

Information and Privacy Commissioner,
Ontario, Canada



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

ORDER MO-4722

Appeal MA23-00494

Town of East Gwillimbury

November 18, 2025

Summary: An individual made a request, under the *Municipal Freedom of Information and Protection of Privacy Act*, to the Town of East Gwillimbury for access to records relating to a specified complaint. The town denied access, in full, to two email chains, explaining that disclosure of these email chains to the requester would be an unjustified invasion of another individual's personal privacy (section 38(b)).

In this order, the adjudicator upholds the town's decision that disclosure of the withheld personal information in the second email chain would be an unjustified invasion of personal privacy and is exempt under section 38(b). She finds that some withheld information in the first email chain is not personal information and orders the town to disclose it to the requester.

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") and 38(b).

Orders Considered: Order MO-2453.

OVERVIEW:

[1] The Town of East Gwillimbury (the town) received a request, under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*), for access to a specified complaint.

[2] The town issued a decision refusing to confirm or deny the existence of responsive records pursuant to section 14(5) of the *Act*.

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

[4] A mediator was assigned to explore the possibility of resolution.

[5] During mediation, the appellant stated that he is pursuing access to the complaint, which he was told about by a town employee. He added that the town has disclosed severed complaints to him in the past.

[6] Subsequently, the town issued a revised decision denying access, in full, to two email chains pursuant to section 14(1) (personal privacy) of the *Act*.

[7] The mediator raised with the town the application of section 38(b) to the responsive records given the presence of the appellant's own information in the email chains. The town stated that it was maintaining its decision.

[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 the town and the appellant.¹

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

[10] In the appellant's representations, he disputed the reasonableness of the town's search for responsive records. The appellant did not raise this issue either in his notice of appeal or during mediation. As such, the reasonableness of the town's search for responsive records is not an issue in this appeal and I will not be addressing it in this order.

[11] In this order, I uphold the town's decision that disclosure of the withheld personal information in the second email chain would be an unjustified invasion of personal privacy and that the personal information is exempt under section 38(b). I find that some withheld information in the first email chain is not personal information and order the town to disclose it to the requester.

RECORDS:

[12] The records remaining at issue are two email chains (the records). One of the two email chains contains three digital photographs (the first email chain). For ease of reference, I will refer to the remaining email chain as the second email chain.

¹ The parties' representations were shared in accordance with the confidentiality criteria in the IPC's *Practice Direction Number 7*.

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 second email chain?

DISCUSSION:

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

[13] 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.

[14] 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.

[15] 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.²

[16] 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.³

[17] 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,

² Orders P-1409, R-980015, PO-2225 and MO-2344.

³ Order PO-1880, upheld on judicial review in *Ontario (Attorney General) v. Pascoe*, [2002] O.J. No. 4300 (C.A.).

(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.

[18] 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."⁴

[19] 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.⁵ Also, if the records contain the personal information of other individuals, one of the personal privacy exemptions might apply.⁶

[20] The town submits that the email chains contain personal information of identifiable individuals. Specifically, it submits that the email chains contain the name, address and email address of the complainant and the individual who is the subject of the complaint. The town also submits that one of the email chains contain digital photographs of vehicles on a property owned by the appellant. It finally submits that the email chains contain the complainant's views and opinions about the incident or situation.

[21] The appellant submits that the email chains do not contain personal information. He submits that, in the past, he received photographs taken from the road or the sidewalk as there is no indication of who or when the photographs were taken. The appellant submits that information about town employees is not their personal information and can only be severed if they were speaking to legal counsel.

[22] The appellant also submits that he is not seeking any personal information of identifiable individuals in the email chains, such as the complainant.

[23] On my review of the records, I find that the first email chain contains information that qualifies as the personal information of another identifiable individual, the complainant. As the appellant is not interested in the personal information of the complainant, I find that once the complainant's personal information is severed the remaining information in the first email chain is not personal information. As such, I will order the town to disclose the first email chain in accordance with the highlighted records

⁴ Order 11.

⁵ 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.

⁶ See sections 21(1) and 49(b).

enclosed with this order.

[24] With respect to the digital photographs in the first email chain, I do not find that the digital photographs contain the personal information of any identifiable individuals. As such, I will order the town to disclose the digital photographs in the first email chain to the appellant.

[25] Finally, I find that some information in the first email chain contains information about a town employee, the by-law enforcement officer. Section 2.1 of the *Act* states that personal information does not include the name, title, contact information of an individual in their business, professional or official capacity. The by-law enforcement officer was mentioned in the records in his professional capacity. As such, the information about him is not his personal information in this context. I order the by-law enforcement officer's information to be disclosed as the town is not relying on any other exemption to withhold this information.

[26] With respect to the second email chain, I find that it contains information that qualifies as the personal information of the appellant as well as that of another identifiable individual, an affected party. Specifically, the second email chain contains information which would fall under paragraphs (d), (e), (g) and (h) of the definition of "personal information" under section 2(1) of the *Act*. Specifically, it contains the views or opinions of the affected party, their address, telephone number and their name as it appears with other personal information.

[27] Above, I have found that the second email chain contains 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 second email chain, 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.

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

[28] 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.

[29] 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).

