



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

## **ORDER M-647**

Appeal M\_9500287

Haliburton, Kawartha, Pine Ridge District Health Unit



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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 Haliburton, Kawartha, Pine Ridge District Health Unit (the Health Unit) received a request for access to the name of the individual who lodged a complaint against the requester and/or her business.

The Health Unit indicated that it was prepared to disclose the inspection report, but denied access to the name of the complainant under section 14(1) of the Act, invasion of privacy.

The requester appealed the denial of access, reiterating that she wanted to know the name of the complainant.

A Notice of Inquiry was sent to the Health Unit, the appellant and the complainant. Because the document containing the requested information appeared to contain the personal information of the appellant, the parties were asked to comment on the application of section 38(b) of the Act. Representations were received from all three parties.

## 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 record to determine if it contains personal information and, if so, to whom the information relates.

The record contains the name of the complainant, and reveals that this individual filed a complaint against the appellant. In my view, this constitutes the personal information of both the complainant and the appellant.

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 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 institution must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

While the Health Unit's submissions do not specifically refer to section 14(3)(b) of the Act, it is clear that their representations relate to the application of this presumption. Section 14(3)(b) of the Act states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation.

The Health Unit states that technically the complainant was not filing a complaint, but rather posed an inquiry to the Health Unit as to whether the premises and sale of food by the appellant was in compliance with the applicable legislation and whether the Health Unit had any concerns about the safety of the appellant's operation. In response to the query, the Health Unit conducted an inspection under the Health Protection and Promotion Act and the Food Premises Regulation to ascertain if the appellant's operation was in compliance with this legislation. The complainant's name and telephone number appear in the document entitled "Complaint/Request Report" which contains a description of the inspection carried out by the Health Unit and the results of the inspection.

I am of the view that the complainant's name is identifiable as part of the Health Unit's investigation into a possible violation of the Food Premises Regulation and thus the section 14(3)(b) presumption applies.

The information at issue does not fall within section 14(4) of the Act. Nor has the appellant argued the application of section 16 of the Act, the public interest override. In these circumstances, the presumption in section 14(3)(b) has not been rebutted. The disclosure of the name of the complainant would thus constitute an unjustified invasion of this individual's personal privacy under section 38(b) of the Act and should not be disclosed.

## **ORDER:**

I uphold the decision of the Health Unit.

Original signed by: \_\_\_\_\_ November 16, 1995  
Anita Fineberg  
Inquiry Officer