



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

ORDER M-651

Appeal M_9500309

City of Sarnia



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/Télé: 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 City of Sarnia (the City) received a request for access to the name of the individual(s) who lodged a property standards complaint against the requester's property.

The City denied access to the name of the complainant under section 14(1) of the Act, invasion of privacy, indicating that it was not its policy to release the names of complainants.

The requester appealed the denial of access.

A Notice of Inquiry was sent to the City, 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 (Order M-170).

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 City submits that the name of the complainant is exempt under section 14(3)(b) of the Act which 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 name of the complainant is recorded on a document entitled "Building Services - Complaint Log." The City indicates that the complaint was filed with reference to a breach of a City by-law. The materials provided by the appellant indicate that it was the City's debris by-law. As a result of the complaint, the Chief Building Official and By-law Enforcement Co-ordinator of the City conducted an inspection of the appellant's property and issued a Notice of Violation of the by-law. After a subsequent inspection, and explanation by the appellant, the Notice of Violation was withdrawn.

I am of the view that the complainant's name is identifiable as part of the City's investigation into a possible violation of its debris by-law and thus the section 14(3)(b) presumption applies. The fact that no legal proceedings were initiated (apart from the Notice of Violation which was later rescinded) does not negate the applicability of this presumption (Orders P-223 and P-237).

The appellant maintains that the name of the complainant should be disclosed for two reasons:

- (1) One of the individuals he suspects may be the complainant is subject to a Recognizance to Keep the Peace. The appellant believes that this individual would have violated the Recognizance if he is the complainant; and
- (2) In a situation in which he was the complainant, the appellant states that his identity was disclosed to the individual who was the subject of his complaint.

As previously noted, the only way in which a presumption under section 14(3) of the Act may be rebutted is where the information falls within section 14(4) of the Act or where the public interest override is found to apply.

In this case, 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 City.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ November 17, 1995