

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4648

Appeal MA23-00698

City of Toronto

April 29, 2025

Summary: An individual made a request to the City of Toronto, under the *Municipal Freedom of Information*, for access to building permit drawings and plans for his neighbours' house. The city decided to grant access to the records in full.

The neighbours appealed the city's decision, claiming that disclosure of the records would be an unjustified invasion of their personal privacy under section 14(1) and that they contain third party information exempt under section 10(1). The neighbours also claimed that the disclosure of the records would be a threat to their safety or health under the discretionary exemption at section 13 and that they should be permitted to raise the application of this discretionary exemption. Finally, the neighbours argued that the requester's request for access to records about their house was frivolous or vexatious under section 4(1)(b).

In this order, the adjudicator finds that the information at issue in the records is not personal information and therefore, cannot be exempt from disclosure under section 14(1). She also finds that the information is not third party information exempt under section 10(1). The adjudicator determines that the appellants should not be permitted to raise the application of the discretionary section 13 exemption and that they are not permitted to deem the appellant's request frivolous or vexatious under section 4(1)(b). She orders the city to disclose the information at issue in the records to the requester.

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), 4(1)(b), 10(1), and 13.

Orders Considered: Orders 23, MO-2792, P-1137, and PO-3917.

OVERVIEW:

[1] The requester, whose home shares a wall with his neighbours' house, sought access to his neighbours' building permit drawings and plans from the City of Toronto (the city) under the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA or the *Act*).

[2] Prior to issuing its decision, the city notified the requester's neighbours under section 21(1) of the *Act*, seeking their views on the disclosure of the records at issue. The neighbours submitted representations objecting to the disclosure of the records.

[3] Following consideration of the requester's neighbours' representations, the city subsequently issued a decision granting the requester access to the records in their entirety.

[4] The neighbours, now the appellants, appealed the city's decision to the Information and Privacy Commissioner of Ontario (the IPC).

[5] During mediation, the appellants advised the mediator that, in their view, the mandatory exemptions at section 14(1) (personal privacy) and section 10(1) (third party information) apply to the records at issue. The appellants also advised that they are of the view that the discretionary exemption at section 13(1) (threat to safety or health) applies to the records. The appellants also claimed that the request is frivolous or vexatious under section 4(1)(b) of the *Act*.

[6] As a mediated resolution could not be reached, this file proceeded to the adjudication stage of the appeal process where an adjudicator may conduct an inquiry. I sought and received representations from both the appellants and the requester, which were exchanged between them in accordance with the IPC's *Practice Direction 7*.¹

[7] In his representations, the requester stated that he does not seek access to the appellants' names, phone numbers, and email addresses. As such, this information is no longer at issue in this appeal.

[8] In this order, I find that the records do not contain personal information and therefore, the mandatory exemption for personal information at section 14(1) does not apply. I also find that the records are not exempt under the mandatory third party exemption at section 10(1). In addition, I find that, in the circumstances of this appeal, the appellants are not allowed to raise the application of the discretionary exemption at section 13(1). Finally, I find that the appellants are not permitted to deem the request frivolous or vexatious under section 4(1)(b).

¹ Portions of the appellants' representations were confidential and not shared with the requester. They will not be set out in this order. I did not seek representations from the city.

RECORDS:

[9] The records at issue consist of 40 pages of building drawings and plans of the appellants' home submitted to the city as part of a building permit application.

ISSUES:

- A. Does the mandatory exemption at section 10(1) for third party information apply to the records?
- B. Do the records contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- C. Should the appellants be permitted to claim the application of the discretionary section 13 exemption regarding a threat to safety or health?
- D. Should the appellants be permitted to claim that the requester's access request is "frivolous or vexatious" under section 4(1)(b) of the Act?

DISCUSSION:

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

[10] The purpose of section 10(1) is to protect certain confidential information that businesses or other organizations provide to government institutions,² where specific harms can reasonably be expected to result from its disclosure.³

[11] 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,

- (a) prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization;

² *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.*).

³ Orders PO-1805, PO-2018, PO-2184 and MO-1706.

(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.

[12] 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.

Representations

[13] The appellants are the owners of the home whose building drawings are being sought in this request. They state that they commissioned and paid for the requested building drawings and plans which were prepared by their architect, their structural engineer, and their HVAC designer for the purposes of construction and meeting all building requirements. They also state that the drawings are copyrighted by the architect, engineer, and designer.

