



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

ORDER M-652

Appeal M_9500448

The Corporation of the City of York



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NATURE OF THE APPEAL:

The Corporation of the City of York (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to copies of complaints received by the City about the requester's property in August and November 1994 and in March and May 1995. The City located records from November 1994 and March 1995 which were responsive to the request and granted access to them in part, severing the names and personal identifiers of the individuals who had filed the complaints. The City indicated that it was relying on the following exemption contained in the Act to deny access to this information:

! law enforcement - section 8(1)(d)

The City also advised the requester that no records existed regarding complaints received in August 1994 or May 1995 but that it located records relating to other complaints dated July 15, 1994 and November 1, 1994. Again, the City disclosed these records to the requester after severing the names and personal identifiers of the complainants under section 8(1)(d) of the Act. The requester appealed the City's decision to deny access to information about the complainants and indicated that she believed additional records should exist. A Notice of Inquiry was provided to the appellant, the City and to three individuals whose interests may be affected by the disclosure of the information at issue in this appeal (the affected persons). Representations were received from the City, the appellant and one of the affected persons.

DISCUSSION:

LAW ENFORCEMENT

The City relies on section 8(1)(d) of the Act to withhold the names and personal identifiers of the individuals who made complaints about the requester's property. This provision states:

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

disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;

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

"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);

In its representations, the City has provided a description of the by-law enforcement process undertaken as a result of these complaints which it claims falls within clause (b) of the "law enforcement" definition. I am satisfied that the City's by-law enforcement process qualifies as "law enforcement" under the Act.

The final step in this analysis is to determine whether the disclosure of the complainants names and personal identifiers would reveal the identity of a **confidential source** of information. In order to establish that a source was confidential, the City must provide evidence of the circumstances in which the information was given. More particularly, the City must demonstrate that there was a reasonable expectation of confidentiality associated with the by-law enforcement process.

I have reviewed the representations of the City and the affected person and find that when the complainants provided the information to City officials there was a reasonable expectation that their identities would be kept confidential. It follows, therefore, that the disclosure of the complainants names and personal identifiers would disclose the identity of a confidential source of information. I find, accordingly, that the City is entitled to rely on section 8(1)(d) of the Act to deny access to this information.

REASONABLENESS OF SEARCH

Along with its representations, the City has submitted an affidavit from the Director of By-law Enforcement and Property Standards Section of its Legal Department. In the affidavit, the Director describes in detail the searches undertaken for records responsive to the request for the months of August 1994 and May 1995.

Where a requester provides sufficient details about the records that he or she is seeking and a municipality indicates that the records do not exist, it is my responsibility to ensure that the municipality has made a reasonable effort to identify records which are responsive to the request. In my view, the Act does not require that a municipality prove to the degree of absolute certainty that the requested records do not exist.

I have carefully reviewed the representations of the City and the appellant pertaining to this issue. I am satisfied that the City has taken all reasonable steps to locate records dating from August 1994 and May 1995 which are responsive to the appellant's request. Accordingly, I find that the City's search was reasonable in the circumstances of this appeal.

ORDER:

I uphold the decision of the City.

Original signed by: _____ November 17, 1995
Donald Hale
Inquiry Officer