



**Information and Privacy
Commissioner/Ontario**

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

ORDER M-461

Appeal M-9400267

Municipality of Metropolitan Toronto



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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 Municipality of Metropolitan Toronto (the Municipality) received a request for access to a variety of documents relating to the requester which had been prepared between January 16, 1992 and October 7, 1993. During the mediation stage of the appeal, the request was clarified by the requester as relating to a specific incident and all subsequent related events.

The Municipality identified 346 pages of records and granted the requester partial access, indicating that certain information contained in some records was not responsive to the request. The Municipality relies on the following exemptions to withhold information it views as responsive, to which access has been denied:

- advice or recommendations - sections 7(1) and 38(a)
- invasion of privacy - sections 14 and 38(b)

The Municipality further indicated that one record, a tape dated April 24, 1992, had been destroyed pursuant to its record retention schedule.

The requester appealed the decision of the Municipality, requesting a review with respect to all records which he was denied access in whole or in part, which includes a review of the Municipality's claim that parts of the records are not responsive to the request. The requester did not appeal the Municipality's decision regarding the non-existence of the April 24, 1992 tape.

Subsequent to its original decision, the Municipality released some portions of the records which it had previously withheld. The records remaining at issue in this appeal may generally be described as worker's compensation documents, labour relations files, various supervisors' notes and an internal review tape transcript. The records at issue are described in greater detail in Appendix "A" to this order. For ease of reference, I have numbered the records sequentially.

In reviewing the records, I note that there is some duplication. Where this occurs, it has been noted on the attached Appendix.

A Notice of Inquiry was provided to the appellant and the Municipality. Representations were received from both parties.

PRELIMINARY MATTER:

RESPONSIVENESS OF RECORDS

The decision of the Municipality indicates that all of Records 9 and 12-43, as well as portions of Records 5, 7, 11 and 47-59, are not responsive to the request.

In the Notice of Inquiry, the Municipality was asked to indicate, for each portion of the record to which the appellant was denied access on the basis of non-responsiveness, why that portion of the record is not responsive to the request. The Municipality made no representations on this issue.

In his representations, the appellant argued that all records in the appeal are responsive to his request and should therefore be released in full.

I have carefully reviewed the records at issue in light of the appellant's request as clarified. I find that the following records or parts of records are not responsive to the request: Records 5, 7, 9, 12, 25-28 (and duplicate Records 29, 32 and 40-43) and 47-59. In addition, I agree with the Municipality's assessment that parts of Record 11 are not responsive to the request with the exception of one portion which I have highlighted in yellow on the copy of this record provided to the Municipality's Freedom of Information and Privacy Co-ordinator with a copy of this order. Those records and portions of records which are not responsive contain information relating to individuals other than the appellant and/or to incidents in which he was not involved. Others are blank forms without any information about the requester. The portions of the records which are not responsive to the request will not be considered in this order.

Records 13-24, 30, 31 and 33-35 (and duplicate Records 36-39), and the highlighted portion of Record 11, however, contain the appellant's personal information and are responsive to his request. Accordingly, I will order the Municipality to issue a decision with respect to those records pursuant to sections 19 and 21 of the Act.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

I have reviewed the portions of Records 2-8, 10, 11 and 44-59 which the Municipality has withheld from the appellant on the basis of invasion of privacy. In my view, these portions of the records all satisfy the definition of personal information and the personal information they contain is about the appellant and other individuals.

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 provides a number of exceptions to this general right of access.

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

In this situation, 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 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) of the Act, as well as all other considerations which are relevant in the circumstances of the case.

In its representations, the Municipality indicates that none of the presumptions in section 14(3) apply to the personal information at issue. It submits that some of the information in the records that relates to individuals other than the appellant is unlikely to be accurate (section 14(2)(g)), and that this factor favours non-disclosure of the personal information in the records. In its decision letter, the Municipality claimed that the information was highly sensitive (section 14(2)(f)), which is a factor which favours non-disclosure, however, no representations were provided relating to this factor. The Municipality submits that none of the factors which weigh in favour of disclosure apply in the circumstances of this appeal.

The appellant indicates that he knows the contents of the records at issue. He argues further that the information in the records is unlikely to be accurate (section 14(2)(g)), and that he requires access to records relating to himself in order to ensure their accuracy. As I indicated above, section 14(2)(g) is a factor which favours non-disclosure.

