

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER F2013-53

December 24, 2013

CITY OF EDMONTON

Case File Number F6097

Office URL: www.oipc.ab.ca

Summary: On June 27, 2011, an individual made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the City of Edmonton (the Public Body) for access to all records relating to herself or her property for the time period between October 1, 2007 and June 27, 2011. The Public Body informed the Applicant that her request was for general information, not personal information, and was therefore subject to a \$25 initial fee. The Applicant requested a review of the Public Body's decision to charge the fee, arguing that her request was for personal information.

The Applicant also requested a review of the Public Body's response, alleging that the Public Body failed to comply with its duty to assist and the timelines of the Act.

The Adjudicator found that the Public Body did not meet the timelines required under the Act, and that it did not meet its duty to assist the Applicant because it failed to properly define her request.

The Adjudicator determined that the Applicant's request was a request for personal information and is therefore not subject to the \$25 initial fee.

The Adjudicator also found that the Public Body did not consider all of the relevant factors in withholding information in the responsive records under section 17 of the Act. The Adjudicator ordered the Public Body to consider all relevant circumstances in

making the decision to disclose or withhold personal information in the responsive records.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, ss. 1, 3, 10, 11, 14, 17, 29, 72, 88, 93.

Authorities Cited: AB: Orders 97-003, 97-006, F2004-026, F2008-006, F2009-017, F2010-011, F2012-14, P2007-004, P2012-01, P2012-09.

Cases Cited: *Leon's Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94, *United Food and Commercial Workers, Local 401 v Alberta (Attorney General)*, 2012 ABCA 130.

I. BACKGROUND

[para 1] On June 27, 2011, an individual made a request under the *Freedom of Information and Protection of Privacy Act* (the FOIP Act) to the City of Edmonton (the Public Body) for access to all records relating to herself or her property for the time period between October 1, 2007 and June 27, 2011.

[para 2] The Public Body contacted the Applicant by phone the following day. The Applicant states that she clarified her request as including copies of complaints against her as well as records generated in relation to any complaints; she states that she further advised the Public Body that she was not requesting any third party personal information.

[para 3] The Public Body informed the Applicant at that time that her request was for general information, not personal information, and was therefore subject to a \$25 initial fee. The Applicant states that she disagreed with that conclusion and requested the Public Body's response in writing. She states that the Public Body agreed to provide its response in writing; however, by August 9, 2011 she had not received any further communication from the Public Body, and requested a review by this Office.

[para 4] The Public Body states that during its phone conversation with the Applicant, the Applicant agreed to pay the \$25 initial fee, and that it sent the Applicant a letter requesting the \$25 fee on August 11, 2011. It states that the delay in sending the letter was a result of being temporarily short-staffed.

[para 5] In the course of the mediation process, the Public Body provided the Applicant with 23 pages of records, with some information severed under section 17 of the Act. The Applicant states that the covering letter sent with the records is dated November 12, 2011 but the envelope in which they were sent is date stamped December 13, 2011 by Canada Post. A copy of this envelope was included with the Applicant's submissions.

[para 6] The Public Body's response letter states that the 23 pages provided to the Applicant are "personal information records requested" by the Applicant. It further states that "information related to the property, such as bylaw infraction complaints are

routinely available for a fee to a property owner or agent (with owner authorization) by requesting a search of records from the Sustainable Development Department. For your convenience a Search of Records Application form is enclosed.” According to the application form (provided to me by the Applicant), there is a \$100 fee for this search.

[para 7] On February 22, 2012, the Applicant requested a review of the Public Body’s response. A new case file was opened and the matter was set down for inquiry.

II. RECORDS AT ISSUE

[para 8] The records at issue consist of records relating to the Applicant’s property, including complaints and records created in responding to complaints.

III. ISSUES

[para 9] The issues set out in the Notice of Inquiry, dated February 28, 2013, are as follows:

- 1. Is the access request for the Applicant’s personal information?**
- 2. Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)? In this case, the Adjudicator will also consider whether the Public Body conducted an adequate search for responsive records.**
- 3. Did the Public Body comply with section 11 of the Act (time limit for responding)?**
- 4. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the record(s)?**
- 5. Should the Applicant be excused from paying all or part of a fee, as provided by section 93 of the Act (fees)?**

I will address the issues in the following order:

1. Did the Public Body comply with section 11 of the Act (time limit for responding)?
2. Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?
3. Is the access request for the Applicant’s personal information?
4. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the record(s)?

