



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-39**

**Appeal M-910216**

**Metropolitan Licensing Commission**



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# ORDER

## BACKGROUND:

The Metropolitan Licensing Commission (the MLC) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the name and address of a vendor having a particular licence number. The requester is the agent for a person who claims to have purchased a hot dog which contained glass particles from this vendor, and to have suffered injuries as a result.

The MLC granted access to the name of the vendor but denied access to the vendor's home address under section 14 of the Act. The requester appealed the MLC's decision.

The record which the MLC has identified as being responsive to the request is a computer generated printout which contains the name, home address, phone number, date of birth, physical description and driver's licence of the vendor. The appellant is only requesting access to the address of the vendor.

Mediation efforts in this appeal were not successful. As a result, notice that an inquiry was being conducted to review the MLC's decision was sent to the MLC, the appellant, and the vendor. Accompanying the notice was a report prepared by the Appeals Officer, intended to assist the parties in making representations to this office concerning the subject matter of the appeal. Representations were received from the MLC, the appellant, and the vendor.

## ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the information contained in the requested record 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.

## SUBMISSIONS/CONCLUSIONS:

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

Personal information is defined in section 2(1), in part, as follows:

"personal information" means recorded information about an identifiable individual, including,

...

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

...

The information requested clearly falls within subparagraph (d) of the definition and is properly characterized as the personal information of the vendor.

**ISSUE B: If the answer to Issue A is yes, whether the mandatory exemption provided by section 14 of the Act applies.**

Once it has been determined that a record contains personal information, section 14 of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(f) of the Act reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

Sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of an individual's personal privacy. Section 14(3) lists the types of personal information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. In my view, the record does not contain any of the types of information listed in section 14(3).

Section 14(2) of the Act provides some criteria for the MLC to consider in determining whether the disclosure of the address of the vendor would result in an unjustified invasion of the vendor's privacy. The vendor has not made reference to section 14(2) in her representations, but does indicate that she wants her

address to remain confidential. The institution relies on sections 14(2)(e) and (h) to support its decision to deny access to the address of the vendor, and the appellant relies on sections 14(2)(a), (b), (c) and (d) to support disclosure. These sections of the Act read as follows:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (a) the disclosure is desirable for the purpose of subjecting the activities of the institution to public scrutiny;
- (b) access to the personal information may promote public health and safety;
- (c) access to the personal information will promote informed choice in the purchase of goods and services;
- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence;

In my view, sections 14(2)(a), (b) and (c) are not relevant considerations in the circumstances of this appeal. Disclosure of the home address of a vendor will not permit the public to scrutinize the activities of the institution, promote public health and safety, or promote informed choice in the purchase of goods and services.

With specific reference to section 14(2)(d) of the Act, the appellant submits that it is his client's fundamental right to bring a civil action against the vendor, and without the address of the vendor, he will be unable to proceed with his action. In Order P-312, Assistant Commissioner Tom Mitchinson, in discussing the provincial equivalent of section 14(2)(d), stated the following:

In my view, in order for section 21(2)(d) [section 14(2)(d) of the municipal Act] to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; and
- (2) the right is related to a proceeding which is either existing or contemplated not one which has already been completed; and
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; and
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

In order for section 14(2)(d) of the Act to be a relevant consideration, all four of these conditions must be met. In response to the appellant's request, the MLC disclosed the vendor's name. In my view, the home address of the vendor is not required in order for the appellant's client to proceed with a civil action, should he decide to do so. Accordingly, I find that section 14(2)(d) is not a relevant consideration in the circumstances of this appeal.

In summary, having considered the representations of all parties, and in the circumstances of this appeal, in my opinion none of the considerations which weigh in favour of disclosure apply. In my view, disclosure of the vendor's home address would constitute an unjustified invasion of the vendor's personal privacy.

**ORDER:**

I uphold the MLC's decision.

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

\_\_\_\_\_  
September 24, 1992