ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER F2024-20

July 4, 2024

CITY OF ST. ALBERT

Case File Number 008498

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Summary: Under the *Freedom of Information and Protection of Privacy Act* (the Act), the Applicant made an access to information request to the City of St. Albert (the Public Body). The Applicant sought the results of soil testing conducted on his neighbour's (the Owner's) property. The testing was carried out by Advanced Environmental Engineering Ltd. (the Consultant). The Public Body withheld the entire testing report (the Assessment) under section 16(1) of the Act. The Public Body also withheld some information under section 17(1). At inquiry the Applicant clarified that he only wanted the results of the testing, not the whole report. The results appeared on two pages, which the Adjudicator considered in the inquiry.

The Adjudicator found that section 16(1) did not apply to the Assessment since it was not provided explicitly or implicitly in confidence. The Public Body had arranged to obtain the Assessment from the Owner in exchange for providing funding for it. That arrangement was the whole agreement between the Public Body and the Owner. While an agreement between the Owner and the Consultant to have the testing performed contained terms which stipulated the Assessment was confidential, those terms did not apply to the Public Body, which was not part of that agreement.

The Adjudicator found that the Owner's address was his personal information, but that disclosure of it was not an invasion of third party personal privacy. The Applicant was not interested in obtaining other personal information.

The Adjudicator ordered the Public Body to disclose the two pages containing the testing results, while withholding personal information that the Applicant was not interested in.

Statutes Cited: AB: *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 ss. 1(n), 17(1), 17(4), 17(5), 17(5)(f), 16(1), 16(1)(a), 16(1)(b), 16(1)(c), 30(1), 72.

Authorities Cited: AB: Orders F2012-14, F2013-53, F2016-65, F2019-17.

Cases Cited: *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110**;** *Edmonton Police Service v. Alberta (Information and Privacy Commissioner),* 2012 ABQB 595.

I. BACKGROUND

[para 1] In 2017, the owner (the Owner) of a residential lot located within the boundaries the City of St. Albert (the Public Body) hired Advanced Environmental Engineering (the Consultant) to carry out soil testing on his property. The Public Body provided funding to the Owner to have the testing carried out. The amount provided by the Public Body covered roughly 90% of the cost; the balance was paid by the Owner. As a condition of receiving the funding, the Owner agreed that the Public Body would receive a copy of the results of the soil testing, which are contained in a document called an assessment (the Assessment). The Applicant, who is the Owner's neighbour and shares a property line with him, witnessed the Consultant taking samples for testing.

[para 2] On March 9, 2018, the Applicant made an access request under the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25 (the Act) to the Public Body, seeking the results of the soil testing.

[para 3] In the course of processing the access request, the Public Body provided notice to the Consultant under section 30(1) of the Act. In reply to the section 30(1) notice, the Consultant did not object to disclosure of the Assessment for its own reasons; rather it informed the Public Body that the Assessment was the Owner's property, and that the Public Body would have to seek the Owner's consent to disclose the Assessment. The Owner did not consent.

[para 4] The Owner was also provided notice under section 30(1) in respect of the presence of some of his personal information in the Assessment. The Owner did not consent to disclosure of any of his personal information.

[para 5] The Public Body did not provide any information from the Assessment to the Applicant in response to his access request, withholding 56 pages of it under sections 16 and 17 of the Act.

[para 6] On May 1, 2018, the Applicant sought a review of the Public Body's decision. Investigation and mediation were authorized to attempt to resolve the issue, but did not do so. The matter proceeded to inquiry.

[para 7] After the request was made the Owner showed the results of the soil testing to the Applicant, but did not provide the Applicant with a copy.

II. RECORDS AT ISSUE

[para 8] The records at issue consist of the pages which contain the results of the Assessment. There are discrepancies surrounding the total page count.

[para 9] In its reply to the access request, the Public Body states that the Assessment is 56 pages. In its initial submission in the inquiry, it states that it is 59 pages. The .pdf copy provided to me for review in this inquiry has 74 pages. It is possible that the total count has shifted over time depending upon whether blank pages were included in the total.