5. Should the Applicant be excused from paying all or part of a fee, as provided by section 93 of the Act (fees)?

IV. DISCUSSION OF ISSUES

1. Did the Public Body comply with section 11 of the Act (time limit for responding)?

[para 10] Section 11 states the following:

11(1) The head of a public body must make every reasonable effort to respond to a request not later than 30 days after receiving it unless

(a) that time limit is extended under section 14, or

(b) the request has been transferred under section 15 to another public body.

(2) The failure of the head to respond to a request within the 30-day period or any extended period is to be treated as a decision to refuse access to the record.

[para 11] The Applicant made her request to the Public Body on June 27, 2011. The Public Body contacted her the next day to tell her that the request was for general information, which requires a \$25 initial payment. The Applicant states that during this phone conversation she objected to the characterization of her request as general, and that she asked the Public Body to send her a letter outlining its position. The Public Body states that the Applicant did not object to the characterization of the request but rather that she agreed to send in a cheque for the initial fee payment.

[para 12] The Applicant's request for review was faxed in to this office on August 9, 2011. On August 11, 2011 the Public Body sent the Applicant a letter requesting the \$25 fee. It states that the delay in sending the letter was a result of being temporarily short-staffed.

[para 13] The Public Body states that it "failed to follow up by letter to ascertain when it would be receiving the \$25 fee, but the Applicant likewise did not follow up or forward the anticipated fee." The Applicant argues "I did not have to follow up; I submitted my request in accordance with the FOIP Act."

[para 14] I agree with the Applicant that the onus is on the Public Body to respond to the Applicant openly, accurately and completely, as required by section 10(1) of the Act, which I discuss further below. While there seems to have been a miscommunication between the Public Body and the Applicant, the burden was on the Public Body to follow up with the Applicant in a timely manner, not the other way around. I understand that the Public Body may have been short-staffed at the time; however, this does not affect its responsibilities under the Act. The Public Body had 30 days to respond to the Applicant's request; it did not meet this timeline, nor did it extend the timeline as permitted under section 14. Therefore I find that the Public Body did not comply with section 11 of the Act.

2. Did the Public Body meet its duty to the Applicant as provided by section 10(1) of the Act (duty to assist applicants)?

[para 15] Section 10(1) states

10(1) The head of a public body must make every reasonable effort to assist applicants and to respond to each applicant openly, accurately and completely.

[para 16] The duty to assist includes responding openly, accurately and completely, as well as conducting an adequate search. I have stated that the Public Body bears the onus of showing that it has responded to the Applicant openly, accurately and completely, as it is in the best position to describe the steps taken to assist the Applicant (see Order 97-006, at para. 7).

[para 17] There are two components of an adequate search:

- a) Every reasonable effort must be made to search for the actual record requested; and
- b) The applicant must be informed in a timely fashion about what has been done.

[Order F2009-017, at para. 53.]

[para 18] The Public Body has described the steps it has taken to locate all records responsive to the Applicant's request. The Applicant has not argued in her submissions that the Public Body failed to conduct an adequate search, rather the Applicant argues that the Public Body provided her with only a partial response to her request.

[para 19] The Public Body's letter to the Applicant dated November 12, 2011, in which the Public Body informed her that it was providing 23 pages of "personal information records" also stated that "information related to the property, such as bylaw infraction complaints are routinely available for a fee to a property owner or agent (with owner authorization) by requesting a search of records from the Sustainable Development Department. For your convenience a Search of Records Application form is enclosed."

[para 20] In its submissions, the Public Body does not appear to argue that the Applicant must use the Public Body's routine process for accessing general information about her property; rather, it argues that because the information is general, the \$25 initial fee must be paid.

[para 21] At the time of the first conversation between the Public Body and Applicant, the Public Body was of the opinion that the Applicant's request was a general one. The Public Body repeats this argument in its submissions. Although the Public Body only responded to a portion of the Applicant's request (the portion it deemed to be a request for personal information), the Public Body's response letter to the Applicant does not talk

about the remainder of her FOIP request but only talks about an alternate “routine” process for obtaining information about her property.

