



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

ORDER M-633

Appeal M_9500284

Municipality of Metropolitan Toronto



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The Municipality of Metropolitan Toronto (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all information related to the requester's application for and receipt of general welfare assistance between 1992 and the date of the request. Partial access to the responsive records was granted. The requester appealed the decision to deny access to the remaining records.

The records requested relate to an investigation conducted by the Municipality to determine whether the appellant was entitled to continue to receive general welfare assistance as a sole support parent under the General Welfare Assistance Act (the GWA). A copy of the consent of the alleged co-resident regarding disclosure of his personal information to the appellant has been provided to this office.

The records to which the Municipality denied access, in whole or in part, are described in Appendix "A" to this order. Appendix "A" lists the records by both record number and page number. In this order, I will refer to a record by its record number.

The Municipality relies on the following exemptions to deny access to the records:

- discretion to refuse requester's own personal information as it relates to law enforcement - sections 38(a) and 8(1)(b)
- invasion of privacy - sections 38(b) and 14(1)

The appellant has confirmed that the scope of the request does not include the personal information of other individuals unrelated to the investigation.

A Notice of Inquiry was provided to the appellant and the Municipality. Representations were received from both parties.

The Municipality has indicated that Record 20 is a duplicate of Record 18. I agree. Therefore, I will not refer separately to Record 20 and my finding on Record 18 will apply equally to Record 20. Further, Record 16 (pages 232, 233 and 234) is shown on Appendix "A" as being a photocopied duplicate of Record 12 (pages 222, 223, 224 and 225). I would like to clarify at the outset that while page 222 is an identical duplicate of page 232 (i.e. the information contained therein is identical), pages 233 and 234 are blank duplicates of pages 223, 224 and 225. I will therefore treat them as different records.

In its representations, the Municipality indicates that the severed portions of Record 1 are non-responsive to the request. I have reviewed the record in conjunction with the scope of the request and I agree. The withheld portions of Record 1 do not contain any information related to the appellant, the alleged co-resident or the request. On that basis, I have removed it from the records at issue in this appeal and will not consider it further.

DISCUSSION:

PERSONAL INFORMATION

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 carefully reviewed the information in all the records. I find that all the records contain information which relates to the investigation to determine whether the appellant was entitled to continue to receive general welfare assistance. On that basis, I find that all the records contain the personal information of the appellant and/or the alleged co-resident. I also find that some of the records contain information which relates to other identifiable individuals.

Records 8 and 23 contain information which relates to other identifiable individuals. Therefore, I find that Records 8 and 23 contain personal information of both the appellant and/or the alleged co-resident **and** the individuals referred to therein. I find that the remaining records contain personal information of **only** the appellant and/or the alleged co-resident.

In addition, various records contain references to certain individuals. In my view, these references appear by virtue of their employment functions or duties and do not constitute the personal information of these individuals.

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION

Under section 38(a) of the Act, the Municipality has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The Municipality submits that section 8(1)(b) applies to all the records listed in Appendix "A" **except** for Record 8.

Section 8(1)(b) states as follows:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result.

In order for a record to qualify for exemption under this section, the investigation which generated the records must first satisfy the definition of the term "law enforcement" as found in section 2(1) of the Act. This definition reads as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

The purpose of section 8(1)(b) is to provide the institution with the discretion to preclude access to records in circumstances where disclosure would interfere with an **ongoing** law enforcement matter or investigation.

The Municipality indicates that the records were generated as a result of an investigation by the Fraud and Investigations Unit of the Social Services Division into a possible violation of the GWA. The Municipality submits that benefits under the GWA were terminated as a result of the findings and then reinstated and that the matter is currently pending a hearing before the Social Assistance Review Board (SARB). The Municipality submits, therefore, that the records meet the definition of law enforcement for the purposes of the Act.

I accept the position of the Ministry that the records relate to a law enforcement matter which is ongoing. It now remains to be determined whether disclosure of the records could reasonably be expected to result in the harm outlined in section 8(1)(b).

The Municipality submits that disclosure mechanisms exist in respect of a hearing before SARB and that disclosure of the records under the Act would prejudice the Municipality’s ability to present its case.

I have carefully reviewed the information in the records together with the representations of the parties. I am satisfied disclosure of the information in Records 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 17, 19, 23, 24, 26, 27, 28, 29, 30, 31 and 32 could reasonably be expected to interfere with an ongoing law enforcement matter. I find that these records are exempt from disclosure under section 8(1)(b), and section 38(a) of the Act applies.

Based on the evidence before me, I am not satisfied that disclosure of the information in Records 15, 16, 18, 21, 22, 25 and the first page of Record 12 (page 222) could reasonably be expected to result in the harm alleged in section 8(1)(b) of the Act. The Municipality has not claimed any other discretionary exemption for these records and no mandatory exemptions apply. Records 15, 16, 18, 21, 22, 25 and the first page of Record 12 should therefore be disclosed to the appellant.

I have previously found that Record 8 contains the personal information of both the appellant and the alleged co-resident and another identifiable individual, and I will now consider whether section 38(b) of the Act applies to the information withheld from that record.

