



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

# **ORDER M-585**

**Appeal M\_9500250**

**Thunder Bay District Health Unit**



80 Bloor Street West,  
Suite 1700,  
Toronto, Ontario  
M5S 2V1

80, rue Bloor ouest  
Bureau 1700  
Toronto (Ontario)  
M5S 2V1

416-326-3333  
1-800-387-0073  
Fax/Téléc: 416-325-9195  
TTY: 416-325-7539  
<http://www.ipc.on.ca>

## **NATURE OF THE APPEAL:**

This is an appeal under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The appellant, a property owner, submitted a request to the Thunder Bay District Health Unit (the Health Unit) on behalf of herself and her husband, for "all particulars regarding a complaint alleging a meat operation" at their residence. As a result of the complaint, the Health Unit conducted an investigation to determine whether a by-law infraction had occurred, and prepared a report.

The Health Unit granted access to the investigation report, but denied access to the other responsive record, which is a handwritten, unsigned letter of complaint. The Health Unit relies on the following exemptions in the Act with regard to the denial of access:

- law enforcement - sections 8(1)(a), (b), (c) and (d)
- invasion of privacy - section 14(1).

The appellant filed an appeal, objecting to the denial of access. A Notice of Inquiry was sent to the appellant and the Health Unit. Representations were received from the Health Unit only.

During the course of the appeal, a typewritten copy of the complaint letter was prepared and submitted to this office by counsel for the Health Unit. Although the Health Unit was not required to create this copy, this has in fact been done, and the Health Unit's representations indicate a willingness to disclose the document in this form. Accordingly, in addition to the handwritten copy of the complaint, I will consider the typewritten copy as a record at issue in this appeal.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

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 will first consider whether, in this situation, the author of the complaint is an "identifiable individual". Neither the handwritten copy of the complaint, nor the typewritten version, contains the name of the author. In Order P-230, Commissioner Tom Wright considered whether job competition records, without the candidates' names, would constitute their "personal information". In that regard, he stated as follows:

If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under subsection 2(1) as personal information.

I agree. In my view, in the circumstances of this case, there is a reasonable expectation that the identity of the author of the complaint could be determined from the handwritten version of the complaint, because that version is in the complainant's handwriting. Accordingly, I find that the handwritten complaint qualifies as the personal information of the author.

However, there is no reasonable expectation that the identity of the author of the complaint could be determined from the typewritten version and for this reason, I find that it does not qualify as the personal information of the author.

The appellant's husband is mentioned by name in both versions of the complaint in connection with an alleged by-law violation, and I find that both versions of the complaint contain his personal information.

### **INVASION OF PRIVACY**

There are two exemptions in the Act which relate to personal privacy, namely section 14(1), which the Health Unit has claimed, and section 38(b). Where a record contains the personal information of a requester and an institution decides to deny access because disclosure would constitute an unjustified invasion of the personal privacy of another individual, section 38(b) is the proper exemption to claim (Order M-352). In this appeal, the appellant's husband has confirmed in writing that the request was submitted by his wife on behalf of both of them. I have found that both copies of the record contain his personal information. Accordingly, I will conduct my analysis of whether disclosure would constitute an unjustified invasion of personal privacy under section 38(b) rather than section 14(1).

Above, I found that the only personal information in the typewritten version of the complaint pertains to the appellant's husband, who, as noted above, has confirmed that the request was submitted on his behalf. Accordingly, its disclosure cannot result in an unjustified invasion of the personal privacy of any individual, and it is not exempt under section 38(b). As the Health Unit has indicated it is willing to disclose this version of the complaint, I will not consider the application of sections 8(1)(a), (b), (c) or (d) to it. As no mandatory exemption applies, it should be disclosed.

I will now return to the handwritten copy of the complaint, which I have found to contain the personal information of an individual other than the appellant (i.e. the author of the complaint). Under section 38(b) of the Act, where a record contains the personal information of both the appellant and other individuals and the Health Unit determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Health Unit has the discretion to deny access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions 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 if 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 in section 14(3) apply, the institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

In my view, the investigation in this case qualifies as an "investigation into a possible violation of law" for the purposes of section 14(3)(b) of the Act. I find that the complaint was compiled as part of this investigation. Accordingly, the presumed unjustified invasion of privacy in section 14(3)(b) applies. As noted above, such a presumption can only be rebutted if section 14(4) or 16 applies. I have not been provided with any information to substantiate the application of sections 14(4) or 16. Accordingly, I find that disclosure of the handwritten copy of the record would be an unjustified invasion of personal privacy and the exemption provided by section 38(b) applies.

Because of the way I have decided this issue it is not necessary for me to consider whether section 8(1)(a), (b), (c) or (d) applies.

**ORDER:**

1. I uphold the Health Unit's decision to deny access to the handwritten copy of the complaint.
2. I order the Health Unit to disclose the typewritten copy of the complaint to the appellant within fifteen (15) days after the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Health Unit to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
John Higgins  
Inquiry Officer

\_\_\_\_\_  
August 24, 1995