[para 22] Section 29(a.1) permits a public body to refuse access to information that is available to the public for a fee:

29(1) The head of a public body may refuse to disclose to an applicant information

...

(a.1) that is available for purchase by the public, or

...

[para 23] This provision acknowledges that a public body might provide an alternative route for accessing certain information, outside the FOIP Act. Section 3(a) of the Act specifies that the FOIP Act is in addition to and does not replace existing procedures for access to information or records. Additionally, section 88 permits the head of a public body to specify categories of information to be made available to the public without a request under the Act and to require that a fee be paid for that information. Section 29(1)(a.1) permits a public body to refuse access to this information in response to a request under the FOIP Act, if the applicant can access the information via the alternative route.

[para 24] However, the existence of an alternate form of access does not nullify a public body’s obligations under Part 1 of the FOIP Act. As stated in Order F2008-006, “[t]he Applicant has the right to access records pursuant to section 6 of the Act. It is true that the Act is not meant to replace existing systems of access; however, it is a complete system. Therefore, when an access request is made under the Act, the provisions of the Act must be fulfilled regardless of the existence of other ways to access information” (at para. 31).

[para 25] Although the Public Body may have created an alternative process for requesting certain information about property, the Public Body’s response to the Applicant is not adequate as it does not address the Applicant’s entire FOIP request. Even though the Public Body characterizes part of the Applicant’s request as a general request requiring a \$25 fee that has not been paid, the Public Body cannot ignore that part of the request. Further, if the Public Body had intended to apply section 29(a.1) to withhold certain information that could be obtained through the Public Body’s alternate process, it was nevertheless obliged to inform the Applicant of this decision as required under the Act. If the Applicant had requested a review, the Public Body would then have to demonstrate that section 29(a.1) applied, and that it properly exercised its discretion to withhold the information under that provision.

[para 26] Further, the Applicant argues that the routine process does not appear to fulfill the Applicant’s request. I agree; while an individual can request bylaw infraction complaints relating to his or her property, this information can only be requested for the preceding year. The Applicant has requested complaints dating back to October 2007;

therefore the Public Body's routine process would not elicit the information sought by the Applicant.

[para 27] The Applicant also states that most of the information provided to her by the Public Body in response to her request was not responsive to her request. The Applicant stated in her submissions that she clarified her request during the telephone conversation with the Public Body, and told the Public Body that she was interested in complaints made about her and her property, and records generated in response to those complaints. The Public Body states in its submissions that it "clarified what kinds of records were sought over the telephone. The records to be searched included any records pertaining to the two addresses, bylaw enforcement, lot grading and animal licensing matters. None of these records are about the individual so fall into the category of a non-personal search."

[para 28] The Applicant states in response:

I did not request "fines, tickets, tags." I provided them context to assist them in their search for responsive records, as I do not know their records systems. I was clear in my request, and when I spoke with [Public Body employee] as to the types of records I was requesting, and attempted to narrow my request.

[para 29] The Public Body did not directly address in its submissions whether the Applicant narrowed her request. The Public Body's chronology of its response to the Applicant's request (Exhibit A attached to the affidavit in the Public Body's initial submission) states that the Applicant "wants records relating to a dispute with a neighbor: pet licensing, lot grading (emails about a broken pipe), and bylaw enforcement." The Applicant's narrowed request corresponds with the reasons the Applicant gave for making her access request. I accept the Applicant's submission that she narrowed her request to complaints and records generated as a result of complaints. I agree with the Applicant that most of the records provided to her by the Public Body are not responsive to such a request.

[para 30] For the reasons above, I find that the Public Body did not respond to the Applicant's request openly, accurately and completely.

[para 31] The Public Body's explanation of its search seems thorough, if overbroad, given the Applicant's clarified request. Since the Public Body has not responded to the remainder of the Applicant's request (because it has not received the fee it states is owed), it is premature to make a finding regarding the adequacy of search. That question is best left until after an applicant has a chance to review all of the responsive records.

