

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4679

Appeal MA22-00570

Town of East Gwillimbury

July 18, 2025

Summary: An individual made a request to the Town of East Gwillimbury (the town) for access to records relating to the mayor's investigation into the requester's municipal by-law complaints.

The town granted partial access to an email, explaining that disclosure of the withheld information would be an unjustified invasion of another individual's personal privacy (section 38(b)). It also denied access to an email chain, explaining that it is subject to solicitor-client privilege (section 38(a), read with section 12).

In this order, the adjudicator upholds the town's decision. She finds that because disclosure of the information withheld from the email would be an unjustified invasion of another individual's personal privacy it is exempt under section 38(b). She also finds that the email chain is solicitor-client privileged information subject to exemption under section 38(a), read with section 12.

Statutes Considered: *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, as amended, sections 2(1) (the definition of "personal information"), 12, 38(a) and 38(b).

OVERVIEW:

[1] The Town of East Gwillimbury (the town) received the following request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*):

On June 9th 2022 I spoke with [named employee] at the Mayor's Office. The Mayor was going to look into concerns I had regarding the lack of enforcement of Municipal By-laws. I did NOT hear back.

I would like all documentation and notes regarding any investigation the Mayor performed on my behalf as well as the outcomes regarding the Mayor's questions for explanations and improvements.¹

[2] As the town did not issue an access decision, the appellant filed a deemed refusal appeal with the Information and Privacy Commissioner of Ontario (IPC).²

[3] Subsequently, the town issued a decision granting partial access to one responsive record with severances pursuant to section 8(1) (law enforcement matter) of the *Act*.

[4] Dissatisfied with the town's decision, the requester, now the appellant, appealed it to the IPC. A mediator was assigned to explore the possibility of resolution.

[5] During mediation, the town issued a revised decision granting access, in full, to the record withheld under section 8(1).

[6] At the appellant's request, the town conducted a secondary search and located two additional records. It issued a supplemental decision granting access in part to an email (together with an attachment) which it severed pursuant to section 14(1) (personal privacy) and denying access in full to an email chain which it withheld pursuant to section 12 (solicitor-client privilege).

[7] As the appellant continues to believe that additional records exist, the issue of reasonable search was added to the scope of the appeal.

[8] As a mediated resolution was not reached, the appeal was transferred to the adjudication stage of the appeal process, where I decided to conduct a written inquiry under the *Act*. I sought and received representations from both the town and the appellant.³

[9] During the inquiry, I added the possible application of sections 38(a) and (b) to the scope of the appeal as both records appear to contain the personal information of the appellant. My reasons for doing so are explained below.

[10] In this order, I uphold the town's decision not to disclose the withheld personal information. I find that the withheld information in the email is exempt under section

¹ Due to discussions with the appellant, the town confirmed that the request pertained to records dated from June 9, 2022 to July 13, 2022.

² Appeal MA22-00498 was opened to address the issue of deemed refusal. Once an access decision was issued Appeal MA22-00498 was closed.

³ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction Number 7*.

38(b) and the withheld personal information in the email chain is exempt under section 38(a), read with section 12.

RECORDS:

[11] The records remaining at issue are:

- An email with a 2-page attachment (email).
- A 3-page email chain (email chain).

ISSUES:

- A. Do the records 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 email?
- C. Does the discretionary exemption at section 38(a), allowing an institution to refuse access to a requester’s own personal information, read with the section 12 exemption, apply to the email chain?
- D. Did the town exercise its discretion under sections 38(a) and (b)? If so, should I uphold the exercise of discretion?
- E. Did the town conduct a reasonable search for records?

DISCUSSION:

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

[12] In order to determine which sections of the *Act* apply to the records, I must first decide whether they contain “personal information,” and if so, to whom this personal information relates.

[13] Section 2(1) of the *Act* defines “personal information” as “recorded information about an identifiable individual.” Recorded information is information recorded in any format, including paper and electronic records.

[14] Information is “about” the individual when it refers to them in their personal capacity, meaning that it reveals something of a personal nature about them. Generally, information about an individual in their professional, official, or business capacity is not

considered to be “about” the individual if it does not reveal something of a personal nature about them.⁴

[15] 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

[16] Section 2(1) of the *Act* gives a list of examples of personal information. The examples that are relevant to this appeal are set out below:

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

...

(d) the address, telephone number, symbol or other particular assigned to the individual,

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

...

