



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

## **ORDER M-756**

Appeal M\_9600048

The Corporation of the City of Barrie



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## NATURE OF THE APPEAL:

The Corporation of the City of Barrie (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to zoning by-law complaints made against the appellants. The City located 18 pages of responsive records and denied access to them, in their entirety, claiming the application of the following exemption contained in the Act:

- invasion of privacy - section 14(1)

The appellants appealed the decision to deny access. During the mediation of the appeal, and within the time prescribed by this office in the Confirmation of Appeal, the City also claimed the application of the law enforcement exemption contained in section 8(1)(d) of the Act. A Notice of Inquiry was provided to the appellants and the City. As the responsive records appeared to contain the personal information of the appellants, the Notice of Inquiry also raised the possible application of sections 38(a) and (b) of the Act.

Representations were received from both parties. The City has withdrawn its exemption claims for Page 2 of Record 1 and Page 5. As no mandatory exemptions apply to these documents, they should be disclosed to the appellants.

## DISCUSSION:

### PERSONAL INFORMATION

Under section 2(1) of the Act, “personal information” is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the remaining 16 pages of records and find that Pages 2, 3, 4, 6, 11, 12, 14 and 17 contain only the personal information of the appellants. Although the names of other individuals appear in these records, I find that these individuals are acting in their employment capacities or in their role as an elected official. This information does not, therefore, qualify as their personal information within the meaning of section 2(1).

Pages 1, 7, 8, 9, 10, 13, 15, 16 and 18 contain the personal information of the appellants and two other identifiable individuals (the affected persons).

### LAW ENFORCEMENT/DISCRETION TO REFUSE REQUESTER’S OWN INFORMATION

The City has claimed the application of section 8(1)(d) of the Act to deny access to the records. This section 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.

The City submits that its by-law enforcement system is complaint driven and that there is a reasonable expectation of confidentiality within this process. The City states that it has always held complainants' names and other personal information which may serve to identify them in confidence.

Previous orders of the Commissioner have determined that a municipality's by-law enforcement process qualifies as a "law enforcement" matter for the purposes of section 2(1) of the Act (Orders M-16 and M-582). I agree with the reasoning in those orders and adopt their findings for the purposes of this appeal. The records at issue in this appeal concern alleged infractions of the City's zoning by-law and I find, therefore, that they relate to a law enforcement matter.

I have reviewed the records and the representations of the parties and find that the disclosure of the personal information of one of the affected persons which is contained in Page 1 of Record 1 and Pages 7, 8, 9, 13, 15, 16 and 18 would reveal the identity of a confidential source of information in respect of a law enforcement matter, the investigation of possible violations of a municipal zoning by-law. I have highlighted portions of Page 1 of Record 1 and Pages 7, 8, 9, 13, 15, 16 and 18 on the copy which I have provided to the City's Freedom of Information and Protection of Privacy Co-ordinator. The highlighted portions contain the information which qualify for exemption under section 8(1)(d)

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 exceptions to this general right of access, including section 38(a), which reads as follows:

A head may refuse to disclose to the individual to whom the information relates personal information,

if section 6, 7, 8, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; [emphasis added]

Section 38(a) of the Act provides the City with the discretion to refuse to disclose the appellants' personal information where section 8 otherwise applies to the information. I have found that the highlighted portions of Page 1 of Record 1 and Pages 7, 8, 9, 13, 15, 16 and 18 qualify for exemption under section 8(1)(d) and therefore, section 38(a) applies to exempt this information from disclosure.

## **INVASION OF PRIVACY**

As noted above, the highlighted portions of Page 1 of Record 1 and Pages 7, 8, 9, 13, 15, 16 and 18 are exempt from disclosure under section 8(1)(d). These portions of the records contain all of the personal information which relates to one of the affected persons. Because of the manner in which I have addressed the application of section 8(1)(d) to this information, it will not be

necessary for me to determine whether it is exempt from disclosure under the invasion of privacy exemptions.

Another exception to the general right of access is provided by section 38(b) of the Act. Under section 38(b), where a record contains the personal information of both the appellants and other individuals and the City determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the City has the discretion to deny the appellants access to that information. In this situation, the appellants are not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the appellants have a right of access to their own personal information, the only situation under section 38(b) in which they can be denied access to the information is if it can be demonstrated that the disclosure of the information **would** constitute an unjustified invasion of another individual's privacy.

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 in section 14(3) apply, the City must consider the application of the factors listed in section 14(2), as well as all other considerations which are relevant in the circumstances of the case.

The remaining information relates, with the exception of one portion of Page 10, to the appellants exclusively. I find that the disclosure of the personal information of the appellants would not constitute an unjustified invasion of the personal privacy of any other individuals. It is not, accordingly, exempt from disclosure under sections 14(1) or 38(b) of the Act.

I find that the disclosure of that portion of Page 10 which contains the personal information of the other affected person would constitute a presumed unjustified invasion of the personal privacy of this individual under section 14(3)(b). This information was compiled and is identifiable as part of an investigation into a possible violation of law, a municipal zoning by-law as contemplated by the presumption.

Section 14(4) does not apply and the appellants have not raised the application of section 16 of the Act. This portion of Page 10, which I have highlighted on the copy of the records provided to the City's Freedom of Information and Protection of Privacy Co-ordinator with a copy of this order, qualifies for exemption under section 38(b).

#### ORDER:

1. I uphold the City's decision to deny access to those portions of Page 1 of Record 1 and Pages 7, 8, 9, 10, 13, 15, 16 and 18 which I have highlighted on the copy of the records provided to the City's Freedom of Information and Protection of Privacy Co-ordinator with a copy of this order.

2. I order the City to disclose to the appellants Page 2 of Record 1 and Pages 2, 3, 4, 5, 6, 11, 12, 14 and 17 in their entirety and those portions of Page 1 of Record 1 and Pages 7, 8, 9, 10, 13, 15, 16 and 18 which are **not** highlighted on the copies of the records provided to the City's Freedom of Information and Protection of Privacy Co-ordinator by sending them a copy by **May 23, 1996** but not earlier than **May 20, 1996**.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellants pursuant to Provision 2.

Original signed by: \_\_\_\_\_  
Donald Hale  
Inquiry Officer

\_\_\_\_\_ April 18, 1996