[para 10] As it is, I do not need to consider the proper number of pages. In his initial submission, the Applicant has made clear that he is not interested in receiving the whole Assessment, but rather seeks only the results of the lab testing. The results are neatly contained in a two-page letter that occurs on pages five and seven of the .pdf copy of the Assessment provided to me by the Public Body. Page six is blank. Since the Applicant is only concerned with the findings, I limit this inquiry to consideration of whether or not pages five and seven were properly withheld in response to the Applicant's access request. I will not order the Public Body to disclose any other pages.

III. ISSUES

[para 11] The issues in this inquiry are:

A. Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information in the records?

B. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?

IV. DISCUSSION OF ISSUES

Preliminary Matter – Affected Third Parties

[para 12] The Owner was invited to participate in the inquiry, and did.

[para 13] The Consultant was invited to participate in the inquiry but did not. It appears that between the time of the access request and the inquiry, the Consultant has ceased operations.

A. Does section 16 of the Act (disclosure harmful to business interests of a third party) apply to the information in the records?

[para 14] Section 16 of the Act states,

16(1) The head of a public body must refuse to disclose to an applicant information
(a) that would reveal

(i) trade secrets of a third party, or

(ii) commercial, financial, labour relations, scientific or technical information of a third party,

(b) that is supplied, explicitly or implicitly, in confidence, and

(c) the disclosure of which could reasonably be expected to

(i) harm significantly the competitive position or interfere significantly with the negotiating position of the third party,

(ii) result in similar information no longer being supplied to the public body when it is in the public interest that similar information continue to be supplied,

(iii) result in undue financial loss or gain to any person or organization, or

(iv) reveal information supplied to, or the report of, an arbitrator, mediator, labour relations officer or other person or body appointed to resolve or inquire into a labour relations dispute.

[para 15] The purpose of section 16(1) has been set out many times. In Order F2016-65 the Adjudicator stated at para. 34,

> Orders of this office have taken the position that section 16 is intended to protect the informational assets, or proprietary information, of third parties that might be exploited by competitors in the marketplace if disclosed. In Order F2009-015, the Director of Adjudication made this point at paragraphs 46 - 47. Similarly, Orders 99-018, F2009-007, F2009-028, F2010-013, F2010-036, F2011-002, F2011-001, F2012-06, F2012-17, F2013-17, F2013-37, F2013-47, and F2013-48 also adopt the position that section 16 applies to protect the informational assets of third parties in situations where those assets have been supplied to government in confidence, and that harm could result from the disclosure of these informational assets.

[para 16] In order for section 16(1) to properly apply to information, the criteria in each of sections 16(1)(a), (b), and (c) must be met. Meeting only one or two of the criteria does not suffice. It is not the case, as is argued by the Public Body, that simply because an entire document may be provided in confidence in accordance with section 16(1)(b), that all information in it is protected by section 16(1). Only information of a third party, of the types described in section 16(1)(a), disclosure of which results in the outcomes in section 16(1)(c) can be withheld under section 16(1). Where those conditions, or confidentiality under section 16(1)(b) are not met, information cannot be withheld under section 16(1).

[para 17] The criteria of section 16(1)(b) are not met in this case. For the reasons below, I find that the Assessment was not supplied in confidence, either explicitly or implicitly.

[para 18] To understand the facts of the matter it is helpful to note that this case concerns information that is regularly for sale, and was sold in the normal course of the Consultant's business. In this regard, it concerns different circumstances than many other cases involving the application of section 16(1). More frequently, section 16(1) arises in in cases where an entity shares proprietary information with a public body as a matter of negotiation, or to fulfill another obligation occurring outside of the buying and selling of information. In this case the information was simply bought by the Owner and traded to the Public Body in exchange for funding for the purpose of its purchase.

[para 19] The chain of events leading to the creation of the Assessment and the Public Body's acquisition of it concerns two agreements: one between the Public Body and the Owner, and another between the Owner and the Consultant. There is no agreement between the Public Body and the Consultant.

[para 20] As mentioned, the Public Body obtained a copy of the Assessment in exchange for providing the Owner with funding for soil testing. This arrangement is detailed in a letter to the Owner, dated July 17, 2017. That letter also states the Owner must provide documentation to demonstrate that his agreement with the Consultant includes a provision that the Public Body will receive a copy of the Assessment. These terms appear to be the whole agreement between the Public Body and the Owner. Neither of them gives any indication that any other terms, including whether the Assessment was being provided confidentially, ever took place.

