



Information and Privacy
Commissioner/Ontario

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

ORDER M-194

Appeal M-9200370

Metropolitan Licensing Commission



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ORDER

On September 20, 1993, the undersigned was appointed Inquiry Officer and received a delegation of the power and duty to conduct inquiries and make orders under the provincial Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act.

BACKGROUND:

The Municipality of Metropolitan Toronto (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for:

all personal information and records about me, including those contained in any ghost records and/or daytimers held by my employer, the Municipality of Metropolitan Toronto, and all of its affiliated Boards, Commissions, Agencies, Departments and personnel.

The Municipality referred the request to the individual's employer, the Metropolitan Licensing Commission (the Commission), for reply. The Commission located a considerable number of records responsive to the request and disclosed the majority of these to the requester. The Commission denied access to five records in full and to 11 records in part, claiming the application of sections 11(e) and 14 of the Act. The requester appealed the Commission's decision.

During mediation, two additional complete records were released to the appellant. Further mediation was not possible and notice that an inquiry was being conducted to review the Commission's decision was sent to the appellant, the Commission, and two persons whose names appeared in the records. Representations were received from the Commission only.

In its representations, the Commission indicated that, while it had originally chosen to apply sections 11(e) and 14(1) to deny access to portions of the records, it was now relying exclusively on sections 7(1) and 38(a) of the Act to exempt the records from disclosure. In addition, the Commission decided to disclose to the appellant still more records previously withheld.

The records at issue in this appeal may be described as follows:

Record 2 is a memo from the Field Supervisor to the Manager, Field Operations of the Commission. The portion withheld from disclosure provides some findings in relation to certain entries in the appellant's memo book.

Record 5 is a one page handwritten note describing certain aspects of the appellant's work. The Commission chose not to disclose the final two paragraphs to the appellant.

Record 109 is a five page memorandum from the Commission's Field Supervisor to the Manager of Field Operations. It summarizes the results of investigations conducted into an

incident involving the appellant which occurred on June 3, 1992. The Commission chose not to disclose excerpts from pages 2, 3 and 4 of this record.

ISSUES:

The issues arising in this appeal are as follows:

- A. Whether any of the information contained in the records qualifies as "personal information" as defined by section 2(1) of the Act.
- B. Whether the records qualify for exemption under section 7(1) of the Act.
- C. If the answers to Issues A and B are yes, whether the Commission properly exercised its discretion to withhold access under section 38(a) of the Act.

ISSUE A: Whether any of the information contained in the records qualifies as "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,

...

- (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

...

- (g) the views or opinions of another individual about the individual, and

- (h) the individual's name where 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;

The three records at issue were compiled during the Commission's investigation of the work performance of
[IPC Order M-194/September 29, 1993]

the appellant. I have reviewed the records and, in my view, they all contain information which satisfies the requirements of the introductory wording of the definition of "personal information" and one or more of the subparagraphs noted above. The records contain only the personal information of the appellant.

ISSUE B: Whether the records qualify for exemption under section 7(1) of the Act.

The Commission claims the application of section 7(1) of the Act in respect of those portions of Records 2, 5 and 109 which were not disclosed.

Section 7(1) of the Act states that:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

It has been established in a number of previous orders that advice for the purposes of section 13(1) of the provincial Freedom of Information and Protection of Privacy Act, which is the equivalent of section 7(1) in the Act, must contain more than mere information. Generally speaking, "advice" pertains to the submission of a suggested course of action which will ultimately be accepted or rejected by its recipient during the deliberative process (Orders 118, P-304, P-348, P-356 and P-402). "Recommendations" should be viewed in the same vein (Orders 161, P-248, P-348, P-356 and P-402).

The Commission submits that:

The portions of the records at issue do not, in most cases, set out a suggested course of action. Nonetheless, it is submitted that they constitute "advice" because they contain the insights and perspectives of institution employees which were provided exclusively for consideration during deliberations to determine whether the appellant should be subject to disciplinary action.

I have reviewed the records at issue and, in my view, those portions of Record 109 which were withheld from disclosure contain opinion and factual material and do not constitute advice or recommendations regarding a suggested course of action. Accordingly, these portions of the record do not qualify for exemption under section 7(1) of the Act.

Only small segments of the remaining records reveal advice or recommendations in order to qualify for exemption under section 7(1) of the Act. These excerpts, which should not be disclosed, suggest a course of action to be followed by the recipient of the communication. All of the first page of Record 2, with the exception of the final paragraph, describes certain findings of fact made by the author of the memorandum. Only the final paragraph however, suggests a course of action to be followed and is, therefore, exempt from

disclosure. Similarly, I find that only the final five lines of Record 5, which were withheld from disclosure by the Commission, contain a suggested course of action and, accordingly, qualify for exemption under section 7(1) of the Act.

ISSUE C: If the answers to Issues A and B are yes, whether the Commission properly exercised its discretion to withhold access under section 38(a) of the Act.

Under Issue A, I found that the records contain the personal information of the appellant. Section 38(a) of the Act reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, **7**, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

Section 38(a) provides an exception to the general rule that a requester has a right of access to his or her own personal information in the custody or under the control of a government institution. In this case, the section provides the Commission with the discretion to disclose to the appellant his own personal information where section 7 applies. The Commission has provided representations regarding its decision in favour of denying access in the circumstances of this appeal. I have reviewed these representations and find nothing improper in the Commission's exercise of discretion, and would not alter it on appeal.

ORDER:

1. I order the Commission to disclose to the appellant all of Record 2 with the exception of the final paragraph on page one, and all of Record 109.
2. I uphold the Commission's decision not to disclose the final paragraph of page one of Record 2 and the final five lines of Record 5.
3. In order to verify compliance with this order, I order the Commission to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1, **only** upon request.

Original signed by:
Donald Hale
Inquiry Officer

September 29, 1993