



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

# **ORDER M-640**

**Appeal M\_9400558**

**Regional Municipality of Waterloo**



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## **NATURE OF THE APPEAL:**

The Regional Municipality of Waterloo (the Region) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to statements and submissions pertaining to a complaint of harassment made against the requester.

The Region granted access to four letters written by the complainant. Access was denied to nine other records or parts of records (Records E to N) pursuant to sections 14(1) and 38(b) of the Act, and to one record (Record F) on the basis that it was not responsive to the request. The requester appealed the decision, and claimed that a conflict of interest exists with respect to the person who made the access decision.

As a result of mediation, the appellant decided not to pursue her appeal with respect to Records E and G, and these two records are, accordingly, not at issue. Further mediation was not possible and a Notice of Inquiry was sent to the appellant, the Region, and four affected persons (the complainant and three witnesses in the harassment investigation). Representations were received from the Region and three affected persons.

The Region is relying on the following exemption to deny access to the records:

- invasion of privacy - section 38(b)

## **THE RECORDS**

The eight records at issue in this appeal are:

- |          |   |
|----------|---|
| Record F | a document entitled "Investigation of Alleged Harassment" consisting of interview questions for the respondent, complainant and witnesses (3 pages) |
| Record H | a Harassment Panel Member's handwritten interview notes of the complainant, June 17, 1994 (4 pages)   |
| Record I | Chronology of events, supplied by complainant on June 17, 1994 (1 page)   |
| Record J | a Harassment Panel Member's handwritten interview notes regarding witness A, June 17, 1994 (1 page)   |
| Record K | a Harassment Panel Member's handwritten notes regarding a telephone conversation with witness A, June 23, 1994 (1 page)                             |
| Record L | a Harassment Panel Member's handwritten interview notes regarding witness B, June 17, 1994 (3 pages)  |

Record M      Rough notes of Record L (2 pages)

Record N      a Harassment Panel Member's handwritten interview notes  
                  regarding witness C, June 21, 1994 (1 page)

## **PRELIMINARY ISSUES:**

### **CONFLICT OF INTEREST**

The appellant claims that there is a conflict of interest with respect to the person who made the decision regarding access to the records, in this case, the Regional Clerk. The basis of the claim is that the Regional Clerk's husband is a friend of the person who made allegations of harassment against the appellant.

An individual with a personal or special interest in whether the records are disclosed should not be the person who decides the issue of disclosure. In determining whether there is a conflict of interest, we must look at (a) whether the decision-maker had a personal or special interest in the records, and (b) whether a well-informed person, considering all of the circumstances, could reasonably perceive a conflict of interest on the part of the decision-maker.

The records consist of statements made by the complainant and witnesses in response to questions posed by the Harassment Panel during its investigation of alleged harassment. Based upon my review of the records, the correspondence, and representations, I find that the relationship is too remote for the Regional Clerk to have a personal or special interest in the disclosure or non-disclosure of the records and, in my view a well-informed person would not reasonably perceive a conflict of interest on the part of the Regional Clerk in making the decision.

### **WHETHER RECORD F IS RESPONSIVE TO THE REQUEST**

Record F is entitled "Investigation of Alleged Harassment" and consists of the questions posed by the harassment panel during interviews with the respondent, complainant and witnesses. The Region submits that, although a copy of the standard interview questions is available from Human Resources to any employee who requests it, in this case, the questions were not disclosed to the appellant because it would not have been meaningful since the answers had not been disclosed to her. In my view, the questions posed by the investigating panel members are reasonably related to the request, and I find that the record is responsive to the request.

## **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. I have reviewed the above records at issue in this appeal, and in my view, all of the records contain the personal information of the appellant and other identifiable individuals.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. However, this right of access is not absolute. Section 38 provides a number of exemptions to this general right of access. One such exemption is found in section 38(b), which reads:

A head may refuse to disclose to the individual to whom the information relates personal information,

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

Section 38(b) introduces a balancing principle. The Region must look at the information and weigh the requester's right of access to her own personal information against the rights of other individuals to the protection of their personal privacy. If the Ministry determines that disclosure of the information would constitute an unjustified invasion of the other individuals' personal privacy, then section 38(b) gives the Region the discretion to deny the requester access to her own personal information.