[para 21] The Owner contracted with the Consultant to perform the soil testing. There does not appear to be have been a written contract containing the terms negotiated between the Owner and the Consultant. The Owner provided invoices from the Consultant that indicate that the Owner received a quote for the cost of the work, and that final payment had to be made before the Assessment was provided, but that is all. The only other terms agreed to by the Owner and the Consultant that are in evidence before me are that they agreed that the Assessment could not be shared unless both of them consented, and that a copy may be provided to the Public Body (the consent provision). This term is noted in the Assessment itself, at page 29 of 74 in the .pdf copy provided to me.

[para 22] Both the Public Body and the Owner argue that the consent provision in the agreement between the Consultant and the Owner establishes that the Assessment was provided in confidence. The Public Body more specifically argues that it indicates that the Assessment was explicitly provided in confidence. I do not agree.

[para 23] The positions of the Public Body and the Owner rest on the incorrect conclusion that the consent provision binds the Public Body. It does not. The consent provision was only agreed to between the Owner and the Consultant as part of their

arrangements that saw the testing carried out. The Public Body never agreed to such a term with the Consultant. Further, no such term was agreed to between the Public Body and the Owner. Their terms consisted only of providing the Assessment in exchange for funding, and written confirmation that the Public Body would receive the Assessment, prior to release of the funds. None of the terms under which the Public Body obtained the Assessment indicate that it was provided explicitly in confidence.

[para 24] As to whether the Assessment was provided implicitly in confidence, previous orders of this office consider a non-exhaustive list of factors regarded as relevant to the issue of implicit confidentiality, which was held to be a reasonable approach to the issue in *Edmonton Police Service v. Alberta (Information and Privacy Commissioner),* 2012 ABQB 595, at paras. 32-33; those factors are whether the information was,

> (1) Communicated to the public body on the basis that it was confidential and that it was to be kept confidential.
>
> (2) Treated consistently in a manner that indicates a concern for its protection from disclosure by the affected person prior to being communicated to the public body.
>
> (3) Not otherwise disclosed or available from sources to which the public has access.
>
> (4) Prepared for a purpose which would not entail disclosure.

[para 25] For the reasons below, I find that the transactional way in which the Public Body obtained the Assessment is a highly significant factor in this case, which ultimately leads to my conclusion on this matter.

[para 26] The role that the parties' intentions play in determining whether information was implicitly provided in confidence was set out in Order F2019-17 at para. 130:

> Because the language in section 16(1)(b) of the FOIP Act and section 20(1)(b) of the federal ATIA is similar, the Supreme Court's decisions in *Air Atonabee* and *Merck Frosst* are relevant to interpreting section 16(1)(b). In my view, those decisions can be read consistently with the Alberta Court of Appeal's decision in *Imperial Oil*. Where both parties agree that information was provided in confidence and there are no other factors to indicate otherwise, I accept that part of the test has been met. This is a more subjective test, as discussed in *Imperial Oil*. However, where there is extrinsic evidence, such as the records themselves, I must also consider that evidence. In my view, this is not inconsistent with Imperial Oil; otherwise the Court of Appeal could be interpreted as saying that extrinsic evidence should be ignored or discounted in favour of the parties' subjective positions. I don't read the Court's decision that way. Rather, I understand the Court in Imperial Oil saying that the intentions of the parties is a significant factor in the determination of confidentiality, and that the Commissioner (or her delegates) cannot make a finding contrary to those intentions without reason, such as evidence to the contrary.

[para 27] Given that the Public Body and Owner believe that the consent clause applies to the Public Body, it could be said that their respective subjective beliefs are that the

Assessment was provided in confidence. Indeed, that belief informed the Public Body's treatment of the Assessment, which it has treated as confidential. When the access request was made, the Public Body contacted the Owner and the Consultant regarding consent. The Consultant objected to sharing the Assessment, not out of concern for its business, but on the basis that it had been informed by the Owner that he did not consent to sharing it. The Owner did not give consent and the Public Body respected that decision.

[para 28] While the above points weigh in favour of a conclusion that the Assessment was implicitly provided in confidence, I find that further consideration of the full circumstances and agreements between the Public Body and Owner, and Owner and Consultant overwhelmingly points to the opposite conclusion.