3. Is the access request for the Applicant's personal information?

[para 32] Section 1(n) defines personal information under the Act:

1 In this Act,

- (n) *“personal information” means recorded information about an identifiable individual, including*
- (i) *the individual’s name, home or business address or home or business telephone number,*
 - (ii) *the individual’s race, national or ethnic origin, colour or religious or political beliefs or associations,*
 - (iii) *the individual’s age, sex, marital status or family status,*
 - (iv) *an identifying number, symbol or other particular assigned to the individual,*
 - (v) *the individual’s fingerprints, other biometric information, blood type, genetic information or inheritable characteristics,*
 - (vi) *information about the individual’s health and health care history, including information about a physical or mental disability,*
 - (vii) *information about the individual’s educational, financial, employment or criminal history, including criminal records where a pardon has been given,*
 - (viii) *anyone else’s opinions about the individual, and*
 - (ix) *the individual’s personal views or opinions, except if they are about someone else;*

[para 33] In Order 97-003, the former Commissioner set out the following approach to determine whether an access request is for personal information or a general request:

In my view, if a request can be characterized as a request for access to personal information, a public body may not charge a service fee for any document that contains an applicant’s personal information. However, a public body may charge service fees in relation to the documents that do not contain the applicant’s personal information, even if the documents are characterized as a request for access to personal information.

On the other hand, if documents are characterized as not being within the category of a request for personal information, the Public Body may charge services fees in relation to all those documents, even if they contain the applicant’s personal information.

To decide whether the Public Body may charge fees under [what is now section 93(2)] of the Act, there must be “a request for the applicant’s own personal information”. To decide whether there has been a request for the applicant’s own personal information, I propose the following approach...:

- (i) Consider the wording of the request.
- (ii) Characterize the request as to the categories of records the applicant is requesting.
- (iii) Decide whether the records fall within those categories.

If any part of the request can be characterized as a request for the applicant’s own personal information, I then will decide whether each record (not page) found to

be within that category “contains” the applicant’s personal information, not whether each record in the category is “about” the applicant’s personal information. As long as any part of the request falls within the category of a request for an applicant’s own personal information, and a record within this category contains the applicant’s personal information, a public body may not charge a service fee for that record.

It follows that I do not agree with the Public Body’s contention that [what is now section 93(2)] of the Act applies only if “...the application, fairly interpreted, pertains wholly or in all material respects to the applicant’s personal information”.

[para 34] The Public Body cites paragraph 48 of the Court of Appeal decision in *Leon’s Furniture Limited v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94 (*Leon’s*), in which the Court considered the scope of “personal information” as defined in the *Personal Information Protection Act* (PIPA). The Court said:

Further, to be “personal” in any reasonable sense the information must be directly related to the individual; the definition does not cover indirect or collateral information. Information that relates to an object or property does not become information “about” an individual, just because some individual may own or use that property. Since virtually every object or property is connected in some way with an individual, that approach would make all identifiers “personal” identifiers. In the context of the statute, and given the purposes of the statute set out in s. 3, it is not reasonable to expand the meaning of “about an individual” to include references to objects that might indirectly be affiliated or associated with individuals. Some identification numbers on objects may effectively identify individuals. Many, however, are not “about the individual” who owns or uses the object, they are “about the object”.

[para 35] This interpretation is similar to what has been said by this office in past orders regarding the definition of personal information. In Order F2010-011 the adjudicator considered whether a request for information about a business property by the business owners (such as property taxes, permits, and objections or complaints about a permit application) was a request for personal information or a general request. He stated:

...However, personal information is defined as information “about” an identifiable individual. It has been stated that the term “about” in the context of this phrase is a highly significant restrictive modifier, in that “about” an applicant is a much narrower idea than “related” to an applicant; information that is generated or collected in consequence of some action on the part of, or associated with, an applicant – and that is therefore connected to him or her in some way – is not necessarily “about” that applicant (Order F2007-019 at para. 20).

[para 36] The adjudicator concluded that the request by the applicants in that situation was not a request for personal information as the requested information related primarily to the applicants’ business. Several observations are relevant to the current situation:

...On rare occasions, there may be circumstances that give a personal dimension to an individual’s business-related activities, or cause information about his or

her business to simultaneously be information about him or her, so as to render the information “personal information” under section 1(n). For instance, there may be allegations of impropriety or wrongdoing, or disclosure of the information may have an adverse effect on the individual (Order F2006-030 at paras. 12, 13 and 16; Order F2008-020 at para. 28). However, I see no such circumstances in this case.