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester has a right of access to his/her own personal information, the only situation under section 38(b) in which he/she can be denied access to the information is if it can be demonstrated that disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. The Region submits that sections 14(3) and (4) do not apply in the circumstances of this appeal and I agree.

The Region indicates that the considerations under sections 14(2)(e), (f), (g), (h) and (i) of the Act, which favour non-disclosure, are relevant in the circumstances of this appeal. The affected persons echo the concerns raised by the Region.

The appellant, who is the respondent in this workplace harassment case, did not make any representations. However, in her letter of appeal, she states that she is seeking access to the personal information in order that she may make corrections to the allegations of harassment on file.

Sections 14(2)(d), (e), (f), (g), (h) and (i) read:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

- (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
- (e) the individual to whom the information relates will be exposed unfairly to pecuniary or other harm;
- (f) the personal information is highly sensitive;
- (g) the personal information is unlikely to be accurate or reliable;
- (h) the personal information has been supplied by the individual to whom the information relates in confidence; and
- (i) the disclosure may unfairly damage the reputation of any person referred to in the record.

With respect to section 14(2)(d), the appellant in this case is aware of the identity of the complainant, the nature and extent of the complaint, and the results of the harassment investigation. The appellant was not found to have been involved in workplace harassment, and no disciplinary action was taken.

The appellant was not, however, provided with a written report or summary of the panel's findings. The Region submits that the appellant was given all relevant information necessary to enable her to understand and respond to the allegation, including copies of correspondence from the complainant. The Region further submits that the investigation was restricted to the workplace and that information in the records relating to events outside the workplace was not considered by the harassment panel.

In support of their reliance on section 14(2)(e), the Region and the affected persons submit that if the information in the records is disclosed, the witnesses and the complainant will be unfairly exposed to harm.

With regard to section 14(2)(f), the Region and the affected persons submit that the information is highly sensitive. It is my view that when an allegation of harassment is made and investigated, it is reasonable for the persons directly involved to find the experience distressing and to restrict discussion of the subject with others.

The Region submits that the information at issue is unlikely to be accurate or reliable (section 14(2)(g)) because the notes written by the harassment panel are not verbatim accounts of what each witness said. One of the affected persons indicates that there are inaccuracies in the records, however, this person has not stated what the inaccuracies are.

Although, in my view, it is neither practical nor possible to guarantee complete confidentiality to each party during an internal investigation of an allegation of harassment in the workplace, the affected persons submit that the information was provided in confidence and I find that section 14(2)(h) is also a relevant consideration.

One of the affected persons submits that disclosure of Records L and M would unfairly damage his/her reputation (section 14(2)(i)) by conveying an erroneous impression about this witnesses' intentions and willingness to supply information to the investigating panel.

Having considered and weighed all of the circumstances of this appeal, I find that it would not be an unjustified invasion of the personal privacy of the affected persons to disclose portions of the interviewer's notes. I therefore find that section 38(b) does not apply to these parts of the records.

I find that disclosure of the remainder of the personal information in the records would constitute an unjustified invasion of the affected persons' personal privacy pursuant to section 38(b) of the Act, and I uphold the Region's decision to deny access to this information. The information which is highlighted on the copy of the records sent to the Region with a copy of this order should **not** be disclosed to the appellant.

### **ORDER:**

1. I uphold the Region's decision to deny access to Record I in its entirety, and to those portions of the records which are highlighted on the copy of the records which is being sent with a copy of this order to the Region's Freedom of Information and Privacy Co-ordinator.
2. I order the Region to disclose Record F in its entirety and those portions of the records which **not** highlighted within thirty-five (35) days of the date of this order and not earlier than the thirtieth (30th) day following the date of this order.
3. In order to verify compliance with the provisions of this order, I reserve the right to require that the Region provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

November 8, 1995