[para 29] The terms under which the Assessment was purchased by the Public Body were negotiated and agreed to between the Public Body and the Owner and did not include any consideration of confidentiality, including the consent provision. Indeed, the consent provision only arose as part of the Owner's agreement with the Consultant, which occurred after the agreement with the Public Body was in place. Further, as far as I can see from the evidence before me, the consent provision only came to the Public Body's attention *after* it received the Assessment. Under these circumstances, the notion that there could be implied confidence accompanying the agreement between the Public Body and the Owner is contradictory to the operation of the agreement itself. Having agreed to the terms without addressing confidentiality at all, I do not see how the Owner could be seen to be in position to impose or even expect confidentiality on the part of the Public Body. For the same reasons, I see no basis on which I could conclude that the Public Body intended to, or could be seen to have suggested that it would, treat the Assessment as though it were provided in confidence by the Owner; confidentiality was simply not contemplated between them.

[para 30] As to the Public Body's position vis-à-vis the Consultant, the Consultant agreed with the Owner that the Public Body would receive a copy of the Assessment, but that is all. I do not see any basis on which I can conclude that the Consultant expected that it was supplying the Assessment to the Public Body under any particular conditions or circumstances of confidentiality; it left that matter to the Owner, and had no involvement with the Public Body regarding the terms under which the Assessment was supplied to the Public Body.

[para 31] In light of the above, what seems to have happened in this case is that the Public Body arranged to, and did through its transaction with the Owner, acquire the Assessment, free of concern for confidentiality, but, upon reviewing the consent provision, mistakenly concluded that confidentiality had been imposed upon it. I note that aside from the mistaken belief that the consent provision applied to the Public Body neither the Owner nor the Public Body make any arguments or point to any circumstances that suggest confidentiality over the Assessment. Accordingly, I find that the Assessment was not implicitly provided in confidence.

[para 32] In closing, I observe that the fact that the Owner does not want the Applicant to receive the Assessment is of no matter. His desire in that regard is neither reflected in his agreement with the Public Body, nor in the circumstances in which he reached that agreement, and as such does not result in a finding that the Assessment was implicitly provided in confidence.

[para 33] I find that section 16(1)(b) was not met, and that the Public Body was not required to withhold any information under section 16(1).

B. Does section 17 of the Act (disclosure harmful to personal privacy) apply to the information in the records?

[para 34] "Personal Information" is defined in section 1(n) of the 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 35] Section 17(1) of the Act requires a public body to withhold third party personal information in response to an access request where disclosing it would be an unreasonable invasion of the third party's personal privacy. Section 17(1) states,

> *17(1) The head of a public body must refuse to disclose personal information to an applicant if the disclosure would be an unreasonable invasion of a third party's personal privacy.*

[para 36] The application of section 17(1) is informed by sections 17(4) and (5) which provide for presumptions that disclosure is an unreasonable invasion of third party personal privacy, and circumstances to consider in determining whether disclosure is an unreasonable invasion of third party personal privacy, respectively. Sections 17(4) and 17(5) state,

> *(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy if*
>
> > *(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation,*
> >
> > *(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation,*
> >
> > *(c) the personal information relates to eligibility for income assistance or social service benefits or to the determination of benefit levels,*
> >
> > *(d) the personal information relates to employment or educational history,*
> >
> > *(e) the personal information was collected on a tax return or gathered for the purpose of collecting a tax,*
> >
> > *(e.1) the personal information consists of an individual's bank account information or credit card information,*
> >
> > *(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations,*
> >
> > *(g) the personal information consists of the third party's name when*
> >
> > > *(i) it appears with other personal information about the third party, or*
> > >
> > > *(ii) the disclosure of the name itself would reveal personal information about the third party,*
> >
> > *or*
> >
> > *(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.*
>
> *(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body must consider all the relevant circumstances, including whether*
>
> > *(a) the disclosure is desirable for the purpose of subjecting the activities of the Government of Alberta or a public body to public scrutiny,*

(b) the disclosure is likely to promote public health and safety or the protection of the environment,

(c) the personal information is relevant to a fair determination of the applicant's rights,

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people,

(e) the third party will be exposed unfairly to financial or other harm,

(f) the personal information has been supplied in confidence,

(g) the personal information is likely to be inaccurate or unreliable,

(h) the disclosure may unfairly damage the reputation of any person referred to in the record requested by the applicant, and

(i) the personal information was originally provided by the applicant.