[14] The requester states that the *Act* does not permit information to be exempt from the disclosure based on who purchased or paid for the source materials. He submits that any copyright claim, if such exists, restricts the resale and or reuse of the work product to build another home, not the disclosure of records themselves.

[15] In reply, the appellants submit that the city is not permitted to disclosure the drawings and plans because:

These documents are the copyright property of the consultant and are to be used only for the project for which they were originally purchased and by the original purchaser. They may not be copied in any way, shape, or form, in whole or in part...

Part 1: type of information

[16] Neither party provided specific representations addressing part 1 of the test for section 10(1) to apply. This part of the test requires that the information at issue qualifies as one of the listed types of information.

[17] I have reviewed the records and find they contain technical information related to the construction of a home.⁴ The IPC has described technical information as follows:

Technical information is information belonging to an organized field of knowledge in the applied sciences or mechanical arts. Examples of these fields include architecture, engineering or electronics. Technical information usually involves information prepared by a professional in the field, and describes the construction, operation or maintenance of a structure, process, equipment or thing.⁵

[18] As the records are building permit plans and drawings and describe the construction of a structure (the appellants' home), I accept that they are technical information within the meaning of the accepted definition of that term. Therefore, I find that the first part of the section 10(1) test has been met.

Part 2: supplied in confidence

Supplied

[19] 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 parties.⁶

[20] 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.⁷

In confidence

[21] The party arguing against disclosure must show that both the individual supplying the information expected the information to be treated confidentially, and that their expectation is reasonable in the circumstances. This expectation must have an objective basis.⁸

[22] Relevant considerations in deciding whether an expectation of confidentiality is

⁴ Order PO-2010.

⁵ Order PO-2010.

⁶ Order MO-1706.

⁷ Orders PO-2020 and PO-2043.

⁸ Order PO-2020.

based on reasonable and objective grounds include whether the information:

- was communicated to the institution on the basis that it was confidential and that it was to be kept confidential,
- was treated consistently by the third party in a manner that indicates a concern for confidentiality,
- was not otherwise disclosed or available from sources to which the public has access, and
- was prepared for a purpose that would not entail disclosure.⁹

[23] Based on the parties' representations, I am satisfied that the records were supplied to the city, but I find that they were not supplied in confidence. I therefore find that part two of the three-part test in section 10(1) has not been met.

[24] The only representations before me regarding confidentiality are the appellants' representations, in which they say that the records are copyrighted.

[25] There is no persuasive evidence before me from the appellants or from my review of the records themselves, that the records were supplied to the city on the basis that they were confidential and were to be kept confidential. There is also no evidence before me that demonstrates that they were treated consistently by the appellants in a manner that indicated a concern for confidentiality.

[26] The appellants have not provided evidence to demonstrate that they and the city had a mutual reasonable expectation that the residential building drawings and plans associated with the permit application were to be treated confidentially, were prepared for a purpose that would not entail disclosure, or that there was an objective basis for such an expectation.

[27] As noted above, the party opposing the disclosure must show that both the individual supplying the information (the appellants in this case) and the recipient (the city) had a reasonable expectation that the information would be treated confidentially, and that this expectation has an objective basis.

[28] The fact that information contained in the records may be subject to copyright, while it may suggest some measure of ownership, it does not, in and of itself, provide a basis to deny access to the information under the provisions of the *Act*, or oust the *Act's* application.¹⁰

[29] The appellants have provided no information about the circumstances surrounding

⁹ Orders PO-2043, PO-2371 and PO-2497, upheld in *Canadian Medical Protective Association v. Loukidelis*, 2008 CanLII 45005 (ON SCDC).

¹⁰ Order MO-2635.

the submission of the records to the city from which any implied assurance of confidentiality could be inferred, or that any express assurances were given, or that the appellants' expectation was reasonable in the circumstances.

[30] Accordingly, while I accept that the appellants supplied the records to the city, I have insufficient evidence on which to conclude that it did so in confidence. I therefore find that part two of the three-part test in section 10(1) has not been met. Since all three parts of the test must be met, I find that the records are not exempt under section 10(1) of the *Act*.

