



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

ORDER M-620

Appeal M_9500105

Regional Municipality of Hamilton_Wentworth



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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 Regional Municipality of Hamilton-Wentworth (the Municipality) received a request from an individual for access to all welfare information and records relating to him. He subsequently narrowed the scope of the request to include only case management summary reports.

The Municipality granted the requester partial access to the reports, but denied access to the balance of the information on the basis of the following exemptions under the Act:

- law enforcement - sections 8(1)(c), (d) and 8(2)(a)
- invasion of privacy - sections 14 and 38(b)
- discretion to refuse requester's own information - section 38(a)
- evaluative or opinion material - section 38(c)

The requester appealed.

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

In its submissions, the Municipality agreed to disclose to the appellant pages 2, 10, 13, 14, 15, 20, 22, 46, 47, 51, 54, 73, 83, 95 and 99 in their entirety and portions of pages 48 and 87. These pages should be provided to the appellant by the Municipality if it has not already done so.

Therefore, the records at issue in this appeal consist of portions of pages 5, 8, 9, 16, 21, 48, 65, 66, 68, 70, 72, 74, 81, 84, 85, 87 and 101, and pages 76-78, 80, 82, 86 and 88-94 in their entirety.

The Municipality also indicated in its submissions that it would no longer be claiming the application of section 8(1)(c) of the Act. As this is a discretionary exemption, I will not consider it in this order.

DISCUSSION:

DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT

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. The pages all consist of notes taken by individuals in

the Municipality's social services department concerning the appellant's claims for social assistance. I find that this constitutes the personal information of the appellant. In addition, with the exception of pages 65 and 68, all of the pages contain the personal information of other identifiable individuals. Pages 65 and 68 contain only the personal information of 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(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 exemptions listed in section 38(a) include the law enforcement exemption provided by section 8. The Municipality claims that portions of pages 65, 68, 70, 81 and page 82 in its entirety are exempt under section 8(1)(d) which 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

Deciding whether a record qualifies for exemption under this section is a preliminary step in determining whether the exemption in section 38(a) applies.

In order for a record to qualify for exemption under section 8(1)(d), the matter to which the record relates must first satisfy the definition of "law enforcement" found in section 2(1) of the Act.

"Law enforcement" is defined in section 2(1) of the Act as:

- (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 Municipality maintains that the pages at issue under section 8(1)(d) relate to an investigation conducted by an Eligibility Review Officer (ERO) regarding the appellant's right to certain social welfare benefits. As a result of such an investigation, sanctions may be imposed in the form of an assessment of overpayment or the withholding of benefits. These decisions are reviewable by the Social Assistance Review Board which may also impose sanctions. In these circumstances, I find that the information at issue under section 8(1)(d) relates to a law enforcement matter.

The information contained in the pages for which this exemption has been claimed identifies various individuals contacted by the ERO and the information provided by them, which formed part of the ERO's case. The Municipality states that these individuals supplied information about the appellant without his knowledge and with an expectation of confidentiality. The Municipality indicates that even prior to the coming into force of the Act, its policy was to protect the privacy of such individuals.

Based on the submissions of the Municipality, I find that disclosure of portions of pages 65, 68, 70, 71 and page 82 in its entirety could reasonably be expected to disclose the identity of the confidential sources contacted by the ERO and thus this information qualifies for exemption under section 8(1)(d) of the Act.

Having found that these pages contain the personal information of the appellant and qualify for exemption under section 8(1)(d), I find that they are exempt from disclosure under section 38(a).

INVASION OF PRIVACY

Section 38(b) of the Act is another exemption to an individual's general right of access to his or her own personal information. This section provides that a head of an institution may refuse such disclosure if to do so would constitute an unjustified invasion of another individual's personal privacy. As I have previously indicated, all of the remaining pages at issue contain the personal information of both the appellant and other individuals.

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 may 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 relates to their medical history or diagnosis, eligibility for social service benefits, and/or describes their finances (sections 14(3)(a), (c), and (f) of the Act respectively). In addition, the Municipality claims that some of this personal information is highly sensitive (section 14(2)(f)). I agree with the Municipality's characterizations of this information.

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 claimed. Nor have I been presented with any evidence which weighs in favour of disclosing this information.

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. Therefore, the exemption in section 38(b) applies.

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:

1. I order the Municipality to disclose to the appellant within fifteen (15) days of the date of this order pages 2, 10, 13, 14, 15, 20, 22, 46, 47, 51, 54, 73, 83, 95 and 99 in their entirety and the portions of pages 48 and 87 which it has identified on the copy of these pages included with its submissions to this office.
2. I uphold the decision of the Municipality not to disclose the balance of the pages.

Original signed by: _____
Anita Fineberg
Inquiry Officer

_____ October 18, 1995