Given the foregoing, any of the information requested by the Applicants is not their personal information to the extent that the information is about, or relates to, their business or company...

...

The fact that a person purchases property does not automatically make all past information about the property about them. Item 1 is properly characterized as a request for information about the property, as opposed to information about the Applicants. Having said this, I could possibly agree that the amount of taxes paid by the Applicants themselves on the property constitutes information about them, to the extent that the amount was charged to or paid by them personally, and the taxes are in relation to their home. However, this would only be a small amount of information among the records requested in item 1, which is insufficient to find that item 1 constitutes a request for the Applicants’ personal information. As explained in Order 97-003 above, if records are characterized as not being within the category of a request for personal information, a public body may charge fees in relation to all responsive records, even if they contain an applicant’s personal information.

...

Finally, it is possible that some of the records requested in item 3 contain the Applicants’ own views and opinions, as defined under section 1(n)(ix) of the Act, in that representatives of the Public Body may have included the Applicants’ views and opinions in their records/notes. It is also possible that some of the records requested in item 5 contain other landowners’ opinions about the Applicants, as individuals, under section 1(n)(viii). Again, however, this is insufficient to render item 3 or 5 a request for personal information. Both requests were directed at information about the applications, requests, appeals, etc., as opposed to about the Applicants personally...

[para 37] The Public Body argues:

In this case, records pertaining to sidewalk cleaning, lot grading, and animal complaints are referable to property. Although they may contain the names of complainants, investigators, or others, they are not “personal” in the sense that they are “about” an individual. All property is owned by an individual, and offences relating to that property must be answered by the owner, but they are not “personal information” for the purposes of the Act. The records pertain to dogs, sidewalks, lot grading, and houses. The fact that those objects and animals may be referable to the Applicant in some way, does not make the request “personal” in nature as would be the case with counseling, medical or employment records “about” the Applicant. The request was therefore largely for records about property, not an individual.

[para 38] It was not clear to me from the records at issue how the Public Body determined which records were responsive to a request for personal information and which were not. By letter dated May 29, 2013, I asked the Public Body to provide clarification on this point and to provide me with copies of the records that it believed were not responsive to a request for personal information.

[para 39] The Public Body states:

The City provided the following records to [the Applicant] in answer to her request:

1. records relating to POSSE¹ jobs that were commenced by [the Applicant] (which included her dog licensing files or records generated to address her own matters);
2. Records containing opinions or personal reference to or about [the Applicant]

The City did not provide records that:

1. Were created by, or at, the initiative of people other than [the Applicant] in reference to the addresses she referred to in her request;
2. Records pertaining to property issues (such as complaints regarding sidewalk snow removal, animal control, drainage, or permitting issues at the addresses indicated by [the Applicant]. [The Applicant] was advised that production of those records would require payment of the \$25 fee for a general FOIP request;
3. Records that were dated outside the scope of the request; and
4. Enforcement ticket already provided to [the Applicant] and routinely available to her.

[para 40] The Public Body did not explain how it determined that POSSE records “commenced” by the Applicant, such as records related to her pet licenses and a report made by her to the Public Body regarding a stray dog, are the Applicant’s personal information, given the Public Body’s argument that “records pertaining to sidewalk cleaning, lot grading, and animal complaints are referable to property. Although they may contain the names of complainants, investigators, or others, they are not ‘personal’ in the sense that they are ‘about’ an individual.”

[para 41] Many past orders of this office have considered whether information about property can also be personal information of an individual. In Order P2007-004, the Director of Adjudication considered whether information about an individual’s home or property, such as inspections and repair work done to an individual’s home, is personal information about that individual for the purposes of the access provisions PIPA. She surveyed decisions of the Privacy Commissioner of Canada and the Ontario Information and Privacy Commissioner and concluded:

¹ According to the Public Body’s website, POSSE stands for “Public One-Stop Service System, an information system developed by the Sustainable Development Department PPRA Parkland Purchase Reserve Account”, http://www.edmonton.ca/city_government/city_organization/city-acronyms.aspx#p, accessed on August 28, 2013.

... The conclusion I draw from the cases is that information as to the nature or state of property owned or occupied by someone is their personal information if it reflects something of a personal nature about them such as their taste, personal style, personal intentions, or compliance with legal requirements.

