



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

ORDER M-666

Appeal M_9500274

Municipality of Clarington



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:

On February 20, 1995, the appellant's two dogs were shot in the Municipality of Clarington (the Municipality). One dog was killed, and the other wounded. Animal Control responded to a call to pick up the dogs. A farmer allegedly shot the dogs because they were killing or injuring his livestock.

The appellant submitted a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Municipality for access to the written report of the incident prepared by Animal Control. The appellant indicated that she sought access to information identifying the address at which the dogs were picked up, the time at which Animal Control was contacted and the time at which they arrived to pick up the dogs, the name and address of the individual who shot the dogs as well as a description of the circumstances in which the animals were shot. The appellant also requested access to information related to the calculation and payment of damages that she paid to the Municipality. Finally, she requested copies of any written policies or procedures related to the role and responsibilities of Animal Control in these circumstances.

The Municipality provided the appellant with certain responsive records. It removed information related to the identity of the farmer under the following exemptions in the Act:

- law enforcement - section 8(1)(d)
- invasion of privacy - section 14

At that time, the Municipality advised the appellant that it would contact the farmer to determine if he or she would consent to the disclosure of his or her identity. The farmer did not respond to the Municipality.

The appellant filed an appeal of the Municipality's decision to deny access to the information related to the identity of the farmer. She also claimed that more responsive records should exist. In addition, she claimed that a public interest exists in the disclosure of all of the information at issue, thereby raising the application of section 16 of the Act.

A Notice of Inquiry was sent to the Municipality, the appellant and the farmer. Because the records appeared to contain the personal information of the appellant, the parties were asked to comment on the applicability of sections 38(a) and (b) of the Act. Section 38(a) provides an institution with the discretion to refuse to disclose an individual's personal information if certain other exemptions, including section 8(1)(d), would apply. Section 38(b) provides an institution with the discretion to refuse to disclose an individual's own personal information if such disclosure would result in an unjustified invasion of another individual's personal privacy.

Subsequently, the Municipality identified more information as being responsive to the request. It located another record, an excerpt from the daily occurrence book (the DOB). The Municipality disclosed portions of this record to the appellant, without the name of the farmer. The Municipality also indicated that certain portions of this document were not responsive to the request.

The Ministry also disclosed additional information contained in a note taken on February 25, 1995 by the supervisor of the Animal Control Officers (the Supervisor). Again, it refused to disclose the identity of the farmer.

The appellant objected to the decision of the Municipality to withhold portions of these documents. She also disputed the Municipality's claim that certain portions of the DOB were not responsive to the request.

As the appellant and the Municipality agreed that it would be expedient to simultaneously resolve all the issues arising in this appeal, a Supplementary Notice of Inquiry was sent to all the parties. The Notice sought submissions from the parties on the newly-raised issues.

In summary, the following are the issues which are raised in this appeal and which I will consider in this order:

- (1) Whether those parts of the DOB which the Municipality states are non-responsive to the request are, in fact, responsive to the request.
- (2) Whether the Municipality conducted a reasonable search to locate the records responsive to the request.
- (3) Whether the Municipality properly withheld information about the identity of the farmer under sections 8(1)(d), 38(a) and/or (b) from the following records:
 - (a) the notes of the Animal Control Officer (the ACO's notes),
 - (b) the copy of the receipt signed by the farmer (the receipt),
 - (c) the copy of the note taken by the Supervisor of the Animal Control Officers (the Supervisor's notes); and
 - (d) the copy of the excerpt(s) from the DOB for the time period spanning the incident described in the request.
- (4) If the Municipality properly applied the invasion of privacy exemption to the information related to the identity of the farmer, whether there exists a public interest in disclosure of this information under section 16.

I have received representations from the Municipality and the appellant on all of these issues. The submissions of these parties were prepared by their respective counsel. I have not received any submissions from the farmer.

DISCUSSION:

NON-RESPONSIVENESS OF RECORDS

The appellant submits that those portions of the DOB which the Municipality has claimed are not responsive to her request are, in fact, responsive. She bases this submission on the belief that these portions may contain information which would indicate the time the Animal Control Officer (the ACO) received the call from the farmer, as well as the times at which the dogs were picked up from the property and brought to the animal shelter.

