



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

ORDER M-230

Appeal M-9300017

The Corporation of the City of York



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ORDER

BACKGROUND:

The Corporation of the City of York (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records concerning a retaining wall located on a particular residential property, including any correspondence sent by the owner of the subject property in regards to the wall. The requester was the owner of the adjoining property.

The City provided the requester with access to certain photographs, measurements and reports prepared by the City's staff. The City identified one other record responsive to the portion of the request relating to correspondence received from the owner of the subject property. The City notified the owner of the subject property (the affected person) under section 21 of the Act. The affected person objected to disclosure of his letter to the requester. The City denied access to the record under sections 8(1)(b) and 14(1) of the Act. The requester appealed the City's decision to refuse access to this record.

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 person. Representations were received from all parties.

The record at issue in this appeal is a letter written by the affected person to the City in response to a notice issued by the City's By-Law Enforcement Branch under the City's property standards by-laws. The notice of violation related to the retaining wall on the appellant's property.

ISSUES:

The issues in this appeal are as follows:

- A. Whether the record contains "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.
- C. Whether the discretionary exemption provided by section 8(1)(b) of the Act applies.

SUBMISSIONS/CONCLUSIONS:

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

In its representations the City submits that the information contained in the record falls within the categories set out in paragraphs (b), (e), (f) and (h) of the definition of "personal information" in section 2(1) of the Act which read as follows:

"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,
- (e) the personal opinions or views of the individual except if they relate to another individual,
- (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
- (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;

I have examined the record at issue carefully. It contains the affected person's opinions and views on the appropriateness of the City's decision in issuing the By-law infraction notice and his observations on the soundness of the retaining wall. The record also contains the affected person's signature, followed by certain abbreviations denoting educational credentials.

The appellant submits that he believes the record contains a "professional opinion and not personal information, for the [affected person] reportedly mentions a profession that is knowledgeable in retaining walls for a reason". In support of this submission the appellant has provided an internal memorandum prepared by the City's By-Law Enforcement and Property Standards Branch. This document refers to the affected person's professional designation and paraphrases the position of the affected person regarding the alleged by-law violation.

In my view, the mere fact that the individual who expresses a view or opinion possesses professional qualifications in the subject matter or is employed by an institution or organization is not sufficient to remove the information from the definition of personal information.

In my view, in order for such information to lose its character as personal information, the individual must have created the record or provided the information in his/her capacity as a professional or an employee,

and in the course of discharging/executing his/her professional or employment responsibilities (Orders M-71, M-74 and P-326).

Having reviewed the content of the record and the circumstances of its creation, I find that the views and opinions expressed by the affected person in the record at issue are his own personal views and opinions as a property owner involved in a law enforcement matter, and were not rendered in his professional capacity or as an employee discharging professional or employment responsibilities. In my view, the information retains its character as personal information, despite the fact that its author proffered views and opinions on a technical professional matter and included his educational qualifications, presumably to lend credibility to his position.

Accordingly, I find that the information contained in the record qualifies as personal information and relates solely to the affected person.

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

I have found under Issue A that the record contains personal information that relates solely to the affected person. Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of personal information to any person other than the individual to whom the information relates, except in certain circumstances listed under the section.

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

In determining whether section 14(1)(f) of the Act applies, consideration should be given to sections 14(2) and (3) of the Act, which provide guidance in determining whether or not disclosure of personal information would constitute an unjustified invasion of personal privacy, and section 14(4) of the Act, which lists a

number of specific types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.

Having reviewed the record, I find that it contains no information that falls within the ambit of the provisions of sections 14(3) or (4) of the Act.

Section 14(2) of the Act provides a non-exhaustive list of criteria for the City to consider in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy.

The appellant argues that the consideration referred to in section 14(2)(d) of the Act, a factor which favours the disclosure of personal information, is relevant in the circumstances of this appeal. This section reads:

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,

the personal information is relevant to a fair determination of rights affecting the person who made the request;

In order for section 14(2)(d) of the 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 or question; **and**
- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

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The appellant submits that he feels that the personal information is relevant to a fair determination of his rights. He states "the reason for this is that the correspondence sent reportedly states that [the affected person] is an architect and in his opinion `... no section of the wall is unstable ...' and this was a factor in having a By-Law enforcement order on the wall, which straddles [on the appellant's property] terminated."

He submits that the termination of the notice was done unfairly, "due to the correspondence alleging a profession, which was not true, and an opinion, which may have biased the City of York".

Both the City and the affected person state that the retaining wall in question was inspected by the City's Building Inspector and Professional Engineer and that it was as a result of his opinion that the City's By-Law Enforcement and Property Standards Branch decided to terminate the enforcement procedure. The internal City memorandum submitted by the appellant supports this position.

The appellant has provided no evidence to establish either a legal right affecting him or how the contents of the record could have some bearing on or is significant to the determination of a legal right affecting him. I, therefore, find that section 14(2)(d) of the Act is not a relevant factor in the circumstances of this appeal.

After considering all of the relevant circumstances in this matter, and in the absence of any factors under section 14(2) of the Act which weigh in favour of disclosure, I am unable to find that disclosure of the personal information contained in the record would **not** constitute an unjustified invasion of the personal privacy of the affected person.

Accordingly, I find that the exception in section 14(1)(f) of the Act does not apply and, therefore, the record is exempt under the mandatory exemption provided by section 14 of the Act.

Because of the manner in which I have disposed of Issues A and B, it is not necessary for me to deal with Issue C.

ORDER:

I uphold the decision of the City to withhold the record.

Original signed by: _____
Asfaw Seife
Inquiry Officer

December 1, 1993