



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-15**

## **Appeal M-910060**

### **City of Waterloo**



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## O R D E R

### BACKGROUND:

The City of Waterloo ("the institution") 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 institution replied to the requester as follows:

Access is denied to your request ... pursuant to Section 8(1)(a), Section 8(2)(a) and Section 14 of the Act. These provisions apply to the records requested because:

- the disclosure could reasonably be expected to interfere with a law enforcement matter
- the record is prepared in the course of law enforcement by an agency which has the function of enforcing and regulating compliance with the law
- the record contains personal information.

The requester appealed the decision of the head to deny access. Notice of the appeal was sent to the appellant and the institution.

One record from 1988 and one record from 1989 were received and reviewed by the Appeals Officer. The Appeals Officer contacted the institution to inquire about records dating from January 1, 1990. The Freedom of Information and Privacy Co-ordinator at the institution explained that the appellant had indicated in a conversation that he wished to obtain two particular orders dated before 1990. Subsequently, the institution supplied three post-1990 records, and claimed the application of the same exemptions.

A settlement could not be effected and the matter proceeded to inquiry.

The appellant, institution and the owners of the properties to which the records refer (the "affected parties") were given notice of the inquiry.

There are five records in issue. Each record is an Order to Comply  
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issued by the institution and contains the name and address of the owner or person 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 under the relevant section of the Property Standards By-Law No. 85-175 and, pursuant to the Planning Act, a date for compliance, the penalty for contravention 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 institution, the appellant and one affected party. I have considered these representations in making this Order.

**ISSUES:**

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 mandatory exemption provided by section 14 of the Act applies.
- C. Whether the discretionary exemption provided by section 8(1) (a) and/or section 8(2) (a) of the Act applies.

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

The institution claims that the requested records are exempt from disclosure under section 14 of the Act.

In order to qualify for exemption under section 14, the information

contained in the record must be "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,

...

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

...

(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;

As the appellant is not interested in the names and addresses of the owners of the properties, the only issue I must consider is whether the municipal addresses of the properties and the information concerning repairs contained in the records is personal information. Representations were received from one affected party objecting to disclosure. Another affected party indicated his consent to disclosure.

In Order 23, dated October 21, 1988, former Commissioner Sidney B. Linden dealt with several appeals arising from requests for estimated market values of all properties in Metropolitan Toronto, together with the municipal address of each property. In those appeals, the Ministry of Revenue claimed that such information should not be disclosed as disclosure would constitute an unjustified invasion of personal privacy.

The first issue considered in Order 23 was whether the information sought was personal information. Former Commissioner Linden stated the following:

The municipal address of a property is a description

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identifying the location of the property in a municipality  
...

An individual's address, on the other hand, is his or her "place of residence". The owner of a property may or may not be an individual, and individual property owners may or may not reside in the property they own ... It is clear to me that the municipal location of a property cannot automatically be equated with the address of its owner ...

In considering whether or not particular information qualifies as "personal information" I must also consider the introductory wording of subsection 2(1) of the Act, which defines "personal information" as "... any recorded information about an identifiable individual ...". In my view, the operative word in this definition is "about". The Concise Oxford Dictionary defines "about" as "in connection with or on the subject of". Is the information in question, i.e., the municipal location of a property and its estimated market value, about an identifiable individual? In my view, the answer is "no"; the information is about a property and not about an identifiable individual.

I am in agreement with the reasoning of former Commissioner Linden. It follows that the information concerning repairs to be made to properties which is contained in the records in issue in this appeal is information concerning the property and is not "personal information".

