

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4665

Appeal MA22-00725

Town of Petrolia

June 12, 2025

Summary: The Town of Petrolia received a request under the *Act* for access to a letter from the mayor to a town councillor. The town denied access to the record arguing it is an employment related record and excluded from the application of the *Act* under section 52(3) of the *Act*. The town also claimed that the mandatory personal privacy exemption at section 14(1) applies to the record.

The adjudicator does not uphold the town's claim of the employment record exclusion in section 52(3). She finds that the councillor, as an elected individual, was not a town employee and the letter is not an employment record. The adjudicator finds that the letter is not exempt under section 14(1) because the councillor consented to the disclosure of his personal information and the exception at section 14(1)(a) applies. She orders the town to disclose the letter to the appellant.

Statute 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"), 14(1), 15(a), and 52(3)3.

Order Considered: Order MO-1264.

OVERVIEW:

[1] This order addresses a claim that an elected councillor is a municipal employee, and that the councillor's consent to have his personal information in a record disclosed can be overridden by the refusal of the mayor, whose personal information is not in the

record.

[2] The Town of Petrolia (the town) received a request under the *Act* for:

1. The agreement signed between Mayor [named individual] and Councillor [named individual] in [month and year] which banned the Councillor from attending in camera meetings.
2. Councillor [named individual's] attendance record for in camera [that is, closed] meetings since [month and year].

[3] The town issued a decision denying access to "the agreement" under the exclusion at section 52(3)3 (employment or labour relations) and the mandatory personal privacy exemption at section 14(1) of the *Act*.¹ Although the requester and the town both refer to this record as an agreement, the record is, in fact, a letter. In its decision, the town commented on public and closed council meetings but did not comment on the attendance records of in-camera meetings requested.

[4] The requester, now the appellant, appealed the town's decision to the Information and Privacy Commissioner of Ontario (IPC).

[5] The IPC appointed a mediator to explore resolution. During mediation, the town maintained its position about the letter. It also clarified that it was relying on the discretionary exemption at section 15(a) (information published or available to the public) of the *Act* to deny access to the councillor's attendance record. The appellant raised the public interest override at section 16 of the *Act*. A mediated resolution was not achieved and the file moved to the adjudication stage, where an adjudicator may conduct an inquiry.

[6] I conducted a written inquiry under the *Act* and obtained written representations on the issues below from the town and then from the appellant. Each party had a chance to review the representations of the other. The town declined to provide reply representations.

[7] After further considering the letter, I invited the councillor, as a party whose interests could be affected by disclosure, to provide representations or to consent to disclosure of the letter. In response, the councillor consented to disclosure. I advised the town and the appellant that the affected party does not object to disclosure. I then asked the town to confirm whether it would revise its position; the town indicated that it would not because the mayor does not consent to disclosure.

[8] In addition, after further considering the parties' representations about the in-camera attendance records and section 15(a), I removed the section 15(a) issue from

¹ In relying on that exemption, the town cited the presumption at section 14(3)(b) and the factors at sections 14(2)(a) and 14(2)(f) of the *Act*.

the appeal. Section 15 of the *Act* allows an institution to withhold records if the information in the records has been published or is already available to the public, or if it is soon to be published. Here, the town states that in-camera attendance is not included in its publicly available summaries of council meetings, so there is no responsive record, and the appellant acknowledges that fact. Without a responsive record, there is no information publicly available or soon to be published at issue, so I do not address section 15(a) in this order.

[9] For the reasons that follow, I do not uphold the town's decision. I find that the letter is not excluded under section 52(3). I also find that the letter, which contains the personal information of the councillor, is not exempt under the personal privacy exemption at section 14(1) because the exception at section 14(1)(a) – consent to disclosure – applies. As a result, there is no need for me to consider the public interest override, and I order the town to disclose the record to the appellant.

RECORD:

[10] The record remaining at issue is a three-page letter from the mayor to the councillor named in the request.

ISSUES:

- A. Does the section 52(3) exclusion for records relating to labour relations or employment matters apply to the letter?
- B. Does the letter contain "personal information" as defined in section 2(1) and, if so, whose personal information is it?
- C. Does the mandatory personal privacy exemption at section 14(1) apply to the information at issue?

DISCUSSION:

Issue A: Does the section 52(3) exclusion for records relating to labour relations or employment matters apply to the letter?

[11] Section 52(3) of the *Act* excludes certain records held by an institution that relate to labour relations or employment matters. The town claims the exclusion at section 52(3)3 of the *Act* to withhold the letter.

