



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-181

Appeal M-9200276

City of Vaughan



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ORDER

BACKGROUND:

The City of Vaughan (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all reports made by inspectors from the By-law, Building, Fire, Building Standards and Health Departments who had been called to her home during the period of 1989-1992. During this period, the requester had called City inspectors on a number of occasions to lodge complaints of by-law violations about two residential properties.

As the City believed that disclosure of the records might constitute an unjustified invasion of the personal privacy of two individuals (the affected parties), the City notified them pursuant to section 21 of the Act. The affected parties did not respond to the notification.

The City identified a number of responsive records and provided access to some. It denied access to others pursuant to sections 8(1)(b) and 14(1) of the Act. The requester appealed the decision.

Mediation was not successful and notice that an inquiry was being conducted to review the City's decision was sent to the City, the appellant and the affected parties. The City, the appellant, and one of the affected parties made representations.

On August 6, 1993, while these representations were being considered, Commissioner Tom Wright issued Order M-170 which interpreted several statutory provisions of the Act in a way which differed from the interpretation developed in previous orders. Since a new approach to the operation of the Act was being adopted and because the same statutory provisions are at issue in the present appeal, it was determined that copies of Order M-170 should be provided to the appellant, the City and the affected party who had made representations. The parties were then afforded the opportunity to state whether the contents of Order M-170 would cause them to change or to supplement the representations which they had previously made. Further representations were received from the City. The City raised the application of the exemption in section 38(b) of the Act to the record they had identified as Document Number 8, pages 1 and 2.

For the purposes of this order, I have renumbered the records as set out in Appendix A. The records which remain at issue and the exemptions claimed by the City for each are as follows:

Records 1 - 6 : A series of "Inspection Reports" consisting of a form document with handwritten notations, all concerning by-law violation complaints with respect to two properties.

Sections 8(1)(b) and 14(1)

Record 7: An "Inspection Report" consisting of a form document with handwritten notations, concerning a by-law violation complaint with respect to one property.

Sections 8(1)(b), 14(1), and 38(b)

Records 8 - 11 : A series of "Notices" issued to the affected parties, requiring remedial action to rectify by-law infractions.

Sections 8(1)(b) and 14(1)

Record 12 : An internal memorandum to the City's by-law enforcement file, including an inspection report, with an attached sketch.

Section 8(1)(b)

Records 13 - 15 : A series of photographs and sketches of the properties which were the subject of the by-law violation complaints.

Sections 8(1)(b) and 14(1)

PRELIMINARY ISSUE:

The City states in its representations that it considered sections 23(1) and 23(2) of the Building Code Act, R.S.O. 1990, c. B.13 (the Code) when making its decision to deny access to Record 12.

Sections 23(1) and 23(2) of the Code read as follows:

A chief official, inspector, or person who, at the request of an inspector, accompanies an inspector, or a person who, at the request of an inspector, makes an examination, test or inquiry or takes samples shall not publish, disclose or communicate to any person any information, material, statement or result of any test acquired, furnished, obtained, made or received under the powers conferred under this Act and the regulations except for the purposes of carrying out his or her duties under this Act or the regulations.

No report of a chief official, inspector, person who, at the request of an inspector, accompanies an inspector, or a person who, at the request of an inspector, makes an examination, test or inquiry or takes samples shall be communicated, disclosed or published to any person except for the purposes of carrying out his or her duties under this Act or the regulations.

Section 53 of the Act provides as follows:

This Act prevails over a confidentiality provision in any other Act unless the other Act or this Act specifically provides otherwise.

Neither the Act nor the Code specifically provide that section 53 of the Act shall not operate. Accordingly, I find that the sections of the Code referred to by the City in its representations are not confidentiality provisions which prevail over the operation of the Act.

I would also note that sections 23(1) and (2) of the Code have now been repealed by the Building Code Act, 1992.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether the records contain personal information as defined in section 2(1) of the Act.
- B. If the answer to Issue A is yes, and the personal information in Record 7 relates to the appellant and other individuals, whether the discretionary exemption provided by section 38(b) of the Act applies.
- C. If the answer to Issue A is yes, and the personal information relates to individuals other than the appellant, whether the mandatory exemption provided by section 14 of the Act applies to the records.
- D. Whether the records qualify for the discretionary exemption provided by section 8(1)(b) of the Act.

SUBMISSIONS/CONCLUSIONS:

ISSUE A: Whether the records contain "personal information" as defined in section 2(1) of the Act.

In her representations, the appellant indicated that she was not interested in receiving access to the personal information of one of the affected parties (affected person 1). I have identified, in blue, these portions of the records on the highlighted copy which I have provided to the City along with this order.