I have also considered the provisions of the Property Standards By-Law Number 85-175 passed by the Council of the Corporation of the City of Waterloo pursuant to section 31 of the Planning Act. Under section 5.9.1.1 an Order to Comply must contain "the municipal address or the legal description of the subject property". Section 5.11.1 provides for the registration of an Order to Comply in the following terms:

The Order under subsection 5.9 may be registered in the proper Registry or Land Titles Office against title to the subject property, and when so registered, any person

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acquiring any interest in the said property subsequent to the registration of the Order, shall be deemed to have been served with the Order as of the date on which the Order was served. [emphasis added]

In my opinion, this provision further supports the position that the Order to Comply relates to the property, and not a person. Therefore, I am of the view that the municipal addresses of the properties in question as well as information concerning repairs do not constitute personal information as defined in the Act. As I have determined that the records do not contain personal information, I need not consider Issue B.

**ISSUE C: Whether the discretionary exemption provided by section 8(1) (a) or section 8(2) (a) of the Act applies.**

The institution claimed that sections 8(2) (a) and 8(1) (a) apply to the records. Section 8(2) (a) provides:

A head may refuse to disclose a record,

- (a) 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 institution indicates that, in the context of property standards, it conducts investigations or inspections of properties which may lead to proceedings in a court or tribunal where a penalty or sanction could be imposed. A copy of the Property Standards By-Law Number 85-175 passed by the City of Waterloo pursuant to the provisions of section 31 of the Planning Act outlines the process of enforcement. When a complaint is received, the property is inspected to determine if an infraction of the by-law has occurred. The owner of the property is notified informally and, if no correction follows, a formal process of enforcement is initiated, and Notices of Non-conformity and Orders to Comply can be issued. If the Order to Comply is confirmed, the municipality can pursue enforcement through court to seek a conviction under the by-law and imposition of a penalty.

I am satisfied that the institution's process of by-law enforcement

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involves investigations or inspections which could lead to proceedings in a court where penalties could be imposed and, therefore, qualifies as "law enforcement" under the Act.

As I stated in Order 200, dated October 11, 1990, in order to qualify for exemption under section 14(2)(a) of the provincial Freedom of Information and Protection of Privacy Act, which is equivalent to section 8(2)(a) of the municipal Act, a record must satisfy each part of the following three part test:

1. the record must be a report; and
2. the report must have been prepared in the course of law enforcement, inspections or investigations; and
3. the report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law. [Page 9]

I also noted that:

The word "report" is not defined in the Act. However, it is my view that in order to satisfy the first part of the test i.e. to be a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact.  
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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.

The institution also cited section 8(1)(a) to exempt the records. That  
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section provides:

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

- (a) interfere with a law enforcement matter.

In Order 188, dated July 19, 1990, 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 **[IPC Order M-15/May 7, 1992]**

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 institution has not offered any evidence to show how the disclosure of the records could interfere with a law enforcement matter. The process of which Orders to Comply are a part can be ongoing, should the property owner appeal or default, and a court proceeding may ensue. In such a case, it would be necessary to consider whether disclosure would interfere with those proceedings. However, in the circumstances of this appeal, the institution has stated in its representations that "all of the work orders have been complied with". Therefore, no question of interference can arise and section 8(1)(a) does not apply to the records.

ORDER:

1. I order the head to release the records in issue, with the names and addresses of the owners severed.
2. I order that the head not disclose the records referred to in provision 1 until thirty (30) days following the date of the issuance of this Order. This time delay is necessary in order to give any party to the appeal sufficient opportunity to apply for judicial review of my decision before the records are actually disclosed. Provided notice of an application for judicial review has not been served on the Information and Privacy Commissioner/Ontario and/or the institution within this thirty (30) day period, I order that these records be disclosed within thirty-five (35) days of the date of this Order. The institution is further ordered to advise me in writing within five (5) days of the date on which disclosure was made.

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3. The notice concerning disclosure should be forwarded to my attention c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Suite 1700, Toronto, Ontario, M5S 2V1.
4. In order to verify compliance with this order, I order the head to provide me with a copy of the record which is disclosed to the appellant pursuant to provision 1, upon request.

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

\_\_\_\_\_ May 7, 1992