[para 37] The list of circumstances in section 17(5) is not exhaustive. Any other relevant circumstances must also be considered when determining whether or not disclosure is an unreasonable invasion of third party personal privacy.

[para 38] While the Public Body withheld the entire Assessment under section 16(1), it also applied section 17(1) to some information. I consider whether the Public Body applied section 17(1) to information that is personal information under the Act.

[para 39] The Public Body applied section 17(1) to the Owner's name, and telephone number. These are his personal information under section 1(n)(i).

[para 40] The Public Body also withheld the Owner's personal e-mail address, which includes his last name in it. This is also his personal information since it is about him as an identifiable individual.

[para 41] The Applicant is not concerned with the above information. He states that it is "completely acceptable" to him for the Public Body to redact the Owner's personal information. However, I do not expect that the Applicant had a full understanding of what information may constitute the Owner's personal information in making that statement. In particular, it does not appear that the Applicant would have understood that under some circumstances the Owner's address, which appears on page five of the Assessment, may be personal information and in other circumstances it would not.

[para 42] The utility of the information on pages five and seven of the Assessment varies greatly depending on whether or not the address is included. With the address, those pages indicate the property where the testing was performed. Without the address, those pages only contain soil testing results from an unspecified place. While the Applicant knows the address personally, the information is objectively less useful if the

address is not included. For that reason, and for the purpose of determining whether the Public Body met its duty under section 17(1), I will consider whether the address is personal information, and whether the Public Body must withhold it if it is.

[para 43] In response to the access request the Public Body did not apply section 17(1) to the Owner's address. The address has not been disclosed to the Applicant since the entire Assessment, including the address, was withheld under section 16(1).

[para 44] In some cases information about property, here a residential address, is personal information, in other cases, where there is no context connecting the address to an individual, or no personal dimension associated with the address, it is not. This point was elucidated in Order F2013-53 at paras. 47 – 49, upheld by the Alberta Court of Appeal in *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110:

> 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).
>
> 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).
>
> 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 45] In present case, the Owner's address, on its own without appearing with Owner's name which was withheld by the Public Body, is not personal information on its face. In the context of pages five and seven of the Assessment, it only reveals the place where testing took place.

[para 46] I note, however, that if the Owner's address is disclosed, it raises a serious possibility that the Owner could be identified via combining that address with

information from other available sources, such as someone else's knowledge that the Owner is the Applicant's neighbour and lives at this address.

[para 47] This point was considered in Order F2012-14 regarding the presence of the legal description of parcels of land appearing among water testing data. The Adjudicator stated, at para. 49

> 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 at para. 34].

[para 48] "Other available information" in Order F2012-14 included information which could link a legal description of a parcel of land, which appeared in the records at issue, with the identity of the owner of the land, which was not at issue. The Adjudicator theorized that such information could consist of land titles searches or knowledge of ownership held by neighbouring families. In conjunction with other information in the records at issue, that information would reveal who had their water tested which was found to be personal information (Order F2012-14 at paras. 52 - 54).

[para 49] In my view, the address at issue in this case is no different than the legal descriptions of land in Order F2012-14. Addresses can be linked back to those who own the property at the address and, in this case, reveal who had testing performed. As such, while the address is not personal information on its own, it takes on the characteristics of personal information when presented in combination with the other information on pages five and seven, which constitutes personal information all together.

[para 50] I have also considered whether other information on pages five and seven constitute personal information and found that it does not. I discuss them below.

The results of the testing

[para 51] Order F2012-14 also considered whether the results of the water testing were an individual's personal information. The Adjudicator found at para. 59 that such information was about the water, and not any person. I reach the same conclusion here. The results of the soil testing are about the soil, not the Owner or anyone else. The results are not personal information.

