



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER M-423**

## **Appeal M-9400114**

### **Regional Municipality of Ottawa-Carleton**



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## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The Regional Municipality of Ottawa-Carleton (the Municipality) received a request for access to all information, including reports, findings and notes, relating to a harassment complaint filed by the appellant against a named individual (the respondent) in August 1993.

The Municipality identified a total of 72 pages responsive to the request (the record) and granted partial access. Additional pages were identified and disclosed during mediation. The pages of the record to which access was denied, in whole or in part, are described in Appendix "A" to this order.

The Municipality relies upon the following exemption to deny access to the information withheld from the record:

- invasion of privacy - section 38(b)

A Notice of Inquiry was provided to the appellant, the Municipality, the respondent and four individuals who gave statements during the investigation (the witnesses). Representations were submitted by the Municipality, the respondent and three witnesses.

## **DISCUSSION:**

### **PRELIMINARY MATTER:**

#### **RESPONSIVE RECORDS**

The appellant had filed two previous complaints against the respondent. Portions of the 72 pages identified by the Municipality contain references to the earlier complaints. Access to these portions of the record was denied on the basis that this information is not responsive to the request. In that regard, the Notice of Inquiry invited representations from the parties on this issue. As I have indicated previously, no submissions were received from the appellant.

In its representations, the Municipality stated that the three incidents were separate and resulted in separate investigation processes. While the three events involved the same complainant and respondent, each of the three incidents involved different allegations. In addition, the time period of the earlier complaints were different.

I have carefully reviewed the information at issue and the representations. I agree with the Municipality that certain information in the 72 pages relates to events that are different from the harassment complaint referred to in the request. Therefore, I find that those portions of the record containing references to the earlier proceedings will not be considered in this order. I have highlighted those parts of pages 7, 28 and 42 which are not responsive to the request.

## INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have carefully reviewed the information that has been withheld in the record to determine whether it qualifies as personal information and if so, to whom the personal information relates.

I find that all of the information qualifies as personal information within section 2(1). In my view, the personal information that relates solely to the appellant has already been disclosed. I find that the personal information that remains relates to both the appellant and other individuals, including the respondent and the witnesses.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. Section 38 of the Act provides a number of exceptions to this general rule of access.

Under section 38(b), where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

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. Where one of the presumptions found in section 14(3) applies to the personal information found in a record, the only way such a presumption against disclosure can be overcome is where the personal information falls under section 14(4) or where a finding is made that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Municipality must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

In its representations, the Municipality submits that the presumptions in section 14(3)(b) (compiled as part of an investigation into a possible violation of law), section 14(3)(d) (employment or educational history) and section 14(3)(g) (personnel evaluations) apply to some of the personal information in the record. The Municipality further submits that there are a number of factors under section 14(2) which favour non-disclosure of the personal information in the record:

- the information is highly sensitive - section 14(2)(f)
- the information is unlikely to be accurate - section 14(2)(g)
- the information has been supplied in confidence - section 14(2)(h)
- the information, if disclosed, may unfairly damage the reputation of anyone referred to - section 14(2)(i)

Counsel, acting on behalf of both the respondent and two of the witnesses, claims that the presumptions in

sections 14(3)(b), (d) and (g) apply. Counsel submits that in addition to the factors listed in sections 14(2)(f) and (h), section 14(2)(e) (unfair exposure to pecuniary or other harm) is also a relevant factor favouring privacy protection.

Having reviewed the evidence before me, I make the following findings:

- (1) None of the personal information in the record falls within the presumptions provided by section 14(3)(b), (d) or (g) of the Act.
- (2) Many past orders have indicated that some information in connection with harassment investigations is highly sensitive within the meaning of section 14(2)(f), and that some information collected in the context of such investigations was provided in confidence within the meaning of section 14(2)(h). However, it has also been found that it is not possible for an investigation to proceed if the complaint is not made known to the respondent and the direct response to the allegations made in the complaint is not made known to the complainant (Orders M-82 and P-685). In addition, where, as in this case, the investigation has been completed, it is essential that the parties (including the appellant) be advised of how the complaint was resolved and why (Order P-694).

In my view, in the circumstances of this appeal, sections 14(2)(f) and (h) are relevant with respect to the personal information of individuals other than the appellant, except for information which directly addresses the substance of the complaint and the findings. In that regard, I have indicated below the portions of the record which should be disclosed.

- (3) I find that the names of witnesses and other information in the record which could identify them (except information relating to the substance of the complaint and the findings) is information that is highly sensitive (section 14(2)(f)) and was provided in confidence (section 14(2)(h)).
- (4) I have considered the other factors listed in section 14(2) including sections 14(2)(e), (g) and (i) in conjunction with the information in the record. In my view, there is no evidence before me to show how these factors are applicable to any of the information in the record.
- (5) In summary, I have found that sections 14(2)(f) and (h) of the Act are relevant to all the information in the record **except** for the information that relates directly to the complaint and to the findings. I find that disclosure of this information would be an unjustified invasion of the personal privacy of individuals other than the appellant and it is, therefore, properly exempt under section 38(b) of the Act.

I have highlighted **in yellow** the portions of the record that are exempt under section 38(b) on the copy being sent to the Municipality's Freedom of Information and Privacy Co-ordinator and which should **not** be disclosed. I have also highlighted **in yellow** those portions of pages 7, 28 and 42 that I have found to be non-responsive to the request and which should **not** be disclosed. The portions of the record highlighted **in pink** is information that does not fall within sections 14(2)(f) and/or (h) and **should** be disclosed.

**ORDER:**

1. I uphold the Municipality's decision to deny access to those portions of the record highlighted **in yellow** on the copy of the record which is being sent to the Municipality's Freedom of Information and Privacy Co-ordinator with a copy of this order. The yellow highlighted portions **should not** be disclosed to the appellant.
2. I order the Municipality to disclose to the appellant the portions of the record highlighted **in pink** on the copy of the record being sent to the Municipality's Freedom of Information and Privacy Co-ordinator with a copy of this order.
3. I order the Municipality to disclose the information in Provision 2 within thirty-five (35) days after the date of this order but not before the thirtieth (30) day after the date of this order.
4. In order to verify compliance with this order, I reserve the right to require the Municipality to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_

Mumtaz Jiwan  
Inquiry Officer

\_\_\_\_\_  
November 22, 1994

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**APPENDIX "A"**

<b>RECORD PAGE#</b>	<b>DESCRIPTION</b>	<b>ACCESS ALLOWED</b>
2-7	Final Investigation Report	partial
18	Memorandum to file	partial
26-28	Chronology of results and interviews	partial
31-34	Notes of meeting with respondent and witness	partial
36, 38, 39	Notes to file	partial
41	List of Interviewees	partial
42, 43	Chronology of results with questions	partial
53	Notes to file	partial
54, 55	Handwritten notes and interviews	none
57, 58, 59	Handwritten notes and interviews	partial
61	Note to file	partial
62	Handwritten note to file	partial
66	Handwritten note to file	partial
67	Handwritten note to file	none