



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-347

Appeals M-9400061, M-9400062 and M-9400063

City of Stoney Creek



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NATURE OF THE APPEAL:

This order addresses three appeals, Numbers M-9400061, M-9400062 and M-9400063, filed under the Municipal Freedom of Information and Protection of Privacy Act (the Act). Because the institution and the nature of the records and the issues are the same, this order will dispose of all three appeals.

The requests were for access to the contents of the "secret files" held on each of the appellants by the fire department of the City of Stoney Creek (the City). Partial access was granted to the contents of these files. The appellants are former part-time firefighters with the City's fire department.

The information which has not been disclosed consists of portions of the following four records:

- (1) signatures on a letter dated October 26, 1993 addressed to the head of the fire department (Appeal Numbers M-9400061, M-9400062 and M-9400063);
- (2) a name on page one and the signature on page two of a two-page letter dated October 26, 1993 addressed to the head of the fire department (Appeal No. M-9400061);
- (3) two names on a note to file dated October 27, 1993 from the head of the fire department (Appeal No. M-9400061);
- (4) author's name on a memorandum dated October 29, 1993 addressed to the head of the fire department (Appeal No. M-9400063).

The City relies on the following exemption to deny access to the information in the records:

- invasion of privacy - sections 38(b) and 14(1)

Notices of inquiry were sent to the City, the appellants and six affected persons. Representations were received from the City, the appellants and three of the affected persons.

DISCUSSION:

INVASION OF PRIVACY

Section 2(1) of the Act states, in part, that "personal information" means recorded information about an identifiable individual, including,

...

- (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,
- (g) the views or opinions of another individual about the individual, and
- (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 reviewed the information in the records and I find that it satisfies the definition of "personal information". The records formed part of the "secret file(s)" on the appellants. In my view, the personal information in the records, therefore, relates to the appellants and the affected persons.

The Act gives individuals a general right of access to their own personal information held by a government body (section 36(1)). There are a number of exceptions to this general right of access. One such exception is found in section 38(b) of the Act, which states:

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

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 38(b) introduces a balancing principle. The City must look at the information and weigh the requester's right of access to his/her own personal information against another individual's right to protection of his/her personal privacy. If the City determines that release of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives the City the discretion to deny the requester access to the personal information.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's personal privacy. Sections 14(2), (3) and (4) of the Act provide guidance in making this determination.

In their representations, the appellants submit that they had not been aware of the existence of the "secret files", that the records were contained in these secret files and were material to the decisions to terminate

their employment as part-time firefighters.

The City has not raised any of the presumptions contained in section 14(3) nor have I found any of the presumptions to be relevant to these appeals. I also find that section 14(4) is not relevant to the appeals.

The City submits that disclosure of the information in the records would result in pecuniary or other harm to the affected persons (section 14(2)(e)). The affected persons support the City's position and also claim that the information was supplied in confidence (section 14(2)(h)) and that disclosure of the information may unfairly damage the reputation of individuals referred to in the records (section 14(2)(i)). I will consider the relevance of each of these factors below.

SECTION 14(2)(e) - PECUNIARY OR OTHER HARM

The City and the affected persons claim that disclosure of the information may result in harm and/or harassment to the affected persons. The City and two of the affected persons describe an incident at the fire station where the members were warned to watch out for the "back stabbers".

In my view, neither the City nor the affected persons have provided evidence to show how and in what manner the individuals to whom the information relates **will** be exposed unfairly to pecuniary or other harm. I find that section 14(2)(e) is not a relevant consideration in this appeal.

SECTION 14(2)(h) - SUPPLIED IN CONFIDENCE

All of the affected persons claim that the information in the records was requested by the department head who had assured them that it would be held in confidence. While I am prepared to accept that in the circumstances of this appeal, there was a probable expectation of confidentiality on the part of the affected persons, there is no evidence from the City that such assurances of confidentiality were given. Nor is there anything on the face of the records themselves that indicates that they were provided in confidence. I find, therefore, that section 14(2)(h) is not a relevant consideration in this appeal.

SECTION 14(2)(i) - UNFAIR DAMAGE TO REPUTATION

One of the affected persons states that the release of his name would unfairly damage his reputation. In my view, a mere assertion does not suffice as evidence. The relevance of section 14(2)(i) is not dependent on whether the damage or harm envisioned by this clause is present or foreseeable but whether this damage or harm would be "unfair" to the individual involved (Order P-256). I am unable to agree that this consideration has any application in the circumstances of this appeal.

In conclusion, I have made the following findings:

- (1) I find that none of the factors in sections 14(2)(e), (h) and (i), which weigh in favour of privacy protection, are relevant in the circumstances of these appeals.

- (2) I have considered the remaining factors in section 14(2) together with all the circumstances of the three appeals and find that there exist no considerations weighing in favour of privacy protection.
- (3) I find that, under section 38(b) of the Act, disclosure of the information in the records would not constitute an unjustified invasion of the personal privacy of the affected persons and, therefore, section 38(b) does not apply.

ORDER:

1. I order the City to disclose to the appellants Records 1-4 in their entirety within thirty-five (35) days following the date of this order, but not earlier than the thirtieth (30th) day after the date of this order.
2. In order to verify compliance with Provision 1 of this order, I reserve the right to require the City to provide me with a copy of the records disclosed to the appellants pursuant to this provision.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

July 12, 1994