The Municipality has provided me with those portions of the DOB which were not disclosed to the appellant. The Municipality has also explained that this book is kept by the Municipality's ACOs and is intended to be a record of all the calls received by the officers. The calls are noted in numerical order of receipt and the date is set out in the book before the first call received each day.

Those portions of the DOB which were not disclosed chronicle the other calls received by the ACOs on February 20, 1995, the date the dogs were shot. They record incidents that are not related or connected in any way to the appellant and/or the dogs. They do not contain any of the information which the appellant suggests may be recorded therein, that is the time the ACO received the call from the farmer, as well as the times at which the dogs were picked up from the property and brought to the animal shelter. I find that the Municipality's determination that these portions were not responsive to the request was a reasonable and proper assessment based on a reasonable interpretation of the request.

REASONABLENESS OF SEARCH

As part of its response to the request, the Municipality provided the appellant with two pages from its Policy and Procedure Manual for Animal Control (the Manual). Based on the provisions contained in these excerpts, noted below in brackets, the appellant submits that the following responsive records and/or information must exist:

- (1) a Pound Log Book (section 12.7);
- (2) information recorded in the Pound Log Book noting the "date, time the animal was turned in or picked up and returned to the shelter" (section 13.1(b)(2));
- (3) other information respecting all animals in a shelter (sections 13.1(b)(3)-(6));
- (4) the signature of the officer receiving the animal in the shelter (section 13.1(b)(7)); and
- (5) an entry in the shelter receipt book referencing the money received by the ACO from the appellant (section 14.1).

The appellant's position with respect to this information may be summarized as follows:

Unless the Municipality is in contravention of the stipulations set forth in the Procedure Manual, it follows that full documentation responsive to the Appellant's requests must logically be available.

She suggests that these records may be found in the Municipality in any one or more of the Animal Control Centre, the By-Law Enforcement Office, the Clerk's Office, the Community Services Office, the Chief Administrative Office and the Mayor's Office.

In addition, the appellant takes issue with the Municipality's statement that no policies and procedures were in place for the care of injured animals. This argument is based on the assertion that the Ministry of Agriculture and Food examines premises and procedures pursuant to its mandate to inspect pounds and shelters in order to ensure that minimal animal care is provided under the provisions of the Animals for Research Act.

Finally, the appellant disputes the Municipality's statement that no policies or procedures were in place regarding the jurisdictional cross-over in dog-shooting incidents between the responsibility and authority of :

- (a) the Municipality's ACOs acting under the Municipality's by-laws;
- (b) the police acting under the Criminal Code of Canada, and
- (c) the evaluator appointed and acting pursuant to the Livestock, Poultry and Honeybee Protection Act (the Livestock Act)

With respect to this matter, it is the appellant's position that "... it is unreasonable to believe or assert that policies or procedures do not exist in some form to address such incidents".

The Municipality's submissions include the affidavit of its Freedom of Information and Privacy Co-ordinator (the Co-ordinator) who processed the appellant's request. In response to the request, the Co-ordinator contacted the Supervisor and requested the department's complete file on the incident involving the appellant's dogs. In this file, were located the ACO's notes, the receipt signed by the farmer, the Supervisor's notes taken while discussing damages with the ACO and the excerpt from the Manual.

The Co-ordinator subsequently reviewed the DOB and disclosed portions of it as previously described. The Co-ordinator further states that, to satisfy herself that there was no additional information which was responsive to the request, she examined several pages of entries prior to call #242 as well as several pages after call #268. Call #242 is the earliest call recorded in the DOB and #268 the last recorded call which relate to the incident in question.

The Co-ordinator also confirmed with the ACO who responded to the call that call #268 was the last call she received related to this incident.

The Co-ordinator also states that, apart from the two-page extract from the Manual, no additional policies describing the care of injured animals and dog shooting incidents existed at the time of the request. She did explain that new policies have since been compiled. The Co-ordinator advised the appellant that these would be considered by Council on October 30, 1995. They were made public on November 6, 1995 at the Municipality Council meeting.