(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.

[17] 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.”⁶

[18] It is important to know whose personal information is in the records. If the records contain the requester’s own personal information, their access rights are greater than if it does not.⁷ Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.⁸

[19] The town submits that the email contains personal information of identifiable individuals. Specifically, the town submits they contain the names, addresses and

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 Order 11.

⁷ Under sections 47(1) and 49 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 21(1) and 49(b).

information of involved parties including personal opinions and views regarding the by-law complaints.

[20] The town submits that the email chain does not contain personal information of the appellant or any identifiable individuals. It submits that the email chain between the prosecutor and manager of by-law enforcement does not provide any information about an identifiable individual. The town submits that the email chain originates with the manager of by-law enforcement seeking legal advice from the prosecutor and the prosecutor responding to the request for legal advice.

[21] Although the appellant submitted representations, his representations do not address the issue of personal information.

[22] On my review of the records, I find that both the email and the email chain contain information that qualifies as the personal information of the appellant as well as that of other identifiable individuals. Specifically, the email contains information which would fall under paragraphs (e), (g) and (h) of the definition of "personal information" under section 2(1) of the *Act*. The email chain contains recorded information about identifiable individuals, including the appellant. I acknowledge that the town claims that the email chain does not contain the personal information of the appellant or any other identifiable individual. However, although the email chain does not reference the appellant by name, I find that the appellant could be identified were the email chain disclosed as it contains his personal information.

[23] I have found that both the email and the email chain contain the personal information of the appellant. If a record contains the personal information of the appellant, the *Act* confers the appellant a greater right of access to the record than they would have had were the record solely a record of another person's personal information. As a result, for the email, I will consider the appellant's right of access to it under the discretionary personal privacy exemption at section 38(b) rather than considering whether the mandatory personal privacy exemption at section 14(1) applies, as claimed by the town. Similarly, for the email chain, I will consider whether the exemption at section 38(a), read with section 12 applies, rather than considering whether section 12 exemption applies, read on its own.

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

[24] Under section 38(b), where a record contains personal information of both the requester and another individual, and disclosure of the information would be an "unjustified invasion" of the other individual's personal privacy, the institution may refuse to disclose that information to the requester. Since the section 38(b) exemption is discretionary, the institution may also decide to disclose the information to the requester.

[25] Sections 14(1) to (4) provide guidance in determining whether disclosure would

be an unjustified invasion of personal privacy. If the information fits within any of the exceptions in sections 14(1)(a) to (e), disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b). Section 14(4) lists situations that would not be an unjustified invasion of personal privacy. If any of paragraphs (a) to (d) of section 14(4) apply, disclosure is not an unjustified invasion of personal privacy and the information is not exempt under section 38(b).

[26] Sections 14(2) and (3) also help in determining 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.⁹ The list of factors under section 14(2) is not exhaustive. The institution must also consider any circumstances that are relevant, even if they are not listed under section 14(2).¹⁰

[27] In determining whether the disclosure of the personal information 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.¹¹

Representations, analysis and findings

[28] For the reasons that follow, I find that the information that the town has withheld from the email is subject to the discretionary exemption at section 38(b) as disclosure would be an unjustified invasion of the personal privacy of an individual other than the appellant.

[29] None of the parties have claimed that any of the withheld personal information fits within either the exceptions set out in section 14(1)(a) to (e) or the situations in section 14(4) of the *Act*. From my review, I find that neither of these sections apply. Therefore, to determine whether disclosure would be an unjustified invasion of personal privacy under section 38(b), I must consider whether any of the factors or presumptions under sections 14(2) and (3) apply.

[30] The town raised the factor at section 14(2)(b) as a factor supporting non-disclosure of the withheld personal information but instead it is a factor favouring disclosure. As such, I will not be considering section 14(2)(b).

[31] The town also relies on the presumption at section 14(3)(b) which considers personal information that has been compiled as part of an investigation into a possible

⁹ Order P-239.

¹⁰ Order P-99.

¹¹ Order MO-2954.

violation of law to be a presumed unjustified invasion of personal privacy.

[32] Although the appellant submitted representations, his representations do not address whether any of the factors or presumptions under section 14(2) or section 14(3) apply.

[33] Having reviewed the parties' representations and the personal information that the town has withheld from the email, I will consider the relevance of the presumption at section 14(3)(b).