INVASION OF PRIVACY

Under section 38(b), where a record contains the personal information of both the appellant and another individual and the Municipality determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Municipality has the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) 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 information found in a record, the only way such an 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.

The Municipality claims that the factors listed in sections 14(2)(f) and (h) are relevant to support the view that the disclosure of the personal information would constitute an unjustified invasion of personal privacy of the individual referred to in the record.

The appellant has raised the application of section 14(2)(d) of the Act.

These sections of the Act read as follows:

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;

...

(f) the personal information is highly sensitive;

...

(h) the personal information has been supplied by the individual to whom the information relates in confidence.

The appellant states that the withheld information is necessary for her to prepare for the hearing before SARB. The appellant acknowledges that while disclosure mechanisms exist for the hearing process, they will not provide sufficient time for her to prepare her case.

The Municipality submits that the withheld information is highly sensitive and that it was provided to the Municipality by the individual to whom it relates, in confidence and within the context of the investigation.

I have carefully considered the information in the record together with the representations of the parties. I accept the Ministry's submission that the information was provided in confidence by the individual to whom the information relates. I understand the position of the appellant and agree that section 14(2)(d) is a relevant consideration.

However, I have also considered all the relevant factors in section 14(2) as well as the circumstances of this case and I find that on balance, disclosure of the withheld information would constitute an unjustified invasion of the personal privacy of the individual to whom the information relates. Accordingly, I find that the withheld information in Record 8 is exempt under section 14(1) and section 38(b) of the Act applies.

ORDER:

1. I uphold the Municipality's decision to deny access to Records 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 (except for the first page) and Records 13, 14, 17, 19, 23, 24, 26, 27, 28, 29, 30, 31 and 32.
2. I order the Municipality to disclose to the appellant Records 15, 16, 18, 21, 22, 25 and the first page of Record 12 within fifteen (15) days of the date of this order.
3. In order to verify compliance with this order, I reserve the right to require the Municipality to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 2.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

October 30, 1995

APPENDIX A

INDEX OF RECORDS AT ISSUE Appeal Number M-9500284

RECORD NUMBER(S))	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED
1	41	Private Agreement/Family Court Appointments, April 28, 1993	14(1), (14(3)(c)(f)), 38(b)
2	129-135	Investigation File Notes	8(1)(b), 38(a)
3	137-140	Income Maintenance/Eligibility Record	8(1)(b), 38(a)
4	142-146	Income Maintenance/Eligibility Record	8(1)(b), 38(a)
5	150-158	Income Maintenance/Eligibility Record	8(1)(b), 38(a)
6	160-164	Income Maintenance/Eligibility Record	8(1)(b), 38(a)
7	165-167	Investigation File Notes	8(1)(b), 38(a)
8	171	Client Profile and Note	14(1), (14(2)(f)(h)), 38(b)
9	174-175	Vital Case Information Form	8(1)(b), 38(b)
10	185	Investigation File Note	8(1)(b), 38(a)
11	206	Investigation File Note	8(1)(b), 38(a)
12	222-226	Form Letter from Metro Community Services Department, December 9, 1994 completed with attachments	8(1)(b), 38(a)
13	227-228	Letter to Metro Eligibility Review Worker dated December 22, 1994	8(1)(b), 38(a)
14	229	Statement of dental treatments	8(1)(b), 38(a)
15	230	Letter from Eligibility Review Worker dated December 9, 1994	8(1)(b), 38(a)
16	231-234	Fax cover sheet, page 231; page 232 duplicate of page 222, pages 233 and 234 blank duplicates of pages 223, 224, 225	8(1)(b), 38(a)
17	235-238	Credit reports	8(1)(b), 38(a)
18	239	A guide for using common language for consumer credit	8(1)(b), 38(a)

RECORD NUMBER(S)	PAGE NUMBER(S)	DESCRIPTION OF RECORDS WITHHELD IN WHOLE OR IN PART	EXEMPTIONS OR OTHER SECTION(S) CLAIMED
19	240-244	Credit reports	8(1)(b), 38(a)
20	245	Duplicate to page 239	8(1)(b), 38(a)
21	246	Fax cover sheet from finance company to Metro Social Services, December 15, 1994	8(1)(b), 38(a)
22	247	Fax cover sheet from Metro Social Services to finance company	8(1)(b), 38(a)
23	248	Drivers licences and vehicle registrations	8(1)(b), 38(a)
24	249-258	Statement of disclosure, security agreement, information sheet, credit statement with finance company	8(1)(b), 38(a)
25	259-263	Correspondence between Metro and the Ministry of Transportation re: license, vehicle registrations; pages 259 and 261 are duplicates	8(1)(b), 38(a)
26	264-266	Driver's Licence History	8(1)(b), 38(a)
27	267-271	Bank statements	8(1)(b), 38(a)
28	272-277	Copies of cheques	8(1)(b), 38(a)
29	278-279	Banking history	8(1)(b), 38(a)
30	289-295	Banking information; page 295 is a duplicate to page 278	8(1)(b), 38(a)
31	332	Cancelled cheque	8(1)(b), 38(a)
32	338-339	Eligibility Review Worker's Investigation: File Review Information sheet and Plan of Action, November 21, 1994	8(1)(b), 38(a)