[30] 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.⁷ 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).⁸

[31] 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.⁹

Representations, analysis and findings

[32] For the reasons that follow, I find that the information that the town has withheld from the second email chain 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.

[33] 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.

[34] The town relies on the factor at section 14(2)(h) and the presumption at section 14(3)(b). It appears that the appellant is relying on the factor at section 14(2)(a). Those sections state:

(2) A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

⁷ Order P-239.

⁸ Order P-99.

⁹ Order MO-2954.

(a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;

...

(h) the personal information has been supplied by the individual to whom the information relates to in confidence; and ...

(3) 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 ...

Section 14(2) factors

[35] The purpose of section 14(2)(a) is to promote transparency of government actions. It contemplates disclosure of information where it is desirable for the purpose of subjecting the activities of the government (as opposed to the views or actions of private individuals) and its agencies to public scrutiny.¹⁰ An institution should consider the broader interests of public accountability when considering whether disclosure is “desirable” or appropriate to allow for public scrutiny of its activities.¹¹

[36] Although the appellant does not refer to the factor at section 14(2)(a), it appears that he is relying on this factor. He submits that the town stated in an email that it received an email complaint then later denied confirming that such a complaint was filed. The appellant submits that this demonstrates deceitfulness and bad faith on the part of the town as it is constantly changing its story to justify its position to withhold information.

[37] On my review of the second email chain, I do not find that section 14(2)(a) applies in this appeal. This email chain is between the affected party and the town’s by-law enforcement officer. In my view, this email chain does not shed light on the activities of the town. As such, I do not give this factor any weight.

[38] As noted above, the town submits that the factor at section 14(2)(h) applies. It explains that in investigating complaints, personal information is collected from a confidential source, such as their name, address, contact information, and information relating to an incident or situation from the source’s perspective, including their views and opinions about the incident or situation. The town explains that this includes interviewing the individual about whom the complaints were made. It submits that the complaint made contains personal information that was supplied in confidence to the

¹⁰ Order P-1134.

¹¹ Order P-256.

town.

[39] In Order MO-2453, the adjudicator stated:

This factor [at section 14(2)(h)] applies if both the individual supplying the information and its recipient had an expectation that the information would be treated confidentially, and that expectation is reasonable in the circumstances. Thus, section 14(2)(h) requires an objective assessment of the reasonableness of any confidentiality expectation.¹²

[40] I agree and adopt this reasoning for this appeal.

[41] On my review, I find that both the affected party and town had a reasonable expectation that the personal information supplied would be treated confidentially. I am satisfied that the context and content of the withheld personal information support the town's position that confidentiality was expected with respect to the withheld personal information.

[42] I note that the parties have not claimed any other factors in section 14(2) apply. On my review, none of the other factors, either listed or unlisted, weighing for or against disclosure, apply.

Section 14(3) presumptions

[43] As stated above, the town relies on the presumption at section 14(3)(b), which weighs against disclosure.

[44] 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.¹³ The presumption can also apply to records created as part of a law enforcement investigation where charges are subsequently withdrawn.¹⁴

[45] Based on my review of the second email chain, I find that the presumption at section 14(3)(b) applies in this circumstance. The withheld personal information relates to a specified by-law complaint and its investigation. 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.

¹² This principle has been set out in previous IPC orders, including PO-1670.

¹³ Orders P-242 and MO-2235.

¹⁴ Orders MO-2213, PO-1849 and PO-2608.

Balancing the factors and presumptions

[46] In balancing the factors and presumptions for and against disclosure, above I have found that the factor at section 14(2)(h) and the presumption at section 14(3)(b) apply and weigh 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.

[47] Accordingly, I find that disclosure of the withheld personal information in the second email chain 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 the second email chain is exempt under section 38(b).

Exercise of discretion

[48] The exemption in section 38(b) is discretionary and permits an institution to disclose the information subject to the exemption despite the fact that it could withhold it. An institution must exercise its discretion. On appeal, the IPC may determine whether the institution failed to do so.

[49] The town submits that it properly exercised its discretion. It submits that it weighed the appellant's right to access his own personal information against the affected party's right to privacy. The town submits that it considered the nature of the withheld personal information contained in the second email chain. It also considered the confidentiality nature of by-law complaints.

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

[51] Having considered the town's representations and the circumstances of this appeal, I find that the town did not err in its exercise of discretion to withhold the information that is exempt under section 38(b) 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 considered the appellant's right to access his own information but also the interests of the affected party that are protected by the personal privacy exemption. I am also satisfied that the town did not act in bad faith or for an improper purpose. Accordingly, I uphold the town's exercise of discretion to withhold the personal information in the second email chain pursuant to section 38(b).

ORDER:

1. I allow the appeal, in part.

2. I order the town to disclose the highlighted portions (including the three photographs) in the first email chain and the highlighted portions in the second email chain by **December 23, 2025** but not before **December 16, 2025**, in accordance with the highlighted copy of the records enclosed with this order. To be clear, the highlighted portions are to be disclosed (including the three photographs).
3. I uphold the town's decision to withhold the remaining withheld personal information in the second email chain.
4. I reserve the right to require the town to provide me with a copy of the records disclosed to the appellant in accordance with order provision 2.

Original Signed by: _____
Lan An
Adjudicator

_____ November 18, 2025