[34] If the presumption applies, it weighs against disclosure of the personal information. Section 14(3)(b) states:

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

(b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

[35] Even if no criminal proceedings were commenced against any individuals, section 14(3)(b) may still apply. The presumption only requires that there be an investigation into a possible violation of law.¹² The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹³

[36] Based on my review of the email, I find that the presumption at section 14(3)(b) applies in this circumstance. The withheld personal information relates to the appellant's by-law complaints and the town's enforcement of them. Although no charges were laid, section 14(3)(b) still applies. As noted above, the presumption can apply to a variety of investigations, including those relating to by-law enforcement. I find that section 14(3)(b) applies to the withheld personal information at issue, and that its disclosure is presumed to be an unjustified invasion of the personal privacy of the individual to whom the personal information relates, the affected party.

Balancing the factors and presumptions

[37] In balancing the factors for and against disclosure, above I have found that the presumption at section 14(3)(b) applies and weighs against disclosure of the withheld personal information. I also found that no factors (listed or unlisted) weighing in favour of disclosure apply. In balancing the interests of the parties, I find that disclosure of the withheld personal information would be an unjustified invasion of the affected party's personal privacy.

¹² Orders P-242 and MO-2235.

¹³ Orders MO-2213, PO-1849 and PO-2608.

[38] Accordingly, I find that disclosure of the withheld personal information in the email would be an unjustified invasion of the personal privacy of the individual to whom that information relates. Subject to my findings below on the town's exercise of discretion, I find that it is exempt under section 38(b).

Issue C: Does the discretionary exemption at section 38(a), allowing an institution to refuse access to a requester's own personal information, read with the section 12 exemption, apply to the email chain?

[39] As stated above, I find that the email chain contains the appellant's personal information. Accordingly, the appropriate exemption for me to consider is section 38(a), read with section 12.

[40] Section 36(1) gives individuals a general right of access to their own personal information held by an institution. Section 38 provides a number of exemptions from this right. Section 38(a) reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 8.1, 8.2, 9, 10, 11, **12**, 13 or 15 would apply to the disclosure of that personal information. [emphasis added]

[41] In this case, the town relies on the common law solicitor-client communication privilege to withhold the email chain.

[42] Section 12 exempts certain records from disclosure, either because they are subject to solicitor-client privilege or because they were prepared by or for legal counsel for an institution. It states:

A head may refuse to disclose a record that is subject to solicitor-client privilege or that was prepared by or for counsel employed or retained by an institution for use in giving legal advice or in contemplation of or for use in litigation.

[43] Section 12 contains two different exemptions, referred to in previous IPC decisions as "branches." The first branch ("subject to solicitor-client privilege") is based on common law. The second branch ("prepared by or for counsel employed or retained by an institution...") is a statutory privilege created by the Act. The institution must establish that at least one branch applies. Given the town's claim as well as my finding in this order, I will only address the first branch.

Branch 1: common law privilege

[44] At common law, solicitor-client privilege encompasses two types of privilege:

- solicitor-client communication privilege, and
- litigation privilege.

Common law solicitor-client communication privilege

[45] The rationale for the common law solicitor-client communication privilege is to ensure that a client may freely confide in their lawyer on a legal matter.¹⁴ This privilege protects direct communications of a confidential nature between lawyer and client, or their agents or employees, made for the purpose of obtaining or giving legal advice.¹⁵ The privilege covers not only the legal advice itself and the request for advice, but also communications between the lawyer and client aimed at keeping both informed so that advice can be sought and given.¹⁶

[46] Confidentiality is an essential component of solicitor-client communication privilege. The institution must demonstrate that the communication was made in confidence, either expressly or by implication.¹⁷ The privilege does not cover communications between a lawyer and a party on the other side of a transaction.¹⁸

Representations, analysis and findings

[47] The town submits that the email chain is exempt under solicitor-client communication privilege. It explains that the Region of York's prosecutors are legal counsel to the local municipalities, including the town, in respect of provincial offences and municipal by-law infractions.

[48] The town submits that the email chain contains an email from the manager of by-law enforcement services to a named prosecutor seeking a legal opinion in respect of certain by-law infractions. It also submits that the email chain contains a response from the named prosecutor in which she provides her legal opinion to the manager of by-law enforcement services.

[49] In addition, the town submits that it did not, either explicitly or implicitly, waive its solicitor-client privilege with respect to the withheld information in the email chain.