[para 42] In Order F2012-14, the adjudicator considered whether records relating to water well testing contain personal information about individuals, or if the information is only “about” property. The adjudicator also surveyed several decisions of the Ontario Information and Privacy Commissioner, as well as past Orders of this office. He concluded:

What I glean from the foregoing relevant commentary is that a legal land description is not itself personal information: see *Leon’s Furniture Ltd. v. Alberta (Information and Privacy Commissioner)* and Ontario Order MO-2053. However, a legal land description may serve as an identifier that will reveal what does constitute personal information: see the various Orders cited within Ontario Order MO-2053, which concludes that “the common thread in all these orders is that the information reveals something of a personal nature about an individual or individuals”. The distinction between what is and is not personal information is demonstrated in Ontario Order PO-2900: the fact that an individual – who can be identifiable by virtue of information about property – drilled a well is his or her personal information, but information about the well itself is not his or her personal information.

Consistent with the foregoing commentary are principles articulated by earlier Orders of the Office. When determining whether information is about an identifiable individual, one must look at the information in the context of the record as a whole, and consider whether the information, even without personal identifiers, is nonetheless about an identifiable individual on the basis that it can be combined with other information from other sources to render the individual identifiable [Order F2006-014 at para. 31, citing Ontario Order MO-2199 (2007) at para. 23]. Information will be about an identifiable individual where there is a serious possibility that an individual could be identified through the use of that information, alone or in combination with other available information [Order F2008-025 at footnote 1, citing *Gordon v. Canada (Minister of Health)*, 2008 FC 258 (CanLII), 2008 FC 258 at para. 34].

[para 43] The Public Body cites *Leon’s* as support for its position that information about property is not personal information. However, I do not understand the Court in *Leon’s* to be saying that information about property *can never* also be information about an individual such that it is also personal information. In my view, the comments of the Court do not lead to the conclusion that the broad definition of personal information specifically excludes information about property owned by an individual in any context. I note also that the Court of Appeal more recently observed that the definition of personal information in the *Personal Information Protection Act* (PIPA) is particularly broad and that “[i]t covers all personal information of any kind, and provides no functional definition of that term” (*United Food and Commercial Workers, Local 401 v Alberta (Attorney General)*, 2012 ABCA 130, at para. 77).

[para 44] This is consistent with Order P2012-01, in which the Director of Adjudication stated:

It is not inconsistent with [Leon's] to say that in a case where the location of a property is associated with an individual in such a manner that it indicates where they reside, for example, where it is *given or designated as* a person's home address, the information does not merely "relate to an object or property", it relates to the individual, and it is information "about" that individual. The information is not about the person "just because" they may own the property, it is their personal information because it indicates where they live.

[para 45] The Applicant's request for complaints about her property should be read in the context of the portion of the request that referred to complaints about her. The Applicant states in her submissions that she is concerned about what neighbours have said about her and the accuracy of statements made by the neighbours. She knows that some complaints have been made in relation to her property. Most of the Public Body's bylaw functions relate to property.

[para 46] It seems to me that the Applicant is seeking complaints made about her, even those that are expressed in terms of her property (because most of the complaints handled by the Public Body are regarding property and not individuals). In other words, the Applicant is primarily seeking information related to complaints made about her, whether they were made about her directly, or indirectly via complaints about her residence.

[para 47] In many cases the determination as to whether information is "personal information" is dependent on the context in which it appears. A statement that a property owner does not remove snow from the sidewalk adjacent his or her property seems to be a statement about the actions (or lack of action) of the property owner, rather than a statement about the property. Similarly, a statement about an owner's landscaping or gardening practices seems to be a statement about that owner's use of her property. In comparison, a statement about the lot grading of a property or a statement about the amount of snow on a sidewalk, appear to be statements about property (although it may relate to the property owner).

[para 48] Another distinction that has been made in past orders between information related to an individual and personal information about the individual is whether there is a "personal dimension" to the information. The adjudicator in Order F2010-011 commented that information about an individual's business may be personal information about that individual in circumstances that give a "personal dimension" to that information, such as allegations of wrongdoing. Similarly, information about employees acting in the course of their job duties is normally not considered information *about* those individuals; however, there may be circumstances that give that information a "personal dimension", such as disciplinary issues or performance evaluations (see Orders F2004-026 and P2012-09).

