

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4616

Appeal MA24-00255

Town of the Blue Mountains

January 17, 2025

Summary: The appellant made a request to the Town of Blue Mountains (the town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the video recordings of a hearing into a by-law infraction. The town denied access to these videos pursuant to section 8(1)(a) of the *Act* on the basis that disclosure could reasonably be expected to interfere with a law enforcement matter.

In this order, the adjudicator finds that disclosure of the video recordings could not reasonably be expected to interfere with a law enforcement matter, and she orders the town to disclose them to the appellant.

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), 8(1)(a), and 38(a).

OVERVIEW:

[1] An individual made a request to the Town of the Blue Mountains (the town) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to the video recordings of three virtual hearings relating to a by-law infraction for failure to comply with the town's short-term accommodation by-law.

[2] The town issued a decision denying access to the requested video files in their entirety, pursuant to section 8(1)(a) of the *Act* on the basis that disclosure could reasonably be expected to interfere with a law enforcement matter.

[3] The requester, now the appellant, appealed the town's decision to the Information and Privacy Commissioner (the IPC) and a mediator was assigned to attempt a resolution of this appeal.

[4] During mediation, the town confirmed that because the video recordings contain the appellant's own personal information, the law enforcement exemption at section 8(1)(a) should be read with section 38(a) (discretion to refuse a requester's own personal information).

[5] The appeal was moved to the adjudication stage where an adjudicator may conduct an inquiry. I began my inquiry by seeking the town's representations. After receipt of the town's representations, I determined that it was not necessary to seek representations from the appellant as I decided that the town had not met its burden of proof under section 42 of the Act.¹

[6] In this order, I find that the section 8(1)(a) law enforcement exemption does not apply to the video recordings, and I order the town to disclose them to the appellant.

RECORDS:

[7] At issue are the videos of three separate sessions of a virtual hearing contesting a monetary penalty imposed on an incorporated company (the company) for failure to comply with the town's short-term accommodation by-law (the video recordings).

ISSUES:

- A. Do the video recordings contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- B. Does the discretionary section 8(1)(a) law enforcement exemption apply to the video recordings?

DISCUSSION:

Issue A: Do the video recordings contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?

[8] 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

¹ Section 42 provides that where an institution refuses access to a record or part of a record, the burden of proof that the record or part of the record falls within one of the specified exemptions in the *Act* lies upon the institution.

the personal information relates.

[9] Section 2(1) of the Act defines “personal information” as “recorded information about an identifiable individual.”

[10] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.²

[11] 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.³

[12] 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.⁴

[13] 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.⁵

[14] Section 2(1) of the Act gives a non-exhaustive list of examples of personal information.⁶

² See the definition of “record” in section 2(1).

³ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225. See also sections 2(2.1) and (2.2), which state:

(2.1) 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.

(2.2) For greater certainty, subsection (2.1) applies even if an individual carries out business, professional or official responsibilities from their dwelling and the contact information for the individual relates to that dwelling.

⁴ Orders P-1409, R-980015, PO-2225 and MO-2344.

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

⁶ Section 2(1) states:

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

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

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

(e) the personal opinions or views of the individual except if they relate to another individual,

[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.⁷ Also, if the record contains the personal information of other individuals, one of the personal privacy exemptions might apply.⁸

[16] I asked the town to respond to the following questions in its representations:

- Do the records contain "personal information"? If so, whose personal information is it? Please explain.
- Is it reasonable to expect that an individual may be identified from the information? Please explain.
- Is the information about an individual in a personal capacity, or in a professional, official or business capacity? Please explain.
- If the information is about an individual in a professional, official or business capacity, does the information reveal something of a personal nature about the individual? Please explain.

[17] In response, the town did not respond directly to any of those questions. The town states that the records only contain the personal information of the appellant and not of any other individuals. However, it submits that there is recorded information in the records that may identify the by-law officer, the administrative assistant for by-law, as well as the screening officer.

Findings

[18] Based on my review of the video recordings at issue and the town's representations, I find that the records do not contain the personal information of either the appellant or other identifiable individuals.

[19] The video recordings are recordings of the screening hearing conducted by the town regarding the fine imposed on the company for a short-term accommodation by-

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(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.

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."

⁷ 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.

⁸ See sections 14(1) and 38(b).

law infraction. The appellant was present throughout this hearing, which ran approximately 140 minutes over three different dates.

[20] In the video recordings, the appellant appears in their capacity as a director of the company fined for the by-law infraction that was being adjudicated upon in the hearings. The other individuals in the video recordings were acting as representatives of the town, namely the town's by-law officer, manager of planning, by-law supervisor, and by-law administrative assistant. Also appearing in the video recordings is an independent adjudicator (referred to as a screening officer) who was the decision-maker in the matter.

[21] This information in the video recordings relates to all the individuals in a professional, official or business capacity, and does not reveal something of a personal nature about these individuals.

[22] I find that the records do not contain the personal information of identifiable individuals, therefore, section 38(a) which considers an individual's access to their own personal information does not apply in this appeal.