I have reviewed the records at issue and I make the following findings:

1. None of the presumptions in section 14(3) apply to the information contained in the records.
2. The Municipality has failed to establish that the information contained in the records is unlikely to be accurate or reliable. Accordingly, I find that section 14(2)(g) has no application.
3. Portions of the records contain information which may be characterized as highly sensitive within the meaning of the Act, and, therefore, section 14(2)(f) is a relevant factor with respect to this information. I have highlighted these portions in pink on the copy of these records which I have provided to the Municipality's Freedom of Information and Privacy Co-ordinator with a copy of this order.
4. The remaining records contain information which relates to the identification of individuals the appellant worked with and the incident which he was involved in, and which is the subject of this appeal. These records do not contain information which may be characterized as highly sensitive. Accordingly, section 14(2)(f) has no application.
5. I have found that none of the presumptions provided by section 14(3) or considerations which favour non-disclosure listed in section 14(2) are applicable to the non-highlighted portions of the records. Accordingly, section 38(b) does not apply to exempt these records from disclosure.

6. As I have decided that one factor (section 14(2)(f)), which favours non-disclosure, is applicable to the highlighted portions of the records, I find that section 38(b) applies to exempt this information from disclosure.

ADVICE OR RECOMMENDATIONS

The Municipality claims that part of Record 1 is exempt from disclosure pursuant to section 7(1) of the Act. I have reviewed Record 1 and in my view, it contains the personal information of the appellant.

Section 38(a) of the Act gives the Municipality the discretion to deny access to an individual's own personal information in circumstances where any of the exemptions listed in that section would otherwise apply to the information. The exemption mentioned in section 38(a) which is at issue in this appeal is the "advice or recommendations" exemption provided by section 7(1) of the Act. Accordingly, I will now turn to the issue of whether the part of Record 1 at issue qualifies for exemption under that section.

Section 7(1) 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 and recommendations for the purpose of section 7(1) must contain more than mere information. To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process.

The part of Record 1 to which the Municipality seeks to apply section 7 consists of factual observations and instructions. It does not contain "advice" or "recommendations" as contemplated in the Act.

Accordingly, I find that the severed portion of Record 1 does not qualify for exemption under section 7(1).

Because the severed portion of Record 1 does not qualify for exemption under section 7(1) of the Act, it is not exempt under section 38(a). Since no other exemption has been claimed for the undisclosed portion of Record 1, and no mandatory exemption applies, it should be disclosed to the appellant.

ORDER:

1. I uphold the decision of the Municipality to deny access to Records 12, 25-29, 32 and 40-43, as well as to the portions of Records 5, 7, 11 and 47-59 which are not responsive to the request, with the exception of that portion of Record 11 which is **highlighted in yellow** on the copy of this record which is being sent to the Municipality's Freedom of Information and Privacy Co-ordinator with a copy of this order.

2. I order the Municipality to issue a decision pursuant to sections 19 and 21 of the Act within thirty (30) days of the date of this order with respect to Records 13-24, 30, 31, 33-35 and with respect to the portion of Record 11 which is **highlighted in yellow** on the copy of this record which is being sent to the Municipality's Freedom of Information and Privacy Co-ordinator with a copy of this order.
3. I uphold the decision of the Municipality **not** to disclose the personal information which has been **highlighted in pink** on the copy of the records which are being sent to the Municipality's Freedom of Information and Privacy Co-ordinator with a copy of this order.
4. I order the Municipality to disclose to the appellant the remaining information within thirty-five (35) days after the date of this order and not earlier than the thirtieth (30th) day after the date of this order.
5. In order to verify compliance with this order, I reserve the right to require the Municipality to provide me with a copy of the decision which is issued pursuant to Provision 2 and/or a copy of the records which are disclosed to the appellant pursuant to Provision 4.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ February 9, 1995

APPENDIX "A"

INDEX OF RECORDS AT ISSUE

RECORD NUMBER	NUMBER OF PAGES	DESCRIPTION OF DOCUMENT	MUNICIPALITY'S DECISION EXEMPTIONS CLAIMED	DECISION
WORKERS COMPENSATION BOARD FILE				
1	1 page	Memo dated October 5, 1993 re appellant	Partial release 7(1)	Disclose
2	8 pages	Letter dated June 29/93 from East Area Manager, Dept. of Ambulance Services to WCB	Partial release 14(1), 38(b)	Decision upheld
3	3 pages	Internal memo dated May 15/92 from District Supervisor, Dept. of Ambulance Services to file	Partial release 14(3)(d), 14(1)	Decision upheld
4	1 page	WCB Report dated May 15/92 from Metro Toronto Ambulance Dept.	Partial release 14(1)	Decision upheld in part
LABOUR RELATIONS FILE #1				
5	5 pages	Incident report of the Dept. of Ambulance Services dated from May 13/94 - May 14/94	Partial release 14(1), 2(f), 3(a), Non-responsive	Decision upheld in part
6	3 pages	Duplicate of Record 3	Partial release 14(1), 14(3)(d)	Decision upheld
7	4 pages	Supervisor's Log, Operational Support Division dated May 14/92 - May 15/92	Partial release 14(1), 14(3)(a), Non-responsive	Decision upheld in part
LABOUR RELATIONS FILE #3				
8	2 pages	District Supervisor's response to Grievance dated August 2/92	Partial release 14(1)	Decision not upheld
LABOUR RELATIONS FILE #6				
9	1 page & a copy	Internal Memorandum from District Supervisor to East Operations Manager of Dept. of Ambulance Services dated Nov. 3/91	Fully exempted Non-responsive	Decision upheld
EAST AREA OFFICE FILE				

