



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-20**

## **Appeal M-910223**

### **The Corporation of the City of Oshawa**



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## O R D E R

### BACKGROUND:

The Corporation of the City of Oshawa (the "institution") received a request under the Municipal Freedom of Information and Protection of Privacy Act (the "Act") for access to the name and address of the individual who made a complaint to the institution about the condition of the appellant's property. The institution denied access to the name of the complainant citing sections 8(1)(d) and 14(2)(h) of the Act. The appellant appealed the institution's decision to deny access to the record to this office.

The record which the institution identified as containing information responsive to the request is entitled "Complaint Input Form". It is used by the institution's Department of Planning and Development to record telephone complaints received from citizens in connection with possible contraventions of a by-law of the institution.

On May 8, 1991, an individual made a complaint over the telephone concerning the property of the appellant. The telephone complaint was recorded on the Complaint Input Form. The complaint and the name of the complainant (the "affected person"), were transcribed on the Complaint Input Form. However, the institution did not record the address of the complainant on the Complaint Input Form or anywhere else.

As a result of the complaint, a zoning inspector completed an investigation at the property in question and determined that an infraction existed. A "Notice of Violation" was then issued advising the appellant that he was not in compliance with one of the institution's by-laws and that he would have 48 hours in which to comply with the by-law, otherwise, legal action would ensue. Since the appellant complied with the requirements of the by-law within the time limit, no legal action resulted from the complaint.

During the course of mediation, both the appellant and the institution acknowledged that the facts of this appeal are similar to those of another appeal involving the same institution. In both these instances, there were investigations or inspections that "could lead to proceedings in a court or tribunal", and a claim by the institution that the complaint was made in confidence. In the other appeal, which was resolved by Order M-4, dated December 11, 1991, the record at issue was Part I of the Complaint Input Form which contains the date of the complaint, the address of the property forming the subject of the complaint, a physical description of the property, and the name, address, and telephone number of the complainant. More recently, a further order, M-16, dated May 8, 1992, which involved similar facts and the same institution, was also issued.

Attempts to mediate this appeal were not successful and the matter proceeded to inquiry. Written representations were received from the institution and the affected person. The appellant did not make any representations. The institution stated that it wished to rely on the representations made in the appeal which resulted in Order M-4.

**ISSUES:**

The issues arising in this appeal are:

- A. Whether the information contained in the record qualifies for exemption under section 8(1)(d) of the Act.
- B. Whether the information contained in the record qualifies as "personal information", as defined in section 2 of the Act.
- C. If the answer to Issue B is yes, whether the disclosure of the personal information would constitute an unjustified invasion of the personal privacy of the person to whom the information relates.

**SUBMISSIONS/CONCLUSIONS:**

**ISSUE A: Whether the information contained in the record qualifies for exemption under section 8(1)(d) of the Act.**

Section 8(1)(d) of the Act states:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

In Order M-4, I upheld the head's decision to deny access to the record, a Complaint Input Form, including the name of the complainant, pursuant to section 8(1)(d) of the Act. In doing so, I found that the institution's process of by-law enforcement qualified as "law enforcement" under the Act. I also found that "there is a reasonable

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expectation of confidentiality within the institution's process of by-law enforcement" and that, in my view, disclosure of the record would disclose the identity of a confidential source of information.

As mentioned earlier, in the present appeal, the appellant made no representations.

In its representations, the institution outlines the same considerations that it raised in the appeal which resulted in Order M-4. The institution states that the assurance of confidentiality to complainants is an important element in its by-law enforcement system and that the disclosure of the names of the complainants would jeopardize the effectiveness and integrity of the by-law enforcement system. It also states:

At the time that this [complaint] was made the individual was advised that his or her information would be processed by the City in the strictest of confidence.

The affected person submits:

It was my understanding the information supplied would be held in strict confidence because the man to whom I was speaking at City Hall assured me this would be so and I trusted the person I spoke to but again mentioned I would not be making the complaint if my identity would have to be revealed ...

In my view, the same considerations that were addressed in Orders M-4 and M-16 apply in this appeal. The information is identical to one of the types of information, the name of the complainant, that was at issue in those orders. The appellant has not identified any circumstances or raised any argument which would distinguish this appeal from the appeals which resulted in Orders M-4 and M-16. Therefore, I find that the information at issue is exempt from disclosure under section 8(1)(d).

As section 8 of the Act is a discretionary exemption, it is my responsibility to ensure that the head of the institution has properly exercised his or her discretion in deciding not to grant access to the information. I have carefully considered all of the circumstances of this appeal and I am satisfied that the head has properly exercised his discretion.

As I have found that the information is exempt under section 8(1)(d), it is not necessary for me to consider Issues B and C.

**ORDER:**

I uphold the head's decision.

Original signed by: \_\_\_\_\_  
Tom Wright  
Commissioner

\_\_\_\_\_ June 9, 1992