Once the personal information of affected person 1 is severed from Records 2 and 6, the balance of the personal information is solely that of the appellant.

The City claims that there are portions of the remaining records other than those which I have identified, that contain the personal information of both affected person 1 and the other affected person whose personal information is still at issue (affected person 2). The City is apparently relying on the following parts of the definition of personal information as found in section 2(1) of the Act to deny access to this information:

In this Act, "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;

Records 1, 3, 4, 5 and 7

The Inspection Reports identified as Records 1, 3, 4, 5, and 7 contain the municipal addresses of the properties which are the subject of the by-law violation complaints. They do not contain the name of the owner of the property. There is a space on the form for the nature of the complaint as well as dates for inspections and the findings/comments on those inspections. The City submits that the municipal addresses of the properties as well as the contents of these reports are personal information.

In Order M-15 Commissioner Wright considered whether a municipal address could be considered as "personal information" in the context of a by-law violation. He concluded that it did not. In coming to that conclusion, Commissioner Wright adopted the reasoning of former Commissioner Sidney B. Linden in Order 23 where the former Commissioner stated:

The municipal address of a property is a description 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 ..."

I adopt the reasoning of Commissioner Wright and former Commissioner Linden and find that the municipal addresses set out in Records 1, 3, 4, 5, and 7 do not constitute "personal information" as defined by section 2(1) of the Act.

As far as the balance of Records 1, 3, 4, and 7 are concerned, with the exception of one distinct entry in Record 7, I find the reports contain the personal information of the appellant only. The entry in Record 7 contains the personal information of affected person 2.

Record 5 contains the name, address and telephone number of a complainant other than the appellant. This information, as well as the entry dated July 22/91, constitutes the personal information of another individual.

Record 12

This record contains the name, address and telephone number of the same complainant as in Record 5. This information, as well as three words in the body of the record, constitute the personal information of another individual.

Records 8-11

The only portions of Records 8-10 which are still at issue are those parts of the Notices which describe the municipal by-law which has been breached and the particulars of what must be done to the property in order to bring it into compliance with the by-law. The City maintains that these portions of the records also contain the personal information of the affected parties.

This issue was also addressed by Commissioner Wright in Order M-15 in which he determined that Orders to Comply issued against municipal properties containing information concerning repairs to be made to the properties did not constitute personal information. This conclusion followed the reasoning that resulted in the determination that the municipal address of a property is not personal information.

I am in agreement with this reasoning. Accordingly, I find that the balance of Records 8-10 do not contain personal information.

Record 11 is similar to Records 8-10 but contains the notation "Resident" under "Name", the address, and a general description of the complaint and how it should be remedied. Given the circumstances of this case, I am satisfied that the term "Resident" refers to an identifiable individual and, in combination with the address, constitutes the personal information of affected person 2.

Based on the reasoning described above, I am satisfied that the balance of this record does not contain any personal information.

Records 13-16

These records are sketches and photographs of the properties which were the subject of the appellant's complaints and do not contain any personal information as defined by section 2(1) of the Act.

In summary, I find that the only personal information as defined by section 2(1) of the Act that is at issue in this appeal is that set out in Records 5, 11, 12, and the one entry in Record 7.

Because of the manner in which I have dealt with this issue, I need not consider Issue B.

ISSUE C: If the answer to Issue A is yes, and the personal information relates to individuals other than the appellant, whether the mandatory exemption provided by section 14(1) of the Act applies to the records.

Under Issue A, I found that Records 5, 11, 12, and one entry in Record 7 contain the personal information of persons other than the appellant. Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits disclosure of this information except in certain circumstances.

In my view, the only exception to the section 14(1) mandatory exemption which has potential application in the circumstances of this appeal is section 14(1)(f) which 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.

Because section 14(1)(f) is an exception to the mandatory exemption which prohibits the disclosure of personal information, in order for me to find that section 14(1)(f) applies, I must find that disclosure of the personal information would **not** constitute an unjustified invasion of personal privacy.

Sections 14(2), (3), and (4) of the Act provide guidance in determining whether the disclosure of personal information would constitute an unjustified invasion of personal privacy. In Order M-170, Commissioner Wright addressed the interrelationship between sections 14(2), (3), and (4) of the Act in the following way:

... [W]here personal information falls within one of the presumptions found in section 14(3) of the Act, a combination of the circumstances set out in section 14(2) of the Act which weigh in favour of disclosure, cannot collectively operate to rebut the presumption.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 14 exemption.

I adopt this approach for the purposes of this order.

The City submits that sections 14(3)(b) and (g) of the Act apply to the personal information contained in the records. These sections state:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (b) was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

- (g) consists of personal recommendations or evaluations, character references or personnel evaluations;

I agree that section 14(3)(b) is relevant in the circumstances of this appeal. In my view, it is clear that all of the personal information contained in the records was compiled and is identifiable as part of the City's investigation into the possible violation of its by-laws and, as such, I find that the requirements for a presumption of an unjustified invasion of personal privacy have been established.