Finally, the Co-ordinator explains that the entry for call #242, "8:50" does not represent the time at which the call was received, nor the time at which the dogs were shot. Rather, as explained by the Supervisor, it is a code which indicates that a report of an injured animal has been received by the ACO. The appellant has erroneously interpreted this notation to represent the time at which the farmer notified the ACO of the shooting. This clarification is relevant to the issue of the reasonableness of the Municipality's search for responsive records because, based on the

incorrect interpretation of this information, the appellant suggests that there must exist other documentation which explains the apparent time discrepancy.

Based on the submissions of the parties, I have made the following findings with respect to the reasonableness of the Municipality's search for responsive records:

- (1) I find that the Municipality's search for any records describing the Municipality's policies and procedures dealing with injured animals, dog-shooting incidents, including the three jurisdictional cross-over situations outlined by the appellant was reasonable in the circumstances of this case, with one exception.
- (2) The extract from the Manual consists of pages 7 and 8. The top of page 7 begins with section 12.3. It appears that the balance of this section (12.1 and 12.2) which would apparently be found on page 6, would also be responsive to the appellant's request. Accordingly, the Municipality will be required to locate this page, review its contents and if responsive, disclose it to the appellant.
- (3) With one exception, I find that the search for any records related to this particular incident was reasonable.
- (4) The one exception is the Pound Log Book. The Municipality has made no reference to this record in its description of its search for responsive records. It may be that there is no reference to this book because it appears to contain information related to "stray animals". However, I believe that the Municipality should search the Pound Log Book to determine if it contains any information which is responsive to the request.

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.

Both the appellant and the Municipality submit that the records contain the personal information of the farmer. I agree. In addition, I find that the ACO's notes, the Supervisor's notes and the DOB also contain the personal information of the appellant in that they describe the contact and conversations these individuals had with the appellant concerning the shooting incident. The receipt reflects the fact that the appellant paid money which was turned over to the farmer by the Municipality.

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.

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 the presumption in section 14(3)(b) applies to this case. That section 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;

It is the position of the Municipality that the personal information of the farmer was compiled as part of an investigation under the Livestock Act and thus should not be disclosed. Specifically, the Municipality contends that the investigation was to ascertain if the dog that survived should have been destroyed under section 8 of the Livestock Act.

The appellant contends that the ACO's notes cannot be characterized as being part of an investigation as the Municipality has confirmed that neither its Animal Control Department nor any other governmental agency conducted an investigation to confirm that the damage to the farmer's livestock and/or poultry was done by the dogs. Nor was a valuer notified under section 4 of the Livestock Act to investigate and report on the matter.

I agree with the appellant that the personal information of the farmer was not compiled as part of an investigation into a possible violation of the Livestock Act. However, that is not the end of the matter.

The ACO involved in this incident was appointed by the municipal Council to enforce the Municipality's Animal Control By-laws. These by-laws provide, in part, that no dog shall run at large and no owner shall permit his dog to run at large in the Municipality. "Running at large" is defined as follows:

A dog is deemed to be running at large when found in any place other than the property of the owner of the dog and not under the control of any person.

The by-laws further provide that the owner of a dog which is found to be running at large shall be issued a summons under the Provincial Offences Act and sets out penalties.

ACOs are responsible for, among other matters, investigating complaints of dogs running at large. As part of the policies and procedures set out in the Manual, ACOs keep records and notes of their activities.

Based on the above, I am of the view that the personal information of the farmer found in the ACO's notes, the Supervisor's notes and the DOB was compiled as part of an investigation into a possible violation of the Municipality's Animal Control By-laws. The fact that no one was ever charged with a breach of these by-laws does not negate the applicability of section 14(3)(b) (Orders P-223 and P-237).

The appellant submits that the receipt should be considered a separate document. I agree. I also agree with the appellant's position that the receipt does not attract the presumption in section 14(3)(b) as it was neither compiled nor is identifiable as part of an investigation into a possible violation of law. The exchange of money as documented by the receipt was not related to the investigation of the potential Animal Control By-law violation but was more akin to compensation issues under the Livestock Act.

The appellant suggests that the receipt contains her personal information as it constitutes "information relating to financial transactions in which the individual has been involved" pursuant of clause (b) of the definition of "personal information" in section 2(1) of the Act. I have already found that the receipt contains both the personal information of the appellant and the farmer. Similarly, I find that the personal information in the receipt contains a description of the farmer's financial activities and falls within the presumption found in section 14(3)(f) of the Act.

