



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

ORDER M-744

Appeal M_9500618

City of Kingston



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:

The appellant submitted a request to the City of Kingston (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). She requested that the entire contents of her General Welfare Assistance file be forwarded to her solicitors.

The City responded by granting access to a number of records. The City also denied access to five pages of records pursuant to the exemption provided by section 14(1) of the Act (invasion of privacy). The City further indicated that it would disclose these pages to the appellant upon receipt of the signed consent of a named individual.

The appellant then obtained the signed consent of the individual mentioned in the City's decision letter and provided it to the City. As a result, the City granted access to the five pages previously withheld.

The appellant then filed an appeal on the basis that additional responsive records exist. This view arises from a comment which, according to the appellant, was made by a City employee at a hearing before the Social Assistance Review Board, to the effect that the appellant was the subject of an investigation relating to undisclosed income. Failure to report such income could constitute what is commonly referred to as "welfare fraud".

During mediation of the appeal, the City sent a supplementary decision letter to the appellant, refusing to confirm or deny the existence of additional records under section 8(3) of the Act. In support of its section 8(3) claim, the City indicates that records relating to a welfare fraud investigation, if they exist, would be exempt under sections 8(1)(a), (b), (d) and (e), and sections 8(2)(a) and (c).

This office sent a Notice of Inquiry to the City and the appellant. The City submitted representations. The appellant did not do so, but indicated that I should consider the letter of appeal as representations.

The sole issue in this appeal is whether the City was entitled to refuse to confirm or deny the existence of additional records under section 8(3) of the Act.

DISCUSSION:

REFUSAL TO CONFIRM OR DENY THE EXISTENCE OF ADDITIONAL RECORDS

Section 8(3) of the Act states as follows:

A head may refuse to confirm or deny the existence of a record to which subsection (1) or (2) applies.

Sections 8(1) and (2) set out various grounds for exemption. I will refer to section 8(1) in more detail later in this discussion.

A requester in a section 8(3) situation is in a very different position than other requesters who have been denied access under the Act. By invoking section 8(3), the City is denying the requester the right to know whether a record exists, even if one does not.

For this reason, if the City wishes to rely on section 8(3) of the Act, it must do more than merely indicate that records of the nature requested, if they exist, would qualify for exemption under sections 8(1) or (2). The City must establish that disclosure of the mere existence or non-existence of such records would communicate to the requester information that would fall under either section 8(1) or (2) of the Act. (Order P-542)

Accordingly, I will begin by considering whether the disclosure of records relating to an investigation of the appellant for welfare fraud, if they exist, would qualify for exemption under section 8(1) or 8(2). If the answer to this question is yes, I will then consider whether disclosure of the mere existence or non-existence of such records would communicate to the requester information that would fall under either section 8(1) or (2) of the Act.

Section 8(1)(a) of the Act states as follows:

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

interfere with a law enforcement matter.

In the circumstances of this appeal, I am satisfied that the disclosure of records relating to an investigation of welfare fraud, if they exist, could reasonably be expected to interfere with that investigation. I am also satisfied that such an investigation and any ensuing prosecution would qualify as "law enforcement" matters. Accordingly, I find that records relating to an investigation of welfare fraud, if they exist, would qualify for exemption under section 8(1)(a).

I am also satisfied that, should such records exist, disclosure of their existence would communicate information to the appellant which would fall under the exemption in section 8(1)(a), in the event that such an investigation were underway.

In these circumstances, the City is entitled to rely on section 8(3) to refuse to confirm or deny the existence of records relating to an investigation of the appellant for welfare fraud.

ORDER:

I uphold the City's decision.

Original signed by: _____

John Higgins
Inquiry Officer

March 27, 1996