RECORD NUMBER	NUMBER OF PAGES	DESCRIPTION OF DOCUMENT	MUNICIPALITY'S DECISION EXEMPTIONS CLAIMED	DECISION
10	1 page	WCB - Employer's Accident Report dated Jan. 4/93 from Dept. of Metro Ambulance Services	Partial release 14(1)	Decision upheld
SUPERVISOR'S NOTES				
11	4 pages	Dept. of Ambulance Services, Supervisor's log dated May 15/92	Partial release Non-responsive, 14(1), 14(3)(a)	Partly Responsive; Decision upheld in part
12	4 pages	Dept. of Ambulance Services, Supervisor's log dated May 14/92 and May 15/92.	Fully exempted Non-responsive	Decision upheld
NOTES MADE BY CO-ORDINATOR, HUMAN RESOURCES SERVICES				
13	1 page	Internal memo from F.O.I. Co-ordinator to Human Resources Co-ordinator, of Dept. of Ambulance Services dated Oct. 19/93, re: F.O.I. request of appellant	Fully exempted Non-responsive	Responsive
14	1 page	Internal memo from Commissioner, Dept. of Ambulance Services, re: Privacy Investigations of WCB Claims dated Oct. 20/93	Fully exempted Non-responsive	Responsive
15	2 pages	Memo from Manager, Corporate Access and Privacy to Commissioner of Ambulance Services re: Privacy Investigations - WCB, dated Oct. 7/93	Fully exempted Non-responsive	Responsive
16	8 pages	Investigation report from Information and Privacy Commissioner/Ontario dated Sept. 30/93	Fully exempted Non-responsive	Responsive
17	14 pages	Investigation report from Information and Privacy Commissioner/Ontario dated Sept. 30/93	Fully exempted Non-responsive	Responsive
18	6 pages	Letter from Metropolitan Clerk's Dept. to Compliance Investigator, IPC, re: Investigation report, dated Sept. 7/93	Fully exempted Non-responsive	Responsive
19	2 pages	Metro Toronto Dept. of Ambulance Services Newsletter dated June 30/93	Fully exempted Non-responsive	Responsive
20	1 page	Notice re: Confidentiality	Fully exempted Non-responsive	Responsive
21	2 pages	Letter from Commissioner, Dept. Ambulance	Fully exempted	Responsive

RECORD NUMBER	NUMBER OF PAGES	DESCRIPTION OF DOCUMENT	MUNICIPALITY'S DECISION EXEMPTIONS CLAIMED	DECISION
		Services to Deputy Chief Admin. Officer dated Oct. 18/93, re: Draft response to correspondence	Non-responsive	
22	1 page	Letter from Human Resources Co-ordinator, Dept. of Ambulance Services to Manager, Human Rights and Employment Equity Programs dated Oct. 19/93	Fully exempted Non-responsive	Responsive
23	2 pages	Letter from physician to Deputy Chief Admin. Officer, Dept. of Ambulance Services, dated Sept. 17/93 with notations	Fully exempted Non-responsive	Responsive
24	4 pages	Draft letter from Deputy Chief Admin. Chief to physician dated Oct. 5/93	Fully exempted Non-responsive	Responsive
25	1 page	Dept. of Ambulance Services Physician's Report (blank)	Fully exempted Non-responsive	Decision upheld
26	2 pages	Dept. of Ambulance Services, Modified Work Program	Fully exempted Non-responsive	Decision upheld
27	1 page	Modified Duty Program, Introduction from Dept. of Ambulance Services	Fully exempted Non-responsive	Decision upheld
28	1 page	Example letter from District Supervisor, Dept. of Ambulance Services to an employee re: Temp. Modified Duties dated Sept. 30/93	Fully exempted Non-responsive	Decision upheld
29	3 pages	Duplicates of records 26-28	Fully exempted Non-responsive	Decision upheld
30	2 pages	Letter from physician to Deputy Chief Admin. Officer, Dept. of Ambulance Services, dated Sept. 17/93	Fully exempted Non-responsive	Responsive
31	2 pages	Internal memo from Human Resources Co-ordinator to WCB & Rehabilitation Unit dated Sept. 21/93	Fully exempted Non-responsive	Responsive
32	1 page	Duplicate of Record 25	Fully exempted Non-responsive	Decision upheld
33	1 page	Internal memo from Admin. Assistant, East Operations re: physician dated Sept. 20/93	Fully exempted Non-responsive	Responsive
SUPERVISOR'S NOTES				
34	1 page	Internal memo from Supervisor to Admin. Supervisor re: FOI Request dated Nov. 10/93	Fully exempted Non-responsive	Responsive

