



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

ORDER M-765

Appeal M_9500740

Metropolitan Licensing Commission



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NATURE OF THE APPEAL:

The Metropolitan Licencing Commission (the Commission) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to information relating to the requester's company and for a copy of the application made by a named individual and company to conduct business at the requester's business location.

The Commission granted access to the requested information with the exception of a portion of the Statement of Fact section of the application. The withheld portion of the Statement of Fact included the address and telephone number of the named individual (the applicant) and his responses to the following questions on this form:

1. Have you ever been convicted of any criminal offence?
2. Are you presently charged with any criminal offence?

The Commission denied access to this information on the basis that disclosure of the information would constitute an unjustified invasion of the personal privacy of the applicant under section 14(1) of the Act.

The requester, now the appellant, appealed the decision to deny access.

The appellant indicated that he is not seeking access to the address or telephone number of the applicant. The information that remains at issue in this appeal consists of the applicant's responses to the two questions as described above.

A licence to operate a business on the property of the appellant was issued in error by the Commission to the applicant. The appellant is now involved in civil proceedings in order to resolve the matter.

A Notice of Inquiry was provided by this office to the appellant, the Commission and the applicant. Representations were received from the Commission only.

DISCUSSION:

INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined to mean recorded information about an identifiable individual including the individual's name where it appears with other personal information relating to the individual.

Previous orders of the Commissioner have determined that if there is a reasonable expectation that the individual can be identified from the information, then such information constitutes the individual's personal information (Orders P-230 and P-1168). I note that the applicant's name is already known to the appellant. I have reviewed the information at issue and in my view, when

connected to the name of the applicant, it qualifies as the applicant's personal information. I find, therefore, that the record contains the personal information of the applicant. I find that the record does not contain the personal information of the appellant.

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.

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 against disclosure 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.

The Commission submits that the information in the record consists of personal recommendations or evaluations, character references or personnel evaluations and is therefore exempt under the presumption in section 14(3)(g) of the Act. In this regard, the Commission refers to By-law 20-85 which addresses the licensing and regulation of trades and business in the Metropolitan area. Subsection 11(1)(a) of the by-law states:

An applicant for a licence, or for a renewal of a licence is, subject to the provisions of this By-law, entitled to be issued the licence or renewal, except where,

the conduct of the applicant affords reasonable grounds for belief that he will not carry on his trade, business or occupation in accordance with the law and with integrity and honesty.

The Commission submits that the information in the record relates to the criminal history of the applicant and therefore, consists of "character references" under section 14(3)(g). The Commission states that the questions on the record are asked of all applicants to assist in determining whether the applicants will carry on their business with integrity and honesty, in accordance with the provisions of the by-law.

I do not accept the submissions of the Commission in this regard. In my view, the information in the record does not qualify as the personnel recommendations or evaluations, character references or personnel evaluations intended to be exempt under the presumption provided by section 14(3)(g). In my view, the type of information intended to fall within the exemption are recommendations, evaluations or character references from a third party about an individual.

If none of the presumptions in section 14(3) apply, the Commission must consider the application of the factors listed in section 14(2) of the Act, as well as all other circumstances that are relevant in the circumstances of the case.

The Commission states that sections 14(2)(f) and (h) are relevant because the information in the record is highly sensitive and because it was provided in confidence solely for the purpose of obtaining a licence. In my view, the information in the record is not highly sensitive as the term

has been defined in previous orders of the Commissioner. There is nothing on the face of the record to indicate that the information was submitted explicitly in confidence or that it would be treated as such. There is also no evidence before me to show that the information was provided implicitly in confidence in that the applicant had a reasonable expectation of confidentiality and that there was a reasonable basis for this expectation. Therefore, I find that sections 14(2)(f) and (h) are not relevant considerations in the circumstances of this case.

The appellant, in his letter of appeal, states that the information is sought because it is relevant to a fair determination of his rights (section 14(2)(d)). The appellant alleges that the applicant lied on the application and the application was fraudulent. The appellant stated that the information is required to prepare for a civil suit. As I have indicated previously, the appellant has not made any representations. I find that there is not sufficient evidence before me to show how disclosure of the information in the record is relevant to a fair determination of the appellant's rights.

I have reviewed all the factors listed under section 14(2) including the factors raised by the parties. While I have found that sections 14(2)(f) and (h) are not relevant to this case, I also find that none of the factors favouring disclosure, including section 14(2)(d) are present. I have considered all the relevant circumstances of the case and in the absence of any evidence on the factors which weigh in favour of disclosure, I find, on balance, that disclosure of the personal information in the record would constitute an unjustified invasion of the personal privacy of the applicant and therefore, the mandatory exemption in section 14(1) applies.

ORDER:

I uphold the decision of the Commission.

Original signed by: _____
Mumtaz Jiwan
Inquiry Officer

_____ May 3, 1996