Whether the information could reveal who is responsible for the condition of the soil

[para 52] Lastly, Order F2012-14 also considered whether, in the event that water testing revealed that the water was polluted, a suggestion that the owner of the land could be responsible for the pollution could be personal information. The Adjudicator stated at paras. 66 and 67,

> In my view, a mere belief, perception or speculation about an individual does not amount to "information about" that individual within the terms of section 1(n), even where the individual is "identifiable" in the sense that he or she is the particular individual to whom the belief, perception or speculation is attached. However, I also find that there will be instances in which disclosure of the information requested by the Applicant will reveal that specific groundwater is polluted or contaminated, and where that pollution or contamination can, by virtue of other available information, be traced back to an identifiable individual who can be the only one responsible. For example, an Environmental Health Consultant, who testified at the oral hearing on behalf of the Public Body, noted that hydrocarbon spills from a buried tank can be linked back to a specific piece of land, as can water contaminated from intensive livestock operations.
>
> I accordingly find that the fact that identifiable individuals are responsible for polluting or contaminating groundwater will sometimes be revealed by the records at issue, and that this fact – but not a mere perception – amounts to their personal information within the meaning of section 1(n) of the Act. I must therefore address, in the next part of this Order, whether disclosure of the fact that an identifiable individual polluted or contaminated groundwater would be an unreasonable invasion of his or her personal privacy.

[para 53] I agree with the Adjudicator in Order F2012-14 that mere perception or speculation does not amount to personal information.

[para 54] The information in this case does not contain, or stand to reveal any fact about who is responsible for the state of the soil as reported in the Assessment. There is one paragraph on page seven appearing in bold font that tends toward a suggestion of a historical reason for the state of soil, but does not indicate, nor stand to reveal any fact about any individual's responsibility. Anyone reading the information would have to make a leap between what is reported there and who undertook any activities suggested therein. Any notions of individual responsibility are thus mere perception or speculation.

[para 55] However, as the Owner and the Applicant have both provided ample historical information concerning their shared property line, previous owners of the Applicant's lot, and the activities of previous owners which the Owner believes affected the condition of the soil, I also consider whether the information in pages five and seven, in combination with other available information could be third party personal information, as occurred in Order F2012-14.

[para 56] The information known to the Applicant and Owner demonstrates great and detailed knowledge about the history of their properties and who has been involved with them in the past, activities carried out by past owners, as well as efforts to have the Public Body address various complaints associated with their properties over many years. This historical information creates a serious possibility that an individual responsible for the

state of the soil could be identified. That does not, however, inform whether any information in pages five and seven is personal information.

[para 57] Under the Act, public bodies are not, and could not realistically be expected to be, responsible for knowing "information from other available sources" and how it might be combined with information in records that are subject to an access request. There is simply no means for public bodies to know, for example, what historical knowledge someone's neighbours have about their land. A public body can only be expected to flag information that raises a serious possibility that an individual could be identified by it as personal information, where it can see such information *in its own records*. That is not the case here.

[para 58] In contrast to the historical information possessed by the Applicant and Owner*, the information in pages five and seven* does not create a serious possibility that anyone responsible for the state of the soil could be identified. While the information contains the results of the testing, and states the address at which it was carried out, it does not provide any of the historical information presented by the Owner and Applicant. Neither does it indicate the date of the test, expressly state who owns or owned the property that was tested, who owns or owned any adjacent property, or who could be responsible for any activities that may have affected the state of the soil. The information only reveals whether there is something to be responsible for, not who may be responsible.

[para 59] In short, since the information in the records only reveals if there is anything to be responsible for, the Public Body need not concern itself with considering whether anyone might have other information that indicates who is responsible. The former is not personal information, and the latter is not information subject to an access request for which the Public Body is responsible.

[para 60] Since the information in the records at issue does not raise the possibility of identification, it is not personal information.

[para 61] I now consider whether section 17(1) requires the Public Body to withhold information that is the Owner's personal information. Since the Applicant is not concerned with the Owner's name, telephone number, or e-mail address, I do not need to consider that information. The Public Body may leave it redacted.

[para 62] The remaining information to consider is the Owner's address and if that is not redacted, the fact that the Owner had his soil tested.

[para 63] None of the presumptions against disclosure in section 17(4) apply.

[para 64] I now consider factors under section 17(5), and whether they indicate that disclosure of the address and the fact that he had his soil tested is an unreasonable invasion of the Owner's privacy.

[para 65] The Owner did not expressly argue that any of the enumerated factors under section 17(5) apply. However, I consider that his arguments surrounding the application of section 16(1) indicate that he believed the agreement between him and the Consultant not to share the Assessment without both of their consents bound the Public Body. I consider that it is his position that the Assessment, and the personal information on pages five and seven, was supplied in confidence, which is a factor under section 17(5)(f).

