



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

# ORDER M-696

Appeal M\_9500340

County of Wellington



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 County of Wellington (the County) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to the requester's General Welfare Assistance file. The County granted access to all but four pages of the file, to which access was denied either in whole or in part under the following exemption:

- invasion of privacy - section 38(b)

The requester appealed the denial of access, and indicated that he believed additional records should exist. During mediation of this appeal, the appellant indicated that he believed the records which had been disclosed to him were not complete copies of the originals. Additionally, one of the records which had been exempted from disclosure is no longer at issue in this appeal.

A Notice of Inquiry was sent to the appellant, the County and another individual whose rights may be affected through disclosure of the records (the affected person). Representations were received from the County and the affected person. Additionally, the County has provided its original file to this office for the purposes of disposing of the issues raised in the appeal.

The records at issue are a two-page letter and a Narrative Sheet on which the comments related to the processing of the appellant's request for assistance are set out. The County withheld the letter in its entirety, and severed a total of eight lines from the April 25, 1995 entry on the Narrative Sheet.

## DISCUSSION:

### INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. Having reviewed the records, I am satisfied that they all contain the appellant's personal information. Each of the three pages to which section 38(b) has been applied also contain the personal information of other individuals.

Section 38(b) of the Act introduces a balancing principle. The head must look at the information and weigh the requester's right of access to his own personal information against another individual's right to the protection of their privacy. If the head determines that disclosure of the information would constitute an unjustified invasion of the other individual's personal privacy, then section 38(b) gives him the discretion to deny access to the personal information of the requester.

In determining whether the exemption in section 38(b) applies, 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 the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination.

Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

Section 14(3)(c) states:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

relates to eligibility for social service or welfare benefits or to the determination of benefit levels.

In my view, the letter relates generally to the “eligibility for social service or welfare benefits” of the appellant, as described in section 14(3)(c). Accordingly, in my view, the presumption of an unjustified invasion under section 14(3)(c) applies to the personal information which is contained in this record.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that a compelling public interest exists in the disclosure of the record in which the personal information is contained, which clearly outweighs the purpose of the section 16 exemption.

Having considered all the circumstances of this case, I find that disclosure of the letter would constitute an unjustified invasion of the personal privacy of individuals other than the appellant. Therefore, the exemption in section 38(b) applies.

As far as the eight lines severed from the Narrative Sheet are concerned, I find that section 14(2)(d) (fair determination of rights) and 14(2)(h) (supplied in confidence) are relevant considerations. Having balanced the competing rights to privacy and access to personal information in the particular circumstances of this appeal, I find that disclosure of the name and affiliation of the individual who supplied the information found in the six line severance would be an unjustified invasion of personal privacy, and section 38(b) applies. In my view, disclosure of the remaining information from the six line severance and all of the two line severance would not be an unjustified invasion of personal privacy, and section 38(b) does not apply.

## **REASONABLENESS OF SEARCH**

Where a requester provides sufficient details about the records which he is seeking and the County indicates that further records do not exist, it is my responsibility to ensure that the County has made a reasonable search to identify any records which are responsive to the request. The Act does not require the County to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the Act, the County must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in an institution's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records may, in fact, exist.

I am not persuaded that the appellant has provided sufficient evidence to establish a reasonable basis for concluding that additional records may exist. I am satisfied, based on the evidence provided, that the County's search for records was reasonable with respect to the request.

### **PROVISION OF COPIES**

The appellant contends that the records which he viewed in the County's offices contained more information than the copies which were disclosed to him. In order to dispose of this issue, I ordered the County to provide me with the original records so that I could compare the originals to the copy of the records disclosed to the appellant (which the County provided to me at the outset of this appeal). Having compared the two, it is apparent that there are records in the original file which are not duplicated in the copy. However, most of these records post-date not only the appellant's request, but also the County's decision regarding access, and the County is not obligated to disclose these records to the appellant in the absence of a new request.

Based on my review of the records, I am not satisfied that each of the copies which were disclosed to the appellant is a complete representation of its original. Certain of the originals had notations recorded on their reverse which have not been provided to the appellant. Additionally, there are a small number of records which predate the request which have not been included in the copy.

Unfortunately, the County has not organized the records in a fashion which would enable me to identify these missing records for them in an efficient way. When the request was originally responded to by the County, only some of the copies and none of the original records were numbered. When I received the records, the copies were not organized to match the order of the original file and a significant amount of time had to be spent reorganizing the copies in order to determine whether records were, in fact, missing.

In my view, the most practical way to resolve this issue is for me to order the County to invite the appellant to review the original file under the supervision of an employee of the County at which time the appellant may identify the missing records. The County may remove the three records for which I have upheld exemptions from the file prior to reviewing it with the appellant as well as any records which post-date the request. Unless the County can show that a copy of a particular record was provided to the appellant with its original response to his request, the County must provide the appellant with a copy of any record he identifies as missing during his review.

I appreciate that this exercise will be administratively burdensome on the County, and that the appellant may end up with a second copy of some records. As the file is quite voluminous, I encourage the County to number each original record which predates the request prior to this review by the appellant, such that records to which he has been provided access can be readily identified at a later date. Additionally, if the County requests, I will provide it with the copy of

the records which the Appeals Officer has organized to match the order of the original file to facilitate the County's identification of missing records.

**ORDER:**

1. I order the County to disclose the information severed from the April 25, 1995 entry on the Narrative Sheet with the exception of the name and affiliation of the source of the information found in the six line severance by sending the appellant a copy no later than **February 19, 1996**.
2. I uphold the County's decision not to disclose the two page letter and the name and affiliation of the source of the information described in Provision 1.
3. The parts of the appellant's appeal which relate to the existence of additional records is denied.
4. I order the County to make the original records which predate the request, with the exception of the records which contain the information described in Provision 2 of this order, available for the appellant's review under the supervision of an employee of the County by **February 29, 1996**. I further order the County to provide the appellant with a copy of any record which he identifies as missing during this review, unless the County can show that a copy of a particular record was provided to the appellant with its original response to his request.
5. In order to verify compliance with this order, I reserve the right to require the County to provide me with a copy of the records which are disclosed to the appellant pursuant to Provisions 1 and 4.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Inquiry Officer

\_\_\_\_\_ January 30, 1996