Part 3: harms

[31] Because I have found that part two of the test for exemption under section 10(1) has not been met, it is not necessary for me to consider part three. In any event, there is insufficient evidence for me to find, based on the appellants representations and my review of the records, that disclosure could reasonably be expected to result in any of the harms listed under section 10(1).

[32] 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*.¹¹

[33] Parties resisting disclosure must show that the risk of harm is real and not just a possibility,¹² although they do not have to prove that disclosure will in fact result in harm.

[34] The appellants have not provided details about the risk of harm under section 10(1), beyond inferring that there may be a copyright infringement issue if the records are disclosed. As noted above, the appellants must show that the risk of harm is real under the *Act*, and not just a possibility. As well, as noted above, the fact that information contained in the records may be subject to copyright, does not, in and of itself, provide a basis to deny access to the information under the provisions of the *Act*, or oust the *Act's* application.¹³

[35] In the circumstances, I find that there is insufficient evidence before me that any of the harms listed in section 10(1) can reasonably be expected to result from disclosure of the requested records. Therefore, I find that section 10(1) does not apply to the records.

¹¹ Orders MO-2363 and PO-2435.

¹² *Merck Frosst Canada Ltd. v. Canada (Health)*, [2012] 1 S.C.R. 23.

¹³ Order MO-2635.

Issue B: Do the records contain “personal information” as defined in section 2(1) and, if so, whose personal information is it?

[36] The appellants also submit that the records contain their personal information which, if disclosed would be an unjustified invasion of their personal privacy under section 14(1) of the *Act*.

[37] For section 14(1) to apply the record must contain “personal information.”

[38] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” Section 2(1) of the *Act* gives a list of examples of personal information.

[39] “Recorded information” is information recorded in any format, such as paper records, electronic records, digital photographs, videos, or maps.¹⁴

[40] 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.¹⁵ 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.

[41] 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.¹⁶

[42] 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.¹⁷

[43] The list of examples of personal information under section 2(1) is not a complete

¹⁴ See the definition of “record” in section 2(1).

¹⁵ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

¹⁶ Orders P-1409, R-980015, PO-2225 and MO-2344.

¹⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

list. This means that other kinds of information could also be “personal information.”¹⁸

Representations

[44] The appellants state that the records contain the following information which is private and personal:

 Their full names, phone numbers, and email addresses as well as those of their architect and contractors; and,

 Personal information about their private living quarters such as their sleeping locations and those of their children.

[45] As stated above, the requester confirmed that he does not seek access to the appellants’ names, phone numbers, and email addresses and this information was removed from the scope of this appeal. The appellants submit that disclosure of the remainder of the information in the records would not reveal any information about the appellants or their family members.

Analysis and findings

[46] At issue are building permit plans and drawings where the appellants’ (the homeowners’) names, phone numbers, and email addresses have been severed. For the reasons that follow, I find that the information at issue in the records is not personal information of identifiable individuals in their personal capacity. Instead, I find that the information is about a property.

[47] Regarding the appellants’ concern that the plans would reveal where their family’s sleeping quarters are, I agree with the findings in Order MO-2792. In that order, the records at issue were also drawings and plans.

[48] The appellant in that order submitted that the details of his house design, particularly the interior plan drawings and structural plan drawings, should be regarded as personal information as they included information about where their children would be sleeping. The adjudicator in Order MO-2792, relying on Order 23, found that this information was not personal information.

[49] In Order 23, former Commissioner Sidney B. Linden raised the issue of distinguishing between “personal information” and information concerning residential properties. Mr. Linden considered the introductory wording of section 2(1) of the *Act*, which defines “personal information” as “...any recorded information about an identifiable individual...” Former Commissioner Linden concluded that the information in that appeal, a building plan, was information about a property and not about an identifiable individual.

¹⁸ Order 11.

[50] Many IPC orders,¹⁹ relying on Order 23, have found that permit drawings and plans do not contain “personal information” within the meaning of section 2(1) of the *Act*, as there is no basis to believe that the particulars of this specific residential property would reveal anything of a personal nature “about” the homeowner appellant.

[51] In this appeal, as was the case in Order 23, the records here are permit drawing and plans. Following the reasoning in this order, I find that the records in this appeal are not “personal information” within the meaning of section 2(1) of the *Act*, as there is no basis to believe that the particulars of this specific residential property would reveal anything of a personal nature “about” the appellants.