[12] Section 52(3)3 says:

Subject to subsection (4), this Act does not apply to records collected, prepared, maintained or used by or on behalf of an institution in relation to any of the following:

3. Meetings, consultations, discussions or communications about labour relations or employment related matters in which the institution has an interest.

[13] The purpose of this exclusion is to protect some confidential aspects of labour relations and employment-related matters.² The type of records excluded from the *Act* by section 52(3) are those relating to matters in which the institution is acting as an employer, and terms and conditions of employment or human resources questions are at issue.³ It is well-established that section 52(3) does not apply outside the employment context.⁴

[14] The letter does not relate to labour relations or employment matters. The letter is from the mayor to a town councillor and it contains a reprimand. After the mayor's signature in the letter, there is an area for the councillor to sign his agreement to the letter's contents. Perhaps this is why the town refers to the record as an "agreement." However, the record is not an employment related or labour relations "agreement" that would qualify for one of the section 52(4) exceptions to the section 52(3) exclusions.⁵

There is no employer-employee relationship, and the exclusion does not apply

[15] Previous IPC orders, including [Order MO-1264](#), have held that municipal councillors are not an institution's employees. Order MO-1264 confirmed that an employer/employee relationship must exist in order to trigger the application of section 52(3). At page 7 of that order, the adjudicator found that there is no employer/employee relationship between the city and its municipal councillors. In the Notice of Inquiry I sent to the parties, I referred the town to Order MO-1264 and asked it if it maintains its claim that section 52(3)3 applies to the record, and if so, to explain its position in light of Order MO-1264.

² *Ontario (Ministry of Community and Social Services) v. John Doe*, 2015 ONCA 107 (CanLII).

³ *Ontario (Ministry of Correctional Services) v. Goodis* (2008), 89 O.R. (3d) 457, [2008] O.J. No. 289 (Div. Ct.). The CanLII citation is "2008 CanLII 2603 (ON SCDC)." Section 52(3) does not exclude all records concerning the actions or inactions of an employee of the institution simply because their conduct could give rise to a civil action in which the institution could be held vicariously liable for its employees' actions (see *Ministry of Correctional Services*, cited above).

⁴ See Orders P-1545 and P-1563, and orders following them.

⁵ These agreements are listed in section 52(4) of the *Act*, as follows:

1. An agreement between an institution and a trade union.
2. An agreement between an institution and one or more employees which ends a proceeding before a court, tribunal or other entity relating to labour relations or to employment-related matters.
3. An agreement between an institution and one or more employees resulting from negotiations about employment-related matters between the institution and the employee or employees.

[16] The town responds that despite Order MO-1264, it maintains its position. It argues that it is supported in this by the IPC's fact sheet about municipal councillors' records.⁶ It also notes that councillors are not contractors and that the town has to make certain tax deductions from its employees' pay, just as it does before paying councillors. Therefore, it argues that councillors are deemed employees. The town also relies on Order MO-2750 where the IPC found that certain invoices were within the control of an institution because the institution was reimbursing a councillor for those activities. In addition, the town argues that the reprimand in the letter is an "employment-related matter" which the town "considers to be directly related to human resources or staff relations issues arising from the relationship between an employer and employees, as the reprimand did not arise out of a collective bargaining relationship."

[17] I do not accept the town's position and arguments. The town refers to an IPC fact sheet and Order MO-2750, which deal with the issue of custody or control of records – a different issue than the one before me: whether councillors are an institution's employees. The IPC fact sheet and Order MO-2750 are not relevant to the issue before me.

[18] Order MO-1264 is relevant to this appeal, and I adopt its reasoning here. While the mayor and councillors are paid, have benefits, and are reimbursed for certain activities by an institution, they were elected, not hired. There is no employer-employee relationship between the councillor and the municipality.

[19] I find that since there is no employer-employee relationship, the exclusion for labour relations and employment matters at section 52(3)3 cannot apply to the letter. This means that the letter is subject to the *Act*. As a result, I will address whether the appellant has a right of access to the letter under the *Act* considering the town's alternative claim of section 14(1) to withhold the letter.

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

[20] To decide which sections of the *Act* may apply to a specific case, the IPC must first decide whether the record contains "personal information," and if so, to whom the personal information relates. If the record does not contain the personal information of the requester, as is the case in this appeal, but it contains the personal information of another individual, any right of access that the requester may have will be assessed under the mandatory personal privacy exemption at section 14(1).

[21] Section 2(1) of the *Act* defines "personal information" as "recorded information about an identifiable individual." Information is "about" the individual when it refers to them in their personal capacity and reveals something of a personal nature about them.

