



Information and Privacy  
Commissioner/Ontario  
Commissaire à l'information  
et à la protection de la vie privée/Ontario

# **ORDER M-56**

**Appeal M-910365**

**Toronto Hydro**



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# ORDER

## BACKGROUND:

Toronto Hydro received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of correspondence prepared by a named individual relating to the requester.

Toronto Hydro denied access to the record pursuant to section 14 of the Act, stating that the record consists of "personnel evaluations which, if released, would constitute an unjustified invasion of personal privacy". The requester appealed the decision.

The record is a memorandum prepared by a manager at Toronto Hydro and discusses the relationship between the requester and her supervisor.

During the course of mediation, the supervisor was contacted by the Appeals Officer to determine whether he would consent to the release of the parts of the record which related to him. He did not consent, but did advise the Appeals Officer that he had been provided with a copy of the entire record by Toronto Hydro.

Further mediation of the appeal was not successful, and notice that an inquiry was being conducted to review the decision was sent to the appellant, Toronto Hydro, and the supervisor (the affected person). Written representations were received from Toronto Hydro and the appellant only.

## ISSUES:

The issues in this appeal are as follows:

- A. Whether any of the information contained in the record qualifies as personal information as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.

**ISSUE A: Whether any of the information contained in the record qualifies as personal information, as defined in section 2(1) of the Act.**

Section 2(1) of the Act states in part:

"personal information" means recorded information about an identifiable individual, including,

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,  
...
- (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;

The heading of the memorandum and the first paragraph identify the purpose for which the memorandum was written. Paragraphs two through five refer to a series of incidents involving the appellant and the affected person. The first sentence of the sixth and final paragraph consists of the manager's views regarding the incidents, and the second sentence consists of the manager's views about the affected person.

In my view, the second sentence of paragraph six contains the personal information of the affected person only. Because the appellant has indicated in her representations that she is not interested in receiving any information which relates to another person, I find that the second sentence of paragraph six falls outside the scope of this appeal and should not be released.

The remainder of the record contains the personal information of both the appellant and the affected person.

**ISSUE B: If the answer to Issue A is yes, whether the discretionary exemption provided by section 38(b) of the Act applies.**

I have found under Issue A that the record contains the personal information of both the appellant and the

affected person. Section 36(1) of the Act gives individuals a general right of access to personal information about themselves, which is in the custody or under the control of municipal institutions covered by the Act. However, this right of access is not absolute. Section 38 provides a number of exceptions to this general right of access, including section 38(b), which reads as follows:

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

where the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 38(b) introduces a balancing principle. Toronto Hydro must look at the information and weigh the requester's right of access to her own personal information against the affected person's right to the protection of his privacy. If Toronto Hydro determines that release of the information would constitute an unjustified invasion of the affected person's personal privacy, then section 38(b) gives discretion to deny the requester access to her own personal information (M-22, M-28).

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester. Section 14(3) lists a series of circumstances which, if present, would raise the presumption of an unjustified invasion of personal privacy.

Toronto Hydro specifically claims that sections 14(3)(c) and (g) apply. These sections read as follows:

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

- (c) relates to eligibility for social service or welfare benefits or to the determination of benefit levels;
- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or

The only representations which Toronto Hydro makes on this issue state:

The information relates to the personal performance of another person in the course of that person's employment. Circumstances listed in paragraph (e), (f), (g), (h) and (i) of subsection [14] (2) and paragraph (g) of subsection [14] (3) of the Act [are relevant].

Having examined the record, in my view, the only portion of the record to which section 14(3)(g) might apply is the last sentence of paragraph six, which is no longer at issue.

With regard to the application of section 14(3)(c), the only information which relates to eligibility for social service or welfare benefit is that of the appellant herself.

Accordingly, I find that Toronto Hydro has failed to establish a presumed unjustified invasion of personal privacy under section 14(3).

Section 14(2) provides some criteria for Toronto Hydro to consider in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy. Toronto Hydro submits that sections 14(2)(e), (f), (g), (h) and (i) are relevant considerations.

In its representations regarding section 14(2), Toronto Hydro states that "[The] circumstances in paragraphs (e), (f), (g), (h) and (i) were considered by the head. The facts considered were the contents of the requested information".

Sections 14(2)(e), (f), (g), (h) and (i) state:

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,

- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the

individual to whom the information relates in confidence;  
and

- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

On the face of the record, and in the absence of any representations from the affected party who has seen the record, I find that these factors listed in sections 14(2)(e), (g) and (i) are not relevant considerations in this appeal.

As far as section 14(2)(h) is concerned, no evidence has been presented to indicate that the affected person supplied the personal information which relates to him to Toronto Hydro, and, therefore, I find that section 14(2)(h) is not a relevant consideration.

Turning finally to section 14(2)(f), Toronto Hydro did not make representations with respect to the relevance of this factor. Having reviewed the record, I find that it does not contain information that could be characterized as highly sensitive.

In summary, in my view, none of the factors which suggest that disclosure would result in an unjustified invasion of personal privacy have been established or are evident on the face of the record. Accordingly, I find that the disclosure of the information contained in the record would not constitute an unjustified invasion of the affected person's personal privacy, and therefore, section 38(b) of the Act does not apply.

**ORDER:**

1. I order Toronto Hydro to disclose all of the record to the appellant with the exception of the second sentence of paragraph six (the last paragraph), to the requester within 35 days following the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.
2. In order to verify compliance with this order, I order Toronto Hydro to provide me with a copy of the record which is disclosed to the requester pursuant to Provision 1, **only** upon request.

Original signed by: \_\_\_\_\_  
Tom Mitchinson  
Assistant Commissioner

November 3, 1992