[50] Although the appellant provided representations, his representations do not address whether the withheld information in the email chain is exempt under section 38(a), read with section 12.

[51] Based on my review of the parties' representations and the email chain itself, I

¹⁴ Orders PO-2441, MO-2166 and MO-1925.

¹⁵ *Descôteaux v. Mierzewski* (1982), 141 D.L.R. (3d) 590 (S.C.C.).

¹⁶ *Balabel v. Air India*, [1988] 2 W.L.R. 1036 at 1046 (Eng. C.A.); *Canada (Ministry of Public Safety and Emergency Preparedness) v. Canada (Information Commissioner)*, 2013 FCA 104.

¹⁷ *General Accident Assurance Co. v. Chrusz* (1999), 45 O.R. (3d) 321 (C.A.); Order MO-2936.

¹⁸ *Kitchener (City) v. Ontario (Information and Privacy Commissioner)*, 2012 ONSC 3496 (Div. Ct.).

accept that the email chain relates to the seeking or providing of a legal opinion on certain by-law infractions. The parties to this email chain include the manager of by-law enforcement services and the town's legal counsel. I am satisfied that the email chain contains the seeking of and the legal advice from the town's legal counsel.

[52] With respect to waiver of privilege, the town submits that it neither explicitly nor implicitly waived its solicitor-client privilege with respect to the legal advice provided in the email chain. As there is no evidence before me to suggest that waiver has occurred, I find that the town has not waived its solicitor-client privilege in relation to the email chain.

[53] In conclusion, I find that the email chain contains confidential communications between the town's legal counsel and her client for the purpose of obtaining or giving legal advice, and therefore falls within the ambit of the solicitor-client communication privilege in Branch 1 of section 12 of the *Act*.

Issue D: Did the town exercise its discretion under sections 38(a) and (b)? If so, should I uphold the exercise of discretion?

[54] The sections 38(a) and 38(b) exemptions are discretionary (the institution "may" refuse to disclose), meaning that the institution can decide to disclose information even if the information qualifies for exemption. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[55] In addition, the IPC may find that the institution erred in exercising its discretion where, for example,

- it does so in bad faith or for an improper purpose;
- it takes into account irrelevant considerations; or
- it fails to take into account relevant considerations.

[56] In either case, the IPC may send the matter back to the institution for an exercise of discretion based on proper considerations.¹⁹ The IPC cannot, however, substitute its own discretion for that of the institution.²⁰

Representations, analysis and findings

[57] The town submits that it properly exercised its discretion under sections 38(a) and 38(b).

[58] With respect to section 38(b), the town submits that it provided a severed copy of the email to the appellant – only withholding personal information of an identifiable

¹⁹ Order MO-1573.

²⁰ Section 43(2).

individual. It submits that the withheld personal information would allow the appellant access to information that would indicate another individual's views relating to an incident or situation in the course of an investigation.

[59] With respect to section 38(a), the town submits that the section 12 exemption applies to the email chain as it contains a legal opinion. The town's representations demonstrate that it considered the importance of solicitor-client privilege and weighed it against the appellant's right of access to the specific information in the email chain.

[60] Although the appellant submitted representations, his representations do not address the town's exercise of discretion.

[61] Having considered the parties' representations and the circumstances of this appeal, I find that the town did not err in its exercise of discretion not to disclose the information that is exempt under sections 38(b) and 38(a) of the *Act*. I am satisfied that the town considered relevant factors and did not consider irrelevant factors in its exercise of discretion. In particular, I am satisfied that the town balanced the appellant's right to access his own information against the interests of other individuals that are protected by the personal privacy exemption. I am also satisfied that the town considered the fundamental importance of solicitor-client privilege and weighed the importance of that privilege against the appellant's right of access to the specific information in the email chain. Moreover, I am satisfied that the town did not act in bad faith or for an improper purpose.

[62] Accordingly, I uphold the town's exercise of discretion in deciding to withhold the information at issue in the email and the email chain pursuant to section 38(b) and section 38(a), respectively.

Issue E: Did the town conduct a reasonable search for records?

[63] The appellant claims that further records responsive to his request exist.

[64] Where a requester claims additional records exist beyond those identified by the institution, the issue to be decided is whether the institution has conducted a reasonable search for records as required by section 17.²¹ If I am satisfied the search carried out was reasonable in the circumstances, I will uphold the institution's decision. If I am not satisfied, I may order further searches.

