



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

# **ORDER M-34**

**Appeal M-910061**

**City of Kitchener**



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# ORDER

## **BACKGROUND:**

The City of Kitchener (the city) received a request for the following information under the Municipal Freedom of Information and Protection of Privacy Act (the Act):

Copies of work orders which have been issued by your municipality against various rental residential properties from Jan. 1, 1990.

The requester clarified his request as follows:

I would like information on specific residential rental properties which have had a notice of non-compliance with the property standards bylaw issued against them AND where these notices have been forwarded to the provincial Residential Rental Standards Board.

The city denied access to the records pursuant to section 8(2)(a) of the Act and the requester appealed the city's decision.

Mediation was unsuccessful and the matter proceeded to inquiry. The city indicates that 27 records are responsive to the request, stating that 12 records originally identified as responsive should not be included, because the actual Order to Comply was not issued until 1992. I note that the request was for records **from** January 1, 1990 and therefore, it appears that all 39 records are responsive to the request.

Each record is an Order to Comply issued by the city and contains the name and address of the owner and/or the party having an interest in the property to which the order refers, the municipal address and legal description of the property, particulars of repairs to be effected to bring the property into conformity with the Property Standards By-law, the date for compliance, notice that the addressee may appeal, the penalty for contravention, the signatures of the Property Standards Officer and witness, and the date of the issuance of the order. The appellant has indicated that he is not interested in obtaining the names and addresses of the owners of the properties.

Representations were received from the city and the appellant. In its representations, the city indicated that it was also relying on section 8(1)(a) to deny access to the records. I have considered these representations in making this order.

## **ISSUES:**

The issues arising in this appeal are as follows:

- A. Whether the discretionary exemption provided by section 8(2)(a) of the Act applies.
- B. Whether the discretionary exemption provided by section 8(1)(a) of the Act applies.

## **SUBMISSIONS/CONCLUSIONS:**

### **ISSUE A: Whether the discretionary exemption provided by section 8(2)(a) of the Act applies.**

The city claimed that section 8(2)(a) applied to the records. Section 8(2)(a) provides:

A head may refuse to disclose a record,

that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

The words "law enforcement" are defined in section 2(1) of the Act:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

The city submits that the investigations and/or inspections involved in the creation of the records can proceed to a trial or adjudication where a penalty or sanction could be imposed. A copy of the Property Standards for Maintenance and Occupancy, chapter 665 of the city's Municipal Code, adopted by By-Law 88-100, was provided. It outlines a scheme of enforcement by providing for inspection of properties, issuance of Notices of Non-Conformity and then Orders to Comply, appeals to the Property Standards Committee and thereafter to the Ontario Court (General Division), and the imposition of a penalty for failure to comply with an order. The city's property standards enforcement process is analogous to one that I considered in Order M-15 and, as in Order M-15, I find that it qualifies as "law enforcement" under the Act.

In Order M-15, in rejecting the application of section 8(2)(a) to similar records, I stated:

In considering the Orders to Comply issued by the institution, I am of the view that they do not consist of formal statements or accounts of results from a collation or consideration of information, but, rather, are notifications of repairs to be effected, and so do not qualify as reports. Therefore, section 8(2)(a) does not apply to the records.

In the circumstances, I see no reason to reach a different conclusion in this appeal.

**ISSUE B: Whether the discretionary exemption provided by section 8(1)(a) of the Act applies.**

The city claims that section 8(1)(a) applies to the records. This section provides:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,  
interfere with a law enforcement matter;

In Order 188, I discussed the meaning of the phrase "could reasonably be expected" in the context of section 14 of the provincial Act, which phrase also appears in section 8 of the municipal Act:

It is my view that section 14 ... requires that the expectation of one of the enumerated harms coming to pass, should a record be disclosed, not be fanciful, imaginary or contrived, but rather one that is based on reason.

The city submits:

... the property standards process is designed to solicit co-operation and eventual compliance with minimum standards. It was felt that releasing the documents in question could therefore jeopardize the City's ability to regulate compliance and so interfere with a law enforcement matter. [The Acting Director of Building and Inspections] has also noted that to date the City has a high degree of success in convincing property owners to voluntarily comply and we would not wish to jeopardize this situation.

The city also claims that "where compliance has not occurred, there is a reasonable expectation that the  
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properties involved could be the subject of future legal action, and in fact 4 charges have been laid."

I am not persuaded that disclosure of the records could jeopardize the city's ability to regulate compliance with the by-law. As well, the city has not offered any tangible evidence to support the position that, once a charge has been laid, disclosure of the records would interfere with the court process. Accordingly, the city has not established that interference with a law enforcement matter could reasonably be expected to result from disclosure of the record.

**ORDER:**

1. I order the city to disclose the 39 records identified in the list attached to the letter which accompanies the city's copy of this order, with the names and addresses of the owners or persons having an interest in the property severed, within 35 days following the date of this order and not earlier than the thirtieth day following the date of this order.
2. The city is further ordered to advise me in writing within five days of the date on which disclosure was made. Such notice should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
3. In order to verify compliance with this order, I order the city to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, only upon request.

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

\_\_\_\_\_ September 4, 1992