualifies for exemption. The county must exercise its discretion. On appeal, I may determine whether the county failed to do so.

[38] The county states that it properly exercised its discretion under section 38(b) to withhold the personal information of the other identifiable individuals contained in the rent form from the appellant. The county states that it did not exercise its discretion in bad faith or for an improper purpose and that it balanced the privacy of the other individuals with the appellant's right to access her own information. The county submits that it disclosed all the appellant's personal information to her and only withheld the personal information of the other identifiable individuals.

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<sup>12</sup> Order PO-1670.

[39] The appellant did not specifically address the county's exercise of discretion.

[40] After considering the county's representations and the circumstances of this appeal, I find that the county did not err in its exercise of discretion with respect to its decision to deny access to the withheld personal information of the other identifiable individuals contained in the rent form under section 38(b) of the *Act*. I am satisfied that the county considered relevant factors and did not consider irrelevant factors in its exercise of discretion. In particular, it is evident that the county considered the fact that the rent form contains the appellant's own personal information. I am satisfied that the county disclosed all the appellant's information and only withheld the personal information of the other identifiable individuals contained in the rent form.

[41] Accordingly, I find that the county exercised its discretion in an appropriate manner in this appeal, and I uphold it.

**ORDER:**

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

Original Signed by: \_\_\_\_\_  
Anna Truong  
Adjudicator

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January 15, 2025