[23] I will now consider whether the discretionary law enforcement in section 8(1)(a) applies to the video recordings.

Issue B: Does the discretionary section 8(1)(a) law enforcement exemption apply to the video recordings?

[24] In this case, the town relies on section 8(1)(a), to exempt some of the information from the video recordings. That section reads:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

interfere with a law enforcement matter;

[25] The term "law enforcement"⁹ is defined in section 2(1):

"law enforcement" means,

(a) policing,

(b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, or

(c) the conduct of proceedings referred to in clause (b)

[26] The IPC has found that "law enforcement" can include a municipality's

⁹ The term "law enforcement" appears in many, but not all, parts of section 8.

investigation into a possible violation of a municipal by-law.¹⁰

[27] The law enforcement exemption must be approached in a sensitive manner because it is hard to predict future events in the law enforcement context, and so care must be taken not to harm ongoing law enforcement investigations.¹¹

[28] However, the exemption does not apply just because a continuing law enforcement matter exists.¹² Many of the section 8 exemptions (including section 8(1)(a)) apply where a certain event or harm “could reasonably be expected to” result from disclosure of the record. Parties resisting disclosure of a record cannot simply assert that the harms under section 8 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 8 are self-evident and can be proven simply by repeating the description of harms in the Act.¹³

[29] Parties resisting disclosure must show that the risk of harm is real and not just a possibility.¹⁴ 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.¹⁵

[30] For section 8(1)(a) to apply, the law enforcement matter must still exist or be ongoing.¹⁶ This exemption does not apply once the matter is completed, nor where the alleged interference is with “potential” law enforcement matters.¹⁷ “Matter” has a broader meaning than “investigation” and does not always have to mean a specific investigation or proceeding.¹⁸

[31] I asked the town to respond to the following questions in its representations:

- Is the matter in question an ongoing “law enforcement matter”? Please explain.
- What is the “law enforcement matter”? Please explain.

¹⁰ Orders M-16 and MO-1245.

¹¹ *Ontario (Attorney General) v. Fineberg* (1994), 19 O.R. (3d) 197 (Div. Ct.).

¹² Order PO-2040 and *Ontario (Attorney General) v. Fineberg*, cited above.

¹³ Orders MO-2363 and PO-2435.

¹⁴ *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹⁵ *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.

¹⁶ Order PO-2657.

¹⁷ Orders PO-2085 and MO-1578.

¹⁸ *Ontario (Community Safety and Correctional Services)*, 2007 CanLII 46174 (ON SCDC)

- Could disclosure of the record reasonably be expected to interfere with the law enforcement matter? Please explain.

[32] The town did not respond to these questions or explicitly explain how section 8(1)(a) applies to the recordings. The only direct reference I can find in the town's representations that might address its claim that section 8(1)(a) applies is the town statement that:

The release of the recording may reveal investigative techniques and procedures currently in use or likely to be used in law enforcement matters (Screening and Hearing procedures).

Findings

[33] Section 8(1)(a) allows a head to refuse to disclose a record if disclosure could reasonably be expected to either interfere with a law enforcement matter; or interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result. To claim this, the institution must show that the law enforcement matter or investigation is ongoing, and that disclosure of the requested records could reasonably be expected to interfere with same.

[34] In this appeal, what is at issue are the video recordings of a hearing by an independent adjudicator adjudicating upon the appropriateness of a monetary penalty imposed by the town.

[35] Although, as set out above, the term "law enforcement" can include a municipality's investigation into a possible violation of a municipal by-law, this is not the case here as the investigation has been concluded. As well, the screening hearing that is the subject matter of the video recordings into the alleged by-law infraction has been concluded.

[36] The town has not identified any ongoing law enforcement matter or investigation as it relates to the records at issue. Although the appellant can seek a further hearing before a separate decision-maker on the by-law infraction penalty, the town has indicated that the records at issue cannot be used at any subsequent hearing.

[37] Instead, the town refers generally to hearing and screening procedures without identifying how these procedures are law enforcement matters or investigations within the meaning of section 8(1)(a). Nor is the same apparent to me from my review of the video recordings.

[38] Even if it could be said that the records relate to an ongoing law enforcement matter or investigation, the town has not provided evidence as to how disclosure of the requested video recordings could reasonably be expected to interfere with a law enforcement matter or investigation. Nor can I ascertain from my review of the records that disclosure could reasonably be expected to interfere with a law enforcement matter

or investigation.

[39] For the reasons set out above, I find that the discretionary law enforcement exemption in section 8(1)(a) does not apply, and the video recordings are not exempt under this exemption. As no other exemptions have been claimed for the three video recordings at issue in this appeal, I will order the town to disclose them to the appellant.

ORDER:

1. I order the town to disclose the video recordings to the appellant **by February 24, 2025.**
2. In order to verify compliance with provision 1 of this order, I reserve the right to require the town to provide me with a copy of the records that it disclosed to the appellant.

Original Signed by: _____

Diane Smith
Adjudicator

January 17, 2025