[65] The *Act* does not require the institution to prove with absolute certainty that further records do not exist. However, the institution must provide sufficient evidence to show it has made a reasonable effort to identify and locate responsive records.²² A reasonable search is one in which an experienced employee knowledgeable in the subject matter of the request expends a reasonable effort to locate records which are reasonably

²¹ Orders P-85, P-221 and PO-1954-I.

²² Orders P-624 and PO-2559.

related (responsive) to the request.²³

[66] Although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.²⁴

Parties' representations

[67] The town submits that it conducted a reasonable search for records related to the request as required by section 17 of the *Act*.

[68] Along with its representations, the town submitted an affidavit sworn by a named employee. The named employee attests that, as a result of her experience with the town over the last couple of years, she has personal knowledge of the facts set out in the affidavit.

[69] The named employee attests that the previous council/committee coordinator (coordinator) received the request and emailed the appellant for further clarification. Subsequently, the named employee attests that the appellant emailed the coordinator, providing further clarification about his request and the time frame for it.

[70] The named employee attests that after the Deputy Clerk and the appellant had a phone discussion, the Deputy Clerk and the appellant exchanged several emails relating to the scope of his request.

[71] The named employee attests that the coordinator then emailed the executive coordinator to the mayor and council, requesting that she search for responsive records to the request.

[72] The named employee attests that, during mediation, she asked the manager of by-law enforcement to search for all responsive records in her possession related to the by-law department's response to the appellant's complaints. She attests that subsequently, the town issued a supplemental decision, advising that an email chain and an email were located.

[73] In response to the town's representations and affidavit on search, the appellant submits that he continues to believe that the town should have located more records responsive to his request. He notes that the town has stated that it does not take a formulaic approach to by-law complaints and each case is handled on an individualized basis. He submits that for this reason additional records confirming each complaint filed within the time period of his request was investigated should exist.

[74] Moreover, the appellant submits that each time the town conducted another

²³ Orders M-909, PO-2469 and PO-2592.

²⁴ Order MO-2246.

search for responsive records, it found additional record(s). He submits that, for this reason, it is reasonable to conclude that additional searches will locate additional record(s).

Analysis

[75] For the following reasons, I find that the town conducted a reasonable search for records responsive to the appellant's request.

[76] In its representations and affidavit, the town identified the individuals involved in the searches, explained where they searched, and described the results of their search. In my view, the town's search was logical and comprehensive. I accept it was conducted by experienced employees knowledgeable in the subject matter who expended reasonable efforts to locate responsive records which are reasonably related to the request. I am satisfied that the town has provided sufficient evidence to establish that its search for responsive records was reasonable and in compliance with their obligations under section 17 of the *Act*.

[77] Moreover, I am not persuaded that the appellant has established a reasonable basis for concluding that further responsive records exist. The appellant submits that additional records should exist. However, he has not provided any explanation as to why, despite the town's searches, the town should have located additional records.

[78] As noted above, although a requester will rarely be in a position to indicate precisely which records the institution has not identified, the requester still must provide a reasonable basis for concluding such records exist.²⁵ In this case, although the appellant believes that additional records confirming that each complaint was investigated and responded to should exist, he does not provide a reasonable basis as to why such records should exist. I am not satisfied that the appellant's reliance on the town's statement that it does not take a formulaic approach to addressing by-law complaints provides such reasonable basis.

[79] The appellant also argues that, in the past, additional searches resulted in additional records being located. However, in my view, this argument is insufficient to establish a reasonable basis that additional records should exist. I note that it appears that additional searches resulted in additional records being located may have resulted from the town's efforts to interpret the appellant's request as broadly as possible to find and locate records even beyond the scope of his request.

[80] As noted above, the *Act* does not require the institution to prove with absolute certainty that further records do not exist, however, it must provide enough evidence to show that it has made a reasonable effort to identify and locate records that are "reasonably related" to the request. In this case, I have found that the town has done

²⁵ Order MO-2246.

so.

[81] For the reasons stated above, I find that the town has complied with its obligations under section 17 and has conducted a reasonable search for records responsive to the appellant's request. I dismiss the appeal.

ORDER:

1. I uphold the town's decision to deny access to the email and email chain.
2. I uphold the town's search for responsive records.

Original Signed by: _____

Lan An
Adjudicator

July 18, 2025