I have considered section 14(4) of the Act and find that none of the personal information at issue in this appeal falls within the ambit of this provision. In addition, the appellant has not argued that the public interest override set out in section 16 of the Act applies to the facts of this case.

Accordingly, I find that the presumption of an unjustified invasion of personal privacy has not been rebutted with respect to the personal information of affected person 2 and the other complainant contained in Records 5, 11, 12, and the one entry in Record 7 and the exemption applies.

I have identified this information in yellow on the copy of the records provided to the City with this order.

ISSUE D: Whether the records qualify for the discretionary exemption provided by section 8(1)(b) of the Act.

In its representations, the City claims that all of the records at issue qualify for exemption under section 8(1)(b) of the Act. Section 8(1)(b) reads as follows:

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

interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

In order for a record to qualify for exemption under section 8(1)(b), the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act. This definition reads as follows:

"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 matters to which the subject records relate are investigations or inspections concerning compliance with municipal by-laws, which inspections could lead to proceedings in a court of law and could result in penalties being imposed. Consistent with previous orders, I find that the City's process of by-law enforcement qualifies as "law enforcement" under the Act (Orders M-4, M-10, M-16, M-34).

Having found that the matters in issue are law enforcement matters, I must now determine whether the disclosure of the record could reasonably be expected to interfere with the investigations which resulted in the creation of these records.

In Order 188, then Assistant Commissioner Wright discussed the meaning of the words "could reasonably be expected to" in the context of section 14(1) of the Freedom of Information and Protection of Privacy Act which section corresponds to section 8(1) of the Act. Commissioner Wright stated:

It is my view that the section requires that the expectation that 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. An institution relying on the...exemption bears the onus of providing sufficient evidence to substantiate the reasonableness of the expected harm(s) by virtue of section 53 of the Act.

The City did not, in its representations, address the issue of how the disclosure of the records could be expected to interfere with an investigation or investigations and failed to provide any evidence on that point. I would note also that the records themselves appear to indicate that the investigations conducted by the City with respect to the specific allegations of by-law contravention concerning these properties have now been completed. There is no indication in the records that there is a current investigation continuing, or even the potential of a subsequent investigation taking place.

Accordingly, it is my view that the City has not provided sufficient evidence to establish that interference with an investigation could reasonably be expected to result from disclosure of the records. Therefore, the discretionary exemption provided by section 8(1)(b) of the Act does not apply.

ORDER:

1. I order the City to disclose to the appellant Records 1, 3, 4, page 2 of Record 12, 13, 14, and 15 in their entirety.
2. I order the City to disclose to the appellant Records 2, 5, 6, 7, 8, 9, 10, 11, and page 1 of Record 12 in accordance with the highlighted copy of the records which is forwarded to the Freedom of Information and Privacy Co-ordinator of the City. The highlighted areas are the portions of the record which contain personal information and which should **not** be released.
3. These portions of the record should be disclosed to the appellant within 35 days of the date of this order and **not** earlier than the thirtieth (30th) day following the date of this order.

4. In order to verify compliance with the provisions of this order, I order the head to provide me with a copy of the records which are disclosed to the appellant pursuant to Provisions 1 and 2, **only** upon request.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ August 31, 1993

APPENDIX A

1. By-law Enforcement Inspection Report dated June 11, 1992
re: fence violation
2. By-law Enforcement Inspection Report dated September 10, 1991
re: gate height
3. By-law Enforcement Inspection Report dated May 21, 1992
re: garbage complaint
4. By-law Enforcement Inspection Report dated September 6, 1989
re: numerous families
5. By-law Enforcement Inspection Report dated July 2, 1991
re: fence violation
6. By-law Enforcement Inspection Report dated August 2, 1991
re: fence, grading and eavestrough violations
7. By-law Enforcement Inspection Report dated May 21, 1992
re: garbage complaint
8. By-law Violation Notice dated September 17, 1991
re: Record 2 Report
9. By-law Violation Notice dated August 13, 1991
re: Record 6 Report
10. By-law Violation Notice dated August 22, 1991
re: Record 6 Report
11. By-law Violation Notice dated May 28, 1992
re: Record 7 Report
12. Building Standards Inspection Report dated July 3, 1991
re: complaint report and attached sketch
13. Six photographs taken by Enforcement Officer on August 6, 1991
re: Record 6 Report
14. Sketch of house
re: Record 7 Report

15. Photograph taken by Enforcement Officer on May 22, 1991
re: Record 7 Report