RECORD NUMBER	NUMBER OF PAGES	DESCRIPTION OF DOCUMENT	MUNICIPALITY'S DECISION EXEMPTIONS CLAIMED	DECISION
35	1 page	Letter to physician from Deputy Chief Admin. Officer dated Oct. 26/93	Fully exempted Non-responsive	Responsive
36	2 pages	Duplicate of Record 21	Fully exempted Non-responsive	Responsive
37	1 page	Duplicate of Record 22	Fully exempted Non-responsive	Responsive
38	2 pages	Duplicate of Record 23	Fully exempted Non-responsive	Responsive
39	4 pages	Duplicate of Record 24	Fully exempted Non-responsive	Responsive
40	1 page	Duplicate of Record 25	Fully exempted Non-responsive	Decision upheld
41	2 pages	Duplicate of Record 26	Fully exempted Non-responsive	Decision upheld
42	2 pages	Duplicate of Record 27	Fully exempted Non-responsive	Decision upheld
43	1 page	Duplicate of Record 28	Fully exempted Non-responsive	Decision upheld
LABOUR RELATIONS SUPERVISOR'S NOTES				
44	1 page	Internal Memo from Labour Relations Supervisor re: grievance hearing dated Oct. 7/92	Partial release 14(1), 14(3)(d)	Decision upheld in part
45	1 page	Internal Memo from District Supervisor to Health & Safety Supervisor re: WCB Claim dated May 21/92	Partial release 14(1)	Decision not upheld
46	1 page	Duplicate of Record 44	Partial release 14(1), 14(3)(d)	Decision upheld in part
INTERNAL REVIEW TAPE TRANSCRIPT				
47	19 pages	Tape transcript dated Sept. 10 from Dept. of Ambulance Services	Partial release 14(2)(g), Non-responsive	Decision upheld
SUPERVISOR'S NOTES - JANUARY 16/92 - FEBRUARY 11/92				
48	7 pages	Supervisor's notes from Jan. 16/92 - Feb. 11/92	Partial release 14(1), Non-responsive	Decision upheld in part

RECORD NUMBER	NUMBER OF PAGES	DESCRIPTION OF DOCUMENT	MUNICIPALITY'S DECISION EXEMPTIONS CLAIMED	DECISION
SUPERVISOR'S NOTES - AUGUST 6/92 - FEBRUARY 24/93				
49	16 pages	Supervisor's notes from Aug. 6/92 - Feb. 24/93	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - FEBRUARY 28/93 - APRIL 6/93				
50	15 pages	Supervisor's notes from Feb. 28/93 - April 6/93	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - APRIL 6/93 - MAY 18/93				
51	14 pages	Supervisor's notes from April 6/93 - May 18/93	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - MAY 21/93 - JUNE 29/93				
52	14 pages	Supervisor's notes from May 21/93 - June 29/93	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - JULY 2/93 - AUGUST 10/93				
53	18 pages	Supervisor's notes from July 2/93 - Aug. 10/93	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - AUGUST 13/93 - SEPTEMBER 21/93				
54	7 pages	Supervisor's notes from Aug. 13/93 - Sept. 21/93	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - SEPTEMBER 24/93 - NOVEMBER 1/93				
55	14 pages	Supervisor's notes from Sept. 24/93 - Nov. 1/93	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - NOVEMBER 3/93 - DECEMBER 14/93				
56	12 pages	Supervisor's notes from Nov. 3/93 - Dec. 14/93	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - DECEMBER 15/93 - JANUARY 25/93				
57	21 pages	Supervisor's notes from Dec. 15/93 - Jan.	Partial release	Decision

RECORD NUMBER	NUMBER OF PAGES	DESCRIPTION OF DOCUMENT	MUNICIPALITY'S DECISION EXEMPTIONS CLAIMED	DECISION
		25/94	14(1), Non-responsive	upheld in part
SUPERVISOR'S NOTES - JANUARY 25/94 - MARCH 13/94				
58	14 pages	Supervisor's notes from Jan. 25/94 - March 13/94	Partial release 14(1), Non-responsive	Decision upheld in part
SUPERVISOR'S NOTES - MARCH 9/94 - APRIL 19/94				
59	20 pages	Supervisor's notes from March 9/94 - April 19/94	Partial release 14(1), Non-responsive	Decision upheld in part