[para 66] I do not find that the information was supplied in confidence. As mentioned in the discussion under section 16(1), the arrangement under which the Public Body acquired the Assessment was that it would receive a copy in exchange for providing funding. The consent provision only bound the Owner and Consultant, not the Public Body. The Owner may have hoped the Public Body would treat the Assessment as confidential, but under the circumstances, he cannot be said to have supplied it in confidence. The arrangement under which the Assessment was supplied, did not include such terms.

[para 67] The Owner made several points that I consider as other factors under section 17(5).

[para 68] The Owner argues that the fact that he paid a portion of the cost of the Assessment, and the Applicant paid nothing, means that the Applicant should not receive it. I do not find this point to be relevant. The Owner paid for 10% of the cost of the Assessment as a whole, but not his personal information in it. His address and the fact that he had the soil tested, are not what he paid for.

[para 69] The Owner also argues that if the Assessment is released, it *could* cause unnecessary hardship and stress for his family if previous discussions on social media related to his property resume. The Owner provided examples of such discussion from 2015. I do not find these concerns suggest that disclosure would be an unreasonable invasion of the Owner's privacy. The examples of social media discussion provided by the Owner are benign with respect to him. The notion that the subject would again reach social media is also entirely speculative.

[para 70] The Applicant argues that the Assessment should be released to him since it will assist him in "vindicating" himself in the face of accusations by the Owner that allegedly devalue the Applicant's property, and which have been enshrined in minutes of meetings held by the Public Body and other publically available documents. This argument is germane to the issue of whether the Owner's address should be released. Having the address on pages five and seven removes no doubt about the location at which testing occurred, and would thus bolster his ability to vindicate himself.

[para 71] While the points are germane to the issue, I do not find that they weigh either for or against disclosure in this case. The Applicant's suggestion that he has anything to vindicate in anyone's eyes are as speculative as the Owner's suggestion that this matter will reappear on social media. As well, he does not offer any indication of how vindication would be achieved by the information in the Assessment. It is not evident on

its face that it would vindicate any particular accusation. Moreover, “vindication” appears to be more of personal matter for the Applicant rather than an issue of righting a substantial wrong. It is a reason that the Applicant would like to have the information, but does not inform whether disclosing the Owner’s personal information would be an unreasonable invasion of the Owner’s personal privacy.

[para 72] Finally, the Applicant argues that the Assessment was paid for with tax-payer dollars, and that in light of the amount of taxes he has paid to the Public Body, he is entitled to a copy of it. This argument is irrelevant for the same reason as the Owner’s argument concerning the fact that he paid for some of the Assessment. The personal information at issue is not what was paid for, either by the Owner, or the Public Body.

[para 73] The Public Body did not argue that any factors under section 17(5) apply.

[para 74] The only other relevant factors under section 17(5) I can see in this case is that the Applicant undoubtedly knows the Owner’s address, and that the Owner had the testing carried out, having witnessed the sampling take place, and has been shown the results by the Owner.

[para 75] Regarding knowledge of the Owner’s address, the two have been residential neighbours since 2016, and even prior to the Applicant’s acquisition of his neighbouring property, he made an application to the City of St. Albert’s Development Appeal Board, at which he and the Owner presented cases concerning the Applicant’s property. The two, became known to each other at that time, if they were not already.

[para 76] As well, the Owner participated in the inquiry as a disclosed third party, meaning that his name and address were disclosed to the Applicant throughout the inquiry process in order to facilitate the exchange of submissions.

[para 77] In my view, these last considerations weigh in favour of finding that disclosure of the Owner’s address and the fact that he had his soil tested is not an unreasonable invasion of the Owner’s personal privacy. The disclosure of information to the Applicant does not result in the Applicant acquiring any more personal information about the Owner than he already knows. The effect of disclosure in this case is merely to provide that personal information in a written form.

[para 78] I find that the Public Body is not required to withhold the Owner’s address and the fact that he had his soil tested under section 17(1).

IV. ORDER

[para 79] I make this Order under section 72 of the Act.

[para 80] I order the Public Body to disclose pages five and seven of the .pdf version of the Assessment to the Applicant, with the exception of the Owner’s name, telephone number, and e-mail address.

[para 81] I order the Public Body to confirm to me and the Applicant in writing, that it has complied with this Order within 50 days of receiving a copy.

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John Gabriele
Adjudicator
/ah