[52] The records also contain information about the professionals who prepared the records. This is also not personal information primarily because it is the type of information contemplated section 2(2.1), being information about them in a professional or business capacity. As well, this information does not reveal anything personal about them. Therefore, the personal privacy exemption cannot apply to this information.

[53] Therefore, based on my review of the records at issue, the drawing and plans for the appellants’ home, I find that the information at issue in the records is not personal information and is instead about the appellants’ property, or in the case of the professionals who prepared the records, their business or professional information. Accordingly, I find that the records do not contain “personal information” within the meaning of section 2(1) of the *Act*.

[54] As the mandatory exemption in section 14(1) can only apply to personal information and I find that the information remaining at issue is not personal information, I find that it is not exempt under that section.

Issue C: Should the appellants be permitted to claim the application of the discretionary section 13 exemption regarding a threat to safety or health?

[55] The appellants take the position that the discretionary exemption in section 13 applies to the records. Section 13 is meant to protect individuals from serious threats to their health or safety resulting from disclosure of a record. It states:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

[56] Section 13 is a discretionary exemption. Some exemptions in the *Act* are mandatory; if a record qualifies for exemption under a mandatory exemption, the head of an institution “shall” refuse to disclose it. However, a discretionary exemption uses the word “may” and in choosing that language, the Legislature expressly contemplated that the head of the institution retains the discretion to claim (or not) such an exemption to

¹⁹ See for example, Orders MO-2081 and MO-2695.

support its decision to deny access to a record.

[57] A number of past orders have considered the issue of whether a party other than the institution can claim a discretionary exemption.²⁰ Generally, where a third party raises the possible application of a discretionary exemption, the adjudicator must consider the situation before her in the context of the purposes of the *Act* in order to decide whether the appeal might constitute the “most unusual of circumstances.”

[58] As noted in Order P-1137, the adjudicator considered whether an affected party may raise a discretionary exemption when it was not claimed by the institution which received the request for access to information. She stated:

The [provincial *Freedom of Information and Protection of Privacy Act (FIPPA)*] includes a number of discretionary exemptions within sections 13 to 22 [sections 7 to 15 of *MFIPPA*] which provide the head of an institution with the discretion to refuse to disclose a record to which one of these exemptions would apply. These exemptions are designed to protect various interests of the institution in question. If the head feels that, despite the application of an exemption, a record should be disclosed, he or she may do so. In these circumstances, it would only be in the most unusual of situations that the matter would come to the attention of the Commissioner’s office since the record would have been released.

The *Act* also recognizes that government institutions may have custody of information, the disclosure of which would affect other interests. Such information may be personal information or third party information. The mandatory exemptions in sections 21(1) and 17 [section 14(1) and 10 of *MFIPPA*] of [*FIPPA*] respectively are designed to protect these other interests. Because the Office of the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario’s access and privacy scheme, the Commissioner’s office, either of its own accord, or at the request of a party to an appeal, will raise and consider the issue of the application of these mandatory exemptions. This is to ensure that the interests of individuals and third parties are considered in the context of a request for government information.

Because the purpose of the discretionary exemptions is to protect institutional interests, it would only be in the most unusual of cases that an affected person could raise the application of an exemption which has not been claimed by the head of an institution. Depending on the type of information at issue, the interests of such an affected person would usually

²⁰ See Orders MO-2635, MO-2792, P-1137, PO-1705, PO-3489, PO-3512, PO-3841, and PO-4084.

only be considered in the context of the mandatory exemptions in section 17 or 21(1) of [*FIPPA*, the equivalent to sections 10 and 14(1) of *MFIPPA*].

[59] I agree with and adopt the reasoning of the adjudicator in Order P-1137.

[60] Despite being asked, the appellants did not provide representations on whether they should be permitted to raise the discretionary exemption in section 13 and, if so, why that exemption applies to the records at issue. Instead, their representations focus on building-related issues that they have had with the requester. Rather than providing an explanation of why these circumstances are one of the rare situations where a third party should be permitted to raise a discretionary exemption, the appellants have instead discussed how the requester has undergone construction in his house.

