



Information and Privacy
Commissioner/Ontario

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

ORDER M-17

Appeal M-910400

Metropolitan Licensing Commission



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

O R D E R

BACKGROUND:

The Metropolitan Licensing Commission (the "institution") received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a copy of the notes that the institution's Licensing Enforcement Officer took in relation to a complaint regarding deficiencies in the installation of a linoleum kitchen floor.

The institution denied access to the record pursuant to section 8(2) (a) of the Act. The requester appealed the institution's decision. Notice of the appeal was given to the institution and the appellant. A copy of the record was obtained and reviewed by the Appeals Officer assigned to the case.

As settlement of this appeal could not be effected, notice that an inquiry was being conducted to review the decision of the head was sent to the appellant, the institution and an affected party (the installer).

Enclosed with each notice letter was a report prepared by the Appeals Officer, intended to assist the parties in making their representations concerning the subject matter of the appeal. Representations were received from the institution only.

SUBMISSIONS/CONCLUSIONS:

The sole issue arising in this appeal is whether the record is properly exempt from disclosure pursuant to section 8(2) (a) of the Act. Section 8(2) (a) reads as follows:

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;

I note that the wording of section 8 is identical to the wording of section 14 of the provincial Freedom of Information and Protection of Privacy Act. Therefore, orders which have been issued concerning section 14 will provide guidance in applying section 8 of the municipal 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. [Page 9]

In its representations, the institution submitted that the record is a report "since it consists of a formal review and analysis of information and allegations ..." In my opinion, the record at issue in this appeal is not a report within the meaning set out in Order 200. The record consists of two pages of notes on an "Information Sheet" which notes were compiled by the Licensing Enforcement Officer between August 29, 1991 and September 16, 1991.

In my view, the record is not a formal statement or account of the results of the Licensing Enforcement Officer's work but a series of entries outlining his observations with respect to his investigation of the appellant's complaint.

As the record is not a "report" all three parts of the section 8(2) (a) test have not been met and the record does not qualify for exemption.

ORDER:

1. I order the institution to disclose the record.
2. I order the head not to disclose the record until thirty (30) days following the date of 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 record is actually disclosed. Provided notice of the 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 the record be disclosed within thirty-five (35) days of the date of this Order.
3. I order the head to notify 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, 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 19, 1992