



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

ORDER M-592

Appeal M_9500319

City of 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 City of Toronto (the City) received a request for access to the City's "summary report" with respect to a fire which occurred at an identified property on December 3, 1994. The requester represents the insurers of the building at which the fire occurred.

The City granted access to the report with the exception of the names of the building superintendent and the tenants who occupied the unit in which the fire started. These names were withheld under section 14 of the Act, invasion of privacy.

The requester appealed this decision, indicating that he was only seeking access to the names of the tenants. The City advised that it had no information with respect to the whereabouts of the tenants, so that they could be notified of the appeal. A Notice of Inquiry was sent to the City and the appellant. Representations were received from the appellant only. However, as section 14 is a mandatory exemption, I will consider its application in the discussion which follows.

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 and find that the information which has not been disclosed, appearing as it does in the context of the fire report, constitutes the personal information of the tenants.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances.

Section 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 its decision letter, the City stated that disclosure of the personal information would constitute a presumed unjustified invasion of the personal privacy of the tenants. The City maintained that this information relates to a medical treatment or evaluation (section 14(3)(a)) and was compiled and is identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). The City also indicated that the fact that the personal information was supplied to the City in confidence is a consideration which favours privacy protection (section 14(2)(h)).

The appellant has provided extensive and detailed submissions as to why the considerations referred to by the City have no application to the facts of this case. In addition, he has claimed that disclosure of the names of the tenants is relevant to a fair determination of the rights of the insurance company (section 14(2)(d)).

Having reviewed the record and the representations of the appellant, I have made the following findings:

- (1) The record does not contain any information related to the medical treatment received by the tenants or an evaluation of their conditions. In my view, the information contained in the record does not contain the detail necessary so as to be reasonably construed as being "related to" the types of information listed in section 14(3)(a). Accordingly, I find that the presumption in section 14(3)(a) of the Act does not apply.
- (2) I have been provided with no evidence to conclude that the record was compiled as part of an investigation into a possible violation of law. The record is entitled "City of Toronto, Fire Report" and states that it is to be used for "all fires". On its face, the document is a routine report, prepared by the fire department, of the location details of the fire, the equipment used, as well as observations about the fire itself. I accept the submissions of the appellant that such reports are prepared by firefighters for the purposes of determining the cause or "mechanics" of the fire. They may be distinguished from reports detailing investigations conducted by the police and/or the Fire Marshall who are responsible for determining if a fire resulted from criminal wrongdoing and, if so, for laying charges with respect to possible violations of the law. I accept the submissions of the appellant that the police and/or the Fire Marshall conduct their own independent investigation; they do not rely on the fire report.
- (3) Based on the above, I conclude that the presumed unjustified invasion of personal privacy found in section 14(3)(b) does not apply.
- (4) The City has provided no evidence in support of its claim that the names of the tenants were provided in confidence. Accordingly, I find that section 14(2)(h) is not a relevant consideration in the circumstances of this appeal.
- (5) The appellant claims that he requires access to the names of the tenants in order that they may be named in a civil action to be commenced by the insurance company. I am satisfied that the appellant is seeking the information to exercise its common law and statutory rights under the Insurance Act to pursue a legal claim against the individuals

who were allegedly responsible for the fire. The names of the tenants are crucial to a determination of this right. I therefore conclude that the appellant has established that section 14(2)(d) is a relevant consideration.

- (6) Having considered all the relevant circumstances of this appeal, I find that section 14(2)(d), which favours disclosure, outweighs any privacy interests of the individuals who allegedly caused the fire. Accordingly, I find that disclosure of the names of the tenants would not constitute an unjustified invasion of the personal privacy of these individuals and section 14 does not apply.

ORDER:

1. I order the City to disclose the names of the tenants to the appellant within fifteen (15) days of the date of this order.
2. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the information which is disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

September 11, 1995