[61] As previous orders of this office have stated, the general rule is that the responsibility rests with the head of an institution to determine which, if any, discretionary exemptions should apply to a particular record.²¹

[62] I have considered the appellants' representations in conjunction with the records at issue and the circumstances of this appeal. In my view, the circumstances before me do not amount to one of the "most unusual of cases" where an affected party - in this case the appellants - can raise the possible application of a discretionary exemption, in this case section 13, not relied on by the city. The appellants have not offered sufficient evidence to demonstrate that there is something extraordinary about the circumstances of this appeal, and therefore I find that they are not permitted to raise the discretionary exemption at section 13.

[63] In any event, even if I had allowed the appellants to raise the application of section 13, in the absence of detailed evidence, I would not have found that the exemption applied to the records. Parties resisting disclosure of a record under section 13 cannot simply assert that the harms 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 13 are self-evident and can be proven simply by repeating the description of harms in the *Act*.²²

[64] The appellants, by providing representations about building issues and not the actual information in the records themselves, have not provided the requisite detailed evidence under section 13 for that exemption to apply.

[65] Therefore, even if I had allowed the appellants to raise the application of the discretionary exemption in section 13, in the absence of more detailed evidence from the appellants that disclosure of the records could reasonably be expected to seriously threaten the safety or health of an individual, I would have found that this exemption

²¹ Orders PO-3601 and PO-4075.

²² Orders MO-2363 and PO-2435.

does not apply.

Issue D: Should the appellants be permitted to claim that the requester's access request is "frivolous or vexatious" under section 4(1)(b) of the *Act*?

[66] The appellants claim that the requester's access request is "frivolous or vexatious". Section 4(1)(b) of the *Act* provides institutions with a straightforward way of dealing with frivolous or vexatious requests. This section reads:

Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,

the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.

[67] Section 5.1 of Regulation 823 under the *Act* elaborates on the meaning of the phrase "frivolous or vexatious":

A head of an institution that receives a request for access to a record or personal information shall conclude that the request is frivolous or vexatious if,

(a) the head is of the opinion on reasonable grounds that the request is part of a pattern of conduct that amounts to an abuse of the right of access or would interfere with the operations of the institution; or

(b) the head is of the opinion on reasonable grounds that the request is made in bad faith or for a purpose other than to obtain access.

[68] According to section 4(1)(b), the discretionary power in section 4(1)(b) rests with the head of an institution, not third parties.

[69] The appellants, being third parties in this appeal, were asked to provide representations explaining why, in the circumstances, they should be permitted to claim section 4(1)(b). They were asked to consider paragraph 39 of Order PO-3917,²³ where the adjudicator found that the discretionary power in the provision equivalent of section 4(1)(b)²⁴ rests with the head of an institution, not with third parties. This paragraph reads:

However, the wording of section 10(1)(b) makes it clear that this provision can only be invoked if the head of an institution is of the opinion on reasonable grounds that the request for access is frivolous or vexatious. In other words, the discretionary power in section 10(1)(b) rests with the head

²³ See Order PO-3917.

²⁴ Section 4(1)(b) of *MFIPPA* is the equivalent to section 10(1)(b) of *FIPPA*.

of an institution, not with the third parties. The head of the ministry did not claim that the requester's request for records relating to the company is frivolous or vexatious for the purposes of section 10(1)(b). I find, therefore, that the private company is not entitled to raise section 10(1)(b) in the circumstances of this appeal, and I will not consider whether the requester's request for access to records is "frivolous."

[70] The appellants did not provide representations explaining why, in the circumstances when the city did not claim that the requester's request is frivolous or vexatious for the purposes of section 4(1)(b), they should be permitted to claim the application of this section. I find that this discretionary power rests with the city.

[71] As a result, in accordance with the wording of section 4(1)(b), and in the absence of representations from the appellants as to why they should be allowed to claim the application of this section, I find that the appellants cannot claim that the requester's access request is "frivolous or vexatious" under section 4(1)(b) of the *Act*.

ORDER:

1. I order the city to disclose the records to the requester, having redacted the appellants' names, phone numbers, and email addresses, by **June 3, 2025** but not before **May 29, 2025**.
2. In order to verify compliance with this order, I reserve the right to require the city to provide me with a copy of the records disclosed to the requester.

Original Signed by: _____

Diane Smith
Adjudicator

April 29, 2025