⁶ The link that the town provided did not work, but based on the date found in the link, it appears to be this IPC fact sheet: [The Municipal Freedom of Information and Protection of Privacy Act and Councillors' records | Information and Privacy Commissioner of Ontario](#).

Information is about an “identifiable individual” if it is reasonable to expect that the individual can be identified from the information either by itself or if combined with other information.⁷

[22] Generally, information about an individual in their professional, official or business capacity is not considered to be “about” the individual.⁸ See also section 2(2.1)⁹, which says: “Personal information does not include the name, title, contact information or designation of an individual that identifies the individual in a business, professional or official capacity.”

[23] 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.¹⁰

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

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

...

(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.

[25] 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.”¹¹

Representations

The town’s representations

[26] The town submits that the letter contains personal information of an identifiable individual, the councillor. The town submits that the councillor is identifiable because he is named throughout the record. The town submits that the letter contains “explicit

⁷ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

⁸ Orders P-257, P-427, P-1412, P-1621, R-980015, MO-1550-F and PO-2225.

⁹ See also section 2(2.2) of the Act, regarding an individual who carries out business, professional or official responsibilities from their dwelling.

¹⁰ Orders P-1409, R-980015, PO-2225 and MO-2344.

¹¹ Order 11.

personal information and speaks directly to the inappropriate actions admitted by the identifiable individual while under the oath of office in a professional capacity,” and includes a reprimand. The town submits that the letter reveals something of a personal nature about the councillor.

The appellant’s representations

[27] The appellant agrees that information such as personal telephone or banking information qualifies as “personal information,” and should not be disclosed. However, the appellant submits that the councillor is a public figure who admitted his conduct and his approval of “the agreement” in the letter. The appellant states that this was a news story in a certain news outlet (which he provided a link to). As a result, the appellant submits that there should be a reduced expectation of privacy.

Analysis and findings

[28] Based on my review of the letter, I agree with the town that the letter contains the councillor’s “personal information” within the meaning of that term in section 2(1) of the *Act*. The letter sets out details of actions that can be described as inappropriate, taken in the course of a person’s official or professional capacity. In my view, the nature of these actions reveals something of a personal nature about the councillor, despite the official or professional context in which the letter was generated. I find that the letter as a whole consists of the councillor’s personal information within the meaning of the definition in section 2(1) of the *Act*. I further find that removing the councillor’s name would not render the remaining information not personal information. Based on the circumstances set out in the letter, I agree with the town that the councillor would be identifiable from the remaining information even if his name was severed. Given these findings, it is not necessary to consider if there are other types of personal information found within the letter too.

[29] The town’s representations state that the personal information in the record belongs only to the councillor. I agree. I find that the letter does not contain personal information about any individual other than the councillor.

[30] Since the letter does not contain the appellant’s personal information, I must assess any right of access that the appellant may have to the letter under the mandatory personal privacy exemption at section 14(1) of the *Act*.

Issue C: Does the mandatory personal privacy exemption at section 14(1) apply to the letter?

[31] One of the purposes of the *Act* is to protect the privacy of individuals with respect to personal information about themselves held by institutions. Section 14(1) of the *Act* creates a general rule that an institution cannot disclose personal information about another individual to a requester. This general rule is subject to several exceptions, including the consent exception at section 14(1)(a) of the *Act*.

14(1)(a): prior written consent of the individual

[32] For this exception to apply, the individual whose personal information is contained in the record must have consented to the release of their personal information. This consent must be in writing. The consent must be given in the specific context of the access request, meaning that the consenting individual must know that their personal information will be disclosed in response to an access request under the *Act*.¹²

[33] As noted above, the councillor provides written consent to the release of his personal information in the letter. I communicated the councillor's consent to the town. Nonetheless, the town maintained that the letter should not be disclosed because the mayor has not consented to disclosure.

[34] As discussed under Issue B above, the letter does not include the mayor's personal information. Therefore, the mayor's consent is not relevant when considering whether the personal privacy exemption applies. The only relevant consent for the application of the exception in section 14(1)(a) is the consent of the individual whose personal information is in the record – the councillor. Since the councillor has consented to the release of his personal information, I find that the *exception* in section 14(1)(a) of the *Act* applies. This means that the personal privacy exemption at section 14(1) does not apply. As a result, I will order the town to release the information at issue to the appellant.

[35] Since the exemption at section 14(1) does not apply, there is no reason to consider whether the public interest override at section 16 applies.

ORDER:

I allow the appeal and I order the town to disclose the letter to the appellant by **July 21, 2025**, but not before **July 14, 2025** and to copy me on its correspondence disclosing the letter.

Original Signed by: _____

Marian Sami
Adjudicator

June 12, 2025

¹² Order PO-1723.