[para 49] The Applicant is seeking complaints made about her or her property because she is concerned about what neighbours may be saying *about her*. Because the Applicant resides at the property at issue, complaints about the property could be characterized as complaints about her behavior. Following the above line of reasoning, these circumstances of the Applicant's request indicate that records containing complaints about her property have a "personal dimension" such that they contain information that is not merely related to the Applicant but is *about her*.

[para 50] The records that are responsive to the Applicant's request (complaints about her and her property, and records resulting from those complaints) contain both statements about the Applicant's use of her property (her personal information) as well as statements about the property only (not the Applicant's personal information).

[para 51] I have concluded that the Applicant's request was aimed at complaints made about her, whether directly or via complaints about her property, and was a request for her personal information. The next step is to determine whether each record (not page) contains the Applicant's personal information. Records that do not contain the Applicant's personal information are not responsive to her request.

[para 52] Most of the first type of records provided to the Applicant by the Public Body (records relating to POSSE jobs that were commenced by her) do not appear to be responsive to her request. Only two pages of the records already provided to the Applicant are "records containing opinions or personal reference to or about" the Applicant, and these pages are duplicates.

[para 53] In addition to those pages, records (not pages) containing complaints or statements about the Applicant's actions, use of property or similar information are properly characterized as responsive to the Applicant's request for personal information. Many pages of the records provided to me by the Public Body, which it believed were not responsive to a request for personal information, contain only information about the Applicant's property (for example, the state of the sidewalk on a particular day). However, these records appear to be records generated as a result of a complaint (and are therefore responsive to the Applicant's request for her personal information). Where these pages are linked to a complaint (i.e. part of the same record) then they will also be responsive to the request for personal information. I note that in the package of records provided to me, many pages have "page x of y" in the footer, indicating that all y pages are part of the same record.

[para 54] Any remaining records (records that do not contain complaints and were not generated as a result of a complaint) are not responsive to the Applicant's request for personal information.

4. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the record(s)?

[para 55] The package of records provided to the Applicant by the Public Body included a record that contained an opinion or personal reference about the Applicant; the entire page was withheld except for a partial sentence. The partial sentence consists of a derogatory comment made about the Applicant. Regarding the remainder of the page, the Public Body states:

The bulk of that record was non-responsive, but the single line containing an opinion about the Applicant was disclosed to her. Section 17(1) was applied because the records contain personal information about a third party. As the City was processing a request for only the personal records of the Applicant. [sic] In that context, third party personal information must be redacted and is non-responsive.

[para 56] A public body must withhold personal information of a third party if the disclosure of that information would be an unreasonable invasion of the third party's privacy. The Public Body did not tell me which provisions of section 17 weigh in favour of withholding the information. Further, I do not know which information has been withheld under section 17 and which has been withheld as being non-responsive.

[para 57] The purpose of an inquiry is to review a decision made by a public body. However, in this case I am not clear what decision the Public Body made. I will therefore order the Public Body to reconsider the application of section 17 to the remainder of the severed page, taking into account all relevant factors under that provision.

5. Should the Applicant be excused from paying all or part of a fee, as provided by section 93 of the Act (fees)?

[para 58] I have found that the Applicant's request is a request for personal information, which is subject only to fees for producing a copy of the requested record (items 3-6 of Schedule 2 of the FOIP Regulation). The Applicant has not argued that any fees owing for copying should be waived; her concern was that she did not believe she owed an initial fee as her request was not for general information. As such, I do not need to consider whether a fee waiver is appropriate. As the Applicant did not pay the \$25 initial fee, there is no need to reduce or refund that fee.

V. ORDER

[para 59] I make this Order under section 72 of the Act.

[para 60] I find that the Applicant's request was for personal information. I order the Public Body to process her request in accordance with the Act.

[para 61] I find that the Public Body did not fulfill its duty to assist the Applicant. I also find that the Public Body did not respond to the Applicant within the timelines required by the Act. I order the Public Body to respond to the Applicant as required by Act and in the timelines given therein.

[para 62] I order the head of the Public Body to consider all relevant circumstances in making the decision to disclose or withhold personal information in the responsive records, including the personal information withheld on pages 12 and 18 of the records at issue.

[para 63] I further order the Public Body to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with the Order.

Amanda Swanek
Adjudicator