



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

ORDER M-16

Appeal M-910004

The Corporation of the City of Oshawa



80 Bloor Street West,
Suite 1700,
Toronto, Ontario
M5S 2V1

80, rue Bloor ouest
Bureau 1700
Toronto (Ontario)
M5S 2V1

416-326-3333
1-800-387-0073
Fax/Télé: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

O R D E R

BACKGROUND:

This is an appeal from a decision made by the Corporation of the City of Oshawa (the "institution"). The decision was in response to a request made by the appellant pursuant to the Municipal Freedom of Information and Protection of Privacy Act, 1989, (the "Act").

The appellant's request was for access to the names of individuals who made complaints to the institution about the use of two properties located in the City of Oshawa. Four complaints were received; two in respect of each property.

The complaints together with the names and addresses of the complainants (the "affected persons"), were transcribed on Complaint Input forms which are used by the institution's Department of Planning and Development to record complaints received in connection with alleged by-law violations.

As a result of the complaints, a zoning inspector completed an investigation at each property and determined that infractions had occurred. "Notices of Violation" were issued and, as the matters could not be resolved, the inspectors laid charges pursuant to By-law 3415 and the Provincial Offences Act. The charges were dealt with in the Ontario Court (Provincial Division) in 1991 and the property owners were found guilty and fined for breaching the zoning by-law.

The institution denied access to the names of the complainants citing sections 8(1)(b), 8(1)(d) and 14(1) and 14(2)(h) of the Act.

The institution stated that "these provisions apply to the record because law enforcement proceedings may result and the complaint was made in confidence."

The appellant filed an appeal with this office.

Both the appellant and the institution acknowledge that the facts of this appeal are similar to those of another appeal involving the same institution. 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.

Attempts to mediate this appeal were not successful and the matter proceeded to inquiry. Written representations were received from the institution, the appellant and three of the four affected persons. The institution stated that it also wished to rely on the representations made in the appeal which resulted in Order M-4. I have considered all representations in reaching my decision.

ISSUES/DISCUSSIONS:

The issues arising in this appeal are as follows:

- 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 for exemption under section 8(1)(b) of the Act.
- C. Whether the information contained in the record qualifies as "personal information", as defined in section 2 of the Act.
- D. If the answer to Issue C 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 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.

In the present appeal, the appellant states that the complaints "led to court action and resulting fines" and that it is unfair in a "democratic society" that he still does not have access to the identity of the complainants.

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 that:

For the purposes of by-law prosecution proceedings, the complainant is the City of Oshawa....[A]n independent and objective City employee carries out an investigation as a result of the initial complaint. If circumstances warrant prosecution ... this inspector is the "complainant" and is available to the defendant/owner for cross-examination both before and during court proceedings.

In their representations, the affected persons also point out that the by-law contraventions were dealt with in court. They state that they relied on the institution's assurance that their names would be held in confidence and do not wish their names to be disclosed to the appellant as they fear reprisal.

Having considered the representations of the parties, in my view, the same considerations that were addressed in Order M-4 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 that order. The appellant has not identified any circumstances or raised any argument which would distinguish this appeal from the appeal which resulted in Order M-4. 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 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, C and D.

ORDER:

I uphold the head's decision.

Original signed by:
Tom Wright
Commissioner

May 8, 1992