Accordingly, I find that to disclose the name of the farmer to the appellant would result in an unjustified invasion of this individual's personal privacy under section 38(b) of the Act

PUBLIC INTEREST IN DISCLOSURE

The appellant submits that there is a compelling public interest in the disclosure of the records which outweighs the purpose of the section 38(b) exemption. This raises the possible application of section 16 of the Act, which states:

An exemption from disclosure of a record under sections 7, 9, 10, 11, 13 and 14 does not apply if a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption.

Section 16 does not refer specifically to the exemption in section 38(b). I considered this matter in the context of section 23 of the provincial Act, the equivalent of section 16 of the Act, in Order P-541, where I made the following comments:

In my view, where an institution has properly exercised its discretion under section 49(b) of the Act, relying on the application of sections 21(2) and/or (3), an appellant should be able to raise the application of section 23 in the same manner as an individual who is applying for access to the personal information of another individual in which the personal information is considered under section 21.

I agree, and accordingly, I will consider the possible application of section 16 to those portions of the records which I found to be exempt under section 38(b).

The appellant submits that:

... the compelling public interest in the particular circumstances of this case is the interest in preventing an individual whose acts are prima facie illegal from sheltering under the Act, thereby benefitting both by not being required to give full answer and account for his actions as well as by obtaining pecuniary advantage.

She further states:

... the purpose of the exemption concerning “an unjustified invasion of another individual’s personal privacy” should properly be limited to circumstances where the affected party can be shown to be in accordance with the equitable principle of coming before the decision maker with “clean hands”.

Finally, the appellant states that the name of the farmer must be made public in order that there be an “open and transparent ventilation of the issues”.

It is the position of the Municipality that there is, in this case, no evidence of any public concern that would support the conclusion that there is a compelling public interest in disclosure which clearly outweighs the purpose of the personal privacy exemption.

I am cognizant of the interest and concern that the shooting of the dogs has generated in the Municipality. This matter has been the subject of many letters to the editor of the local paper as well as being a topic of discussion at several council meetings. In addition, a number of individuals have petitioned council on the basis that dog owners are entitled to know the name of an individual who shoots their dogs in situations such as the one before me. Obviously, this situation is a matter of considerable public concern in the Municipality and, in particular has heightened awareness of the provisions of the Livestock Act which entitles an individual to kill a dog that is found killing or injuring livestock or poultry. I sympathize with the appellant’s desire to be fully apprised of the details of this unfortunate situation.

However, having reviewed all the material in this case, I do not find that there exists a compelling public interest which **clearly** outweighs the purpose of the personal privacy exemption. Accordingly, section 16 has no application in the circumstances of this appeal.

Because of the manner in which I have disposed of this issue it is not necessary for me to consider the application of sections 8(1)(d) and 38(a) of the Act.

ORDER:

1. I uphold the decision of the Municipality not to disclose the name, address and telephone number of the farmer as this information appears in the records.
2. I uphold the decision of the Municipality that the portions of the DOB not disclosed to the appellant, with the exception of the information related to the farmer, are not responsive to the request.
3. I order the Municipality to conduct a further search for responsive records and, in particular, to search the Pound Log Book and page 6 of the Manual.
4. I order the Municipality to advise the appellant of the results of the search within twenty (20) days of the date of this order.
5. If, as a result of this further search, the Municipality locates any responsive records, I order the Municipality to provide a decision letter regarding access to these records to the appellant, in accordance with sections 19 and 22 of the Act, considering the date of this order as the date of the request and without recourse to a time extension.
6. In order to verify compliance with the provisions of this order, I order the Municipality to provide me with a copy of the letter referred to in Provision 4, and a copy of the decision referred to in Provision 5 (if applicable) within thirty-five (35) days of the date of this order. These copies should be forwarded to my attention, c/o Information and Privacy Commissioner/Ontario, 80 Bloor Street West, Toronto, Ontario, M5S 2V1.

Original signed by: _____
Anita Fineberg
Inquiry Officer

December 14, 1995