



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

# ORDER M-748

Appeal M\_9600024

City of Toronto



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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 City of Toronto (the City) received a request for a copy of the City's Fire Department's report on a fire which occurred at a specific address. The request was made by the Insurance Adjuster investigating the fire.

The City located four pages of records which consist of two City of Toronto Fire Reports. The City granted full access to one of the reports (Report #1 - pages 3 and 4) and granted partial access to the other report (Report #2 - pages 1 and 2). The City withheld two entries under the headings "Name of Occupant" and "Business" on page 1, and the names of the superintendent of the building and a Fire Marshall investigator on page 2 of Report #2. The City also withheld a portion of this report which contained particulars of the fire. All of this information was withheld on the basis of section 14(1) of the Act (invasion of privacy).

The Adjuster appealed the denial of access.

A Notice of Inquiry was sent to the City, the Adjuster and three individuals whose interests might be affected by disclosure of the information. Representations were received from the Adjuster only. The City advised this office that it would not be submitting representations in this appeal.

## DISCUSSION:

### INVASION OF PRIVACY

Section 2(1) of the Act defines personal information, in part, as recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual. In reviewing the information at issue in this appeal, I note that the names of the superintendent and the Fire Marshall investigator are included in the report in connection with their professional responsibilities. It has been established in a number of orders that information provided by an individual in a professional capacity or in the execution of employment responsibilities is not personal information, and therefore, cannot qualify for personal privacy protection (Orders 157, P-326 and P-328). Similar considerations apply in this appeal. Accordingly, I find that the names of these two individuals, in the circumstances of this appeal, do not qualify as personal information.

In order for section 14(1) to be considered, the information must qualify as personal information. Since the names of these two individuals do not qualify as personal information, section 14(1) does not apply. As no other exemptions have been claimed for this information, it should be disclosed to the Adjuster.

I find that the remaining information qualifies as the personal information of the individuals referred to in the report.

Once it has been determined that a record contains personal information, section 14(1) of the Act prohibits the disclosure of this information except in certain circumstances. Specifically, section 14(1)(f) of the Act reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

The effect of section 14(1)(f) is that the section 14 exemption will not apply if it is demonstrated that disclosure of the personal information would **not** be an unjustified invasion of another individual's personal privacy.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of personal privacy. Where one of the presumptions in section 14(3) applies to the personal information found in a record, the only way such a presumption can be overcome is if 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 in section 14(3) apply, the City must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances which are relevant in the circumstances of this appeal.

As I indicated above, the City did not submit representations. However, in its decision letter, the City claimed that the following presumptions and factors are applicable in withholding the information from disclosure:

- the information was compiled and is identifiable as part of an investigation into a possible violation of law - section 14(3)(b)
- the information relates to employment or educational history - section 14(3)(d)
- the information describes an individual's finances - section 14(3)(f)
- the information has been supplied in confidence - section 14(2)(h).

In the absence of representations, I have no evidence before me which supports the City's contention that the information was compiled as part of an investigation into a possible violation of law. The information is contained in a report of the City's Fire Department, and on its face does not appear to fall within the presumption in section 14(3)(b). Accordingly, I find that this presumption does not apply.

Similarly, in reviewing the portions of the records at issue, I find that neither sections 14(3)(d) nor (f) are applicable in the circumstances. Further, there is no evidence, by way of submissions, or on the face of the records, to indicate that information contained in the report was provided in confidence, and I find that section 14(2)(h) is, therefore, not relevant.

In its representations, the Adjuster states that in investigating a fire loss, it has a duty to its insured to gather all the information regarding the details of the loss in order to report the information to the insured. The Adjuster indicates further that the Fire Department report contains information from people at the scene of the fire, which will help in determining if there is any liability on behalf of the tenant. In a broad sense, the Adjuster has raised the possible application of section 14(2)(d) (fair determination of rights). However, the Adjuster has provided no evidence that its insured is in the process of or even considering asserting any legal rights it might have with respect to the fire, nor that this information is required in order for it to do so. Accordingly, I find that section 14(2)(d) is not relevant in the circumstances.

On the other hand, the Adjuster's representations, in my view, have a bearing on the sensitivity of the information at issue with respect to the tenants in the building. In considering the nature of the personal information contained in the fire report, I find that it is highly sensitive within the meaning of the Act. Accordingly, I find that section 14(2)(f), which is a factor which favours privacy protection, is relevant in the circumstances of this appeal.

In considering the factors and considerations in section 14(2) in their entirety, I find that there are no factors which weigh in favour of disclosure of the personal information at issue. However, I have found that the factor in section 14(2)(f), which favours privacy protection, is relevant. As a result, I find that disclosure of the personal information at issue would constitute an unjustified invasion of personal privacy, and this information is properly exempt under section 14(1) of the Act.

## **ORDER:**

1. I order the City to disclose to the Adjuster the names of the superintendent and Fire Marshall investigator by sending a severed copy of the record with this information revealed to the Adjuster on or before **May 13, 1996** but not earlier than **May 8, 1996**.
2. I uphold the City's decision to withhold the remaining portions of the records at issue.
3. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the record which is disclosed to the Adjuster in accordance with Provision 1.

Original signed by: \_\_\_\_\_  
Laurel Cropley  
Inquiry Officer

\_\_\_\_\_ April 9, 1996