



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

ORDER M-631

Appeal M_9500224

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 appellant submitted a request to the Municipality of Metropolitan Toronto (the Municipality) for access to his personnel file, Division file and notes made by various named management staff. The appellant is a former employee of the Municipality who was employed as a caseworker in the Social Services Division. He was investigated by the Fraud and Investigations Unit of Community Services which determined that he had granted benefits to family and friends who were not entitled to them. Most of these individuals were convicted of fraud. The appellant was terminated from his employment but criminal charges were not laid against him. He has filed a grievance against his termination and an arbitration hearing is pending.

The Municipality granted the appellant full access to his personnel file maintained by the Community Services Department and partial access to his personal file maintained by the Social Services Department and management notes. Pages of these documents were withheld either in whole or in part on the basis of the following exemptions under the Act:

- solicitor-client privilege - section 12
- invasion of privacy - sections 14 and 38(b)
- discretion to refuse requester's own information - section 38(a)

The Ministry also indicated that certain pages of the record were not responsive to the request. The appellant appealed the denial of access.

A Notice of Inquiry was sent to the appellant and the Municipality. Representations were received from the Municipality only.

The following pages and portions of pages are at issue in this appeal: 80-81, 85-86, 100, 113-116, 146-158, 160-174, 176-210, 214-219, 227-234, 236-261, 265-276, and 279-366. They consist of notes from the appellant's Division File, notes made by management staff of the Municipality and notes and documents created or obtained by staff of the Fraud and Investigations Unit.

DISCUSSION:

PRELIMINARY ISSUE

RESPONSIVENESS OF RECORDS

In the Notice of Inquiry, the parties were requested to address the issue of the responsiveness to the request of certain pages of the record. The Municipality did not do so and, as I have indicated, no submissions were received from the appellant.

In these circumstances, I have reviewed those portions of the pages of the record which the Municipality has noted as being unresponsive to the request. They all consist of parts of the notes, or "log", prepared by management to record certain incidents involving the employees of the office in which the appellant worked. They are generally written in such a manner as to describe the incidents on an employee by employee basis. I find that the information about the other employees is not responsive to the appellant's request as it is not related or connected in any way to the appellant's employment with the Municipality or the subsequent investigation into his granting of benefits. The only portions of the following pages which have not been disclosed to the appellant consist of this non-responsive information and I will not consider them further in this appeal: 146_154, 156-158, 160-161, 163, and 166-167.

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 pages at issue to determine if they contain personal information and, if so, to whom that personal information relates.

All of the pages remaining at issue contain the personal information of the appellant, dealing as they do with various issues surrounding his performance appraisals, the investigation into his conduct, a medical incident, and references to his interpersonal relationships with his co-workers. In addition, these pages contain the personal information of other identifiable individuals including the appellant's welfare clients and other employees involved in certain incidents concerning the appellant.

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.

The Municipality submits that certain of the personal information of the other individuals falls within the following presumptions in section 14(3) of the Act:

- section 14(3)(c) - eligibility for social service or welfare benefits
- section 14(3)(d) - employment or educational history
- section 14(3)(f) - description of an individual's finances and liabilities
- section 14(3)(h) - indicates an individual's racial or ethnic origin

I accept the submissions of the Municipality on the application of sections 14(3)(c), (f) and (h) to portions of the personal information related to the appellant's welfare clients. In addition, I find that the personal information of one of his clients constitutes that individual's medical condition and so falls within the presumption in section 14(3)(a) of the Act.

Certain pages of the record contain information concerning employment related incidents involving the appellant and other individuals. However, in my view, the information which relates to other employees cannot accurately be characterized as the employment history of any of these individuals and I find that section 14(3)(d) does not apply.

The Municipality also maintains that certain of the personal information related to other employees was supplied by these individuals in confidence (section 14(2)(h)). I also note that, while the Municipality does not make specific reference to section 14(2)(f) of the Act, it describes other personal information as being highly sensitive. Based on my review of the pages at issue and the submissions of the Municipality, I find that sections 14(2)(f) and (h) are relevant considerations in this appeal which favour the protection of privacy.

The appellant has provided no submissions in this matter. Accordingly, there is no argument before me that section 14(4) or 16 applies to rebut the presumptions which I have found to apply. Nor have I been presented with any evidence which weighs in favour of disclosing the personal information of the appellant's clients and/or co-workers.

Having considered all the circumstances of this case, including material provided by the Municipality on its exercise of discretion under section 38(b), I find that to disclose the pages at issue would constitute an unjustified invasion of the personal privacy of individuals other than the appellant under section 38(b).

Because of the manner in which I have addressed these issues, I need not consider the application of the other exemptions claimed by the Municipality.

ORDER:

I uphold the decision of the Municipality.

Original signed by: _____ October 27, 1995
Anita Fineberg
Inquiry Officer