



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

ORDER M-57

Appeal M-910319

City of Toronto



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ORDER

On October 1, 1992, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the Freedom of Information and Protection of Privacy Act (the Act) and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The City of Toronto (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for records pertaining to property-related disputes between the requester and the owner of an adjoining property (the affected person).

The City located two files that relate to the request, one in its Public Works Department and the other in its Legal Department. It identified 553 pages from both files as being responsive to the request. It granted total access to 159 pages and partial access to 10 pages. Access to the remaining 384 pages was denied in whole pursuant to sections 12 and 14 of the Act.

The requester appealed the decision of the City to deny access.

During the course of processing the appeal the City withdrew the section 12 exemption and indicated that the records are being denied under sections 14(1)(f), 14(3)(b), and 38(b) of the Act. The appellant agreed to narrow his request to the correspondence between the City and the affected person's solicitor (the solicitor).

As complete settlement of this appeal could not be effected through mediation, the file proceeded to inquiry. Notice of the Inquiry was sent to the City, the appellant, the affected person, and the solicitor. Written submissions were received from the appellant, the City, and the solicitor.

The records may be described under two groups:

GROUP ONE:

This group of records were located in the Public Works Department file and relate to a division fence arbitration between the appellant and the affected person, conducted under City By-law No. 37-92. The records are identified by the numbers assigned to them by the City. They are: 70, 73, 76, 87, 91, 95, 96 and 97.

GROUP TWO:

This group of records were located in both the Public Works and Legal Department files, and relate to an order issued under section 326 of the Municipal Act against the affected person, regarding slippage of soil across the boundary of the appellant's property. The records are identified by the numbers assigned to them by the City. They are: 63 in the Legal Department file, and 170, 171, 172, 178 in the Public Works Department file. (Records 172 and 176 are duplicates of the same letter).

ISSUES/DISCUSSION:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested records 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 to the records.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the information contained in the requested records qualifies as "personal information", as defined in section 2(1) of the Act.

In all cases where the request involves access to personal information, it is my responsibility, before deciding whether the exemptions claimed by the institution apply, to determine whether the information falls within the definition of "personal information" as set out in section 2(1) of the Act, and to determine whether this information relates to the appellant, another individual or both.

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

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

...

- (d) the address, telephone number, fingerprints or blood type of the individual,

...

- (f) correspondence sent to an institution by the individual that
[IPC Order M-57/November 5,1992]

is implicitly or explicitly of a private or confidential nature,
and replies to that correspondence that would reveal the
contents of the original correspondence,

...

- (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.

I have reviewed all of the records at issue. In my view, all of the information contained in the records falls within one or more of the aforementioned paragraphs of the definition of personal information under section 2(1) of the Act, and relates to both the appellant and the affected person.

In its representations, the City has argued that the records also contain the personal information of the solicitor. The records were correspondence sent or received by the solicitor, solely in his capacity as the representative of the affected person. They do not contain any personal information that relates to him.

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

I have found under Issue A that all of the records contain the personal information of the appellant and the affected person. Section 36(1) of the Act gives individuals a general right of access to any personal information about themselves 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) of the Act introduces a balancing principle. The City must look at the information and weigh the requester's right of access to his/her own personal information against other individuals' right to the protection of their privacy. If the City determines that release of the information would constitute an

unjustified invasion of the other individuals' personal privacy, section 38(b) gives the City discretion to deny the requester access to the personal information (Orders M-22, M28).

Subsections 14(2) and (3) of the Act provide guidance in determining whether disclosure of the personal information would result in an unjustified invasion of the personal privacy of an individual other than the requester.

The City submits that section 14(3)(b) applies to the records. Section 14(3)(b) reads as follows:

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

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

The division fence arbitration to which the records in Group One relate was initiated by the affected person, under the provisions the City By-law No. 39-72, which provide for settlement of fence-related disputes through arbitration upon the application of one of the parties in the dispute. The City was involved in this matter as one of the arbitrators. There is no evidence that the City has conducted an investigation with respect to this matter.

The records in Group Two are letters exchanged between the City and the solicitor, after the affected person was investigated and convicted of an offence under section 5 of By-law 39-72, and relate to the court order issued after this conviction.

I do not find that any of the information contained in the records was compiled as part of an investigation into a possible violation of law.

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

Section 14(2) of the Act provides a list of factors, which, if present, would be relevant in the determination of whether disclosure would be an unjustified invasion of personal privacy.

The City and the solicitor claim that sections 14(2)(f), (h) and (i) are relevant considerations.

Sections 14(2)(f), (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,

- (f) the personal information is highly sensitive;
- (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.

After reviewing the records and the representations of the parties, I find that only paragraph (h) is a relevant factor in the circumstances of this appeal.

In my view, when a lawyer retained by an individual in relation to By-law matters, sends correspondence to an institution covered under the Act in which he discusses his client's position, and explores settlement possibilities, it is reasonable to assume that, generally, such personal information is supplied implicitly in confidence.

Records 63, 70, 73, 96, 97, 170, 171, 172, 176 and 178, disclose the affected person's position on the matters in dispute, and his solicitor's efforts to resolve them. They contain information relating to discussions and negotiations conducted by the solicitor on behalf of his client.

I find that section 14(2)(h) is a relevant consideration that weighs in favour of the non-disclosure of these records. Accordingly, I find that the disclosure of the personal information contained in these records would constitute an unjustified invasion of the personal privacy of the affected person, and the records qualify for exemption under section 38(b) of the Act.

Records 76, 91 and 95 are letters sent by the City Surveyor, the arbitrator appointed by the City, to the solicitor informing him of the date, time and place of the arbitration meeting. Record 87 is a cover page for a document a copy of which was sent by the solicitor to the appellant's lawyer. The personal information in these records was not supplied to the City in confidence. I find that section 14(2)(h) is not a relevant consideration for these records. None of the other factors under section 14(2) that favour non-disclosure are present; accordingly, I find that the disclosure of the personal information contained in these records would not constitute an unjustified invasion of the personal privacy of the affected person, and they should

be disclosed.

Section 38(b) is a discretionary exemption. I have reviewed the City's representations and I find nothing to indicate that the exercise of discretion was improper.

ORDER:

1. I uphold the City's decision not to disclose Records 63, 70, 73, 96, 97, 170, 171, 172, 176, and 178.
2. I order the City to disclose Records 76, 87, 91 and 95 to the appellant within fifteen (15) days from the date of this order and to advise me in writing within five (5) days of the date on which disclosure was made. This notice should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, MRS 2V1.
3. In order to verify compliance with the provisions of this order, I order the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2, upon my request.

Original signed by: _____
Asfaw Seife
Inquiry Officer

November 5, 1992