



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

ORDER M-803

**Appeal M_9500274
(Reconsideration)**

Municipality of Clarington



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/Télééc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

BACKGROUND:

This order sets out my decision on the reconsideration of Order M-666 (issued December 14, 1995). To place this order in context, I will briefly set out the history of this matter.

The appellant is an individual whose two dogs were shot in the Municipality of Clarington (the Municipality). Under the Municipal Freedom of Information and Protection of Privacy Act (the Act), she submitted a request to the Municipality for access to several records and categories of information related to the shooting incident and the involvement of the Municipality's Animal Control officers.

The Municipality responded to the request by providing the appellant with access to several responsive records. It removed the information related to the identity of the individual who shot the dogs (the farmer), pursuant to the following exemptions in the Act:

- law enforcement (confidential source) - section 8(1)(d)
- invasion of privacy - section 14

The appellant filed an appeal of the Municipality's decision to deny access to this information. She maintained that, under section 16 of the Act, there was a compelling public interest in access to this information. She also maintained that there existed more records that were responsive to her request.

As the appeal could not be resolved through mediation, this office sent a Notice of Inquiry to the appellant, the Municipality and the farmer. The appellant and the Municipality submitted representations in response to the Notice. The farmer did not provide any submissions to this office.

The records at issue consisted of the following:

- the notes of the Animal Control Officer (the ACO's notes)
- the copy of the receipt signed by the farmer (the receipt)
- the copy of the note taken by the supervisor of the ACO's (the Supervisor's note)
- the copy of the excerpts from the Daily Occurrence Book (the DOB) for the time period spanning the incident described in the request

Any information related to the identity of the farmer was removed from these documents prior to their disclosure.

In Order M-666, I made the following findings that are relevant to this reconsideration:

- (1) The Municipality's search for responsive records was not reasonable. The Municipality was ordered to conduct a further search with particular emphasis on its Pound Log Book and page 6 of its Policy and Procedure Manual for Animal Control (the Manual).
- (2) The records at issue contain the personal information of both the appellant and the farmer.

- (3) The personal information of the farmer as found in the ACO's notes, the Supervisor's notes and the DOB was compiled as part of the Municipality's investigation into a possible violation of its Animal Control By-laws. This information fell within the presumption in section 14(3)(b) of the Act (personal information compiled as part of a law enforcement investigation).
- (4) The personal information of the farmer as found in the receipt fell within the presumption in section 14(3)(f) of the Act (an individual's financial activities). There was no compelling public interest under section 16 of the Act in the disclosure of the personal information of the farmer that outweighed the personal privacy exemptions in the Act.
- (5) The disclosure of the personal information of the farmer would therefore result in an unjustified invasion of the personal privacy of this individual pursuant to section 38(b) of the Act.

The Municipality undertook a further search for responsive records. It provided the appellant with a copy of page 6 of the Manual as well as with copies of two responsive entries in the Pound Log Book. The location of the incident was removed from these entries pursuant to sections 8(1)(d) and 14(3) of the Act as it would identify the farmer.

After she received Order M-666 and the aforementioned additional records, the appellant submitted a request for reconsideration of the order. By letters dated February 12, 1996 (the Reconsideration Notices), I invited all the original parties to the appeal to make submissions as to whether or not I should reconsider the order, which would entail conducting a second inquiry and issuing a new order to supersede Order M-666. These letters reproduced the appellant's objections to the order in some detail. In the interests of expediency, the letters also set out the substantive issues raised by the reconsideration request. These are the issues which would be dealt with in the second inquiry should I decide to grant the appellant's request for reconsideration of Order M-666. In response to the Reconsideration Notices, I received representations from the Municipality and the appellant. As was the case in the original inquiry, the farmer did not respond.

In summary, the issues which are now before me are:

- (1) whether I should grant the appellant's request for reconsideration of Order M-666; and, if so,
- (2) whether the Municipality properly withheld the information about the identity of the farmer under sections 8(1)(d), 38(a) and/or (b) of the Act; and if this information was properly withheld under section 38(b)
- (3) whether there exists a compelling public interest in disclosure of this information under section 16.

DISCUSSION:

(1) THE REQUEST FOR RECONSIDERATION

In her initial January 22, 1996 request for reconsideration of Order M-666, the appellant set out three grounds which she submitted should form the basis for reconsideration of my order. They are as follows:

“Specific and Limited Exemptions”

As I indicated above, in Order M-666, I found that the identifying information of the farmer contained in the receipt was exempt under section 38(b) of the Act, based on the presumption in section 14(3)(f). The appellant states that, in its decision letter, the Municipality did not apply section 14(3)(f) to exempt the personal information contained in the receipt. Rather, it denied access to this information on the basis of sections 8(1)(d) and 14(3) of the Act. Therefore, the appellant asserts that, in her original submissions, she did not address the issue of the application of section 14(3)(f).

In her response to the Reconsideration Notice, the appellant reformulated this argument somewhat, indicating that the Municipality failed in its obligations under section 22(3) of the Act in that it did not set out the specific section of the Act under which disclosure was being refused. The appellant suggests that the Appeals Officer should have contacted the Municipality requesting them to amend its decision letter. The appellant also expresses concerns over the application of section 14(3)(f) when it was not cited by the Municipality.

“By-law Enforcement”

It is the appellant’s contention that none of the records containing the personal information of the farmer fall within the presumption in section 14(3)(b) as I found in Order M-666. The appellant maintains that, in this case, the activities of Animal Control were limited to picking up the dead and injured animals, and recording the allegations of the farmer. Thus she submits that there was no “law enforcement investigation” within the meaning of section 14(3)(b). The appellant maintains that this submission was confirmed by the information found on page 6 of the Manual, provided to her by the Municipality in response to Order M-666.

In her response to the Reconsideration Notice, the appellant elaborates on this submission with respect to each of the documents which contains personal information of the farmer. In addition, the appellant submits that once I made the finding that the records were not compiled pursuant to an investigation under the Livestock, Poultry and Honey Bee Protection Act (the Livestock Act), the position asserted by the Municipality, I was incorrect in finding that the information was compiled into an investigation into dogs being at large, a position that had not been put forward by the Municipality.

“Public Interest Override”

The appellant initially asserted that Order M-666 did not provide any reasons for my decision that a compelling public interest, which overrides the purpose of the personal privacy exemption, did not exist in this case. The appellant subsequently set out several public interest issues which

she maintains exist in this case and the reasons why they are compelling and outweigh the purpose of the exemptions in section 14 of the Act.

The Reconsideration Request

In her submissions in response to the Reconsideration Notice, the appellant also expressed several other concerns about the manner in which the Municipality processed her appeal and the basis for the decision in Order M-666. She alleges that both the head and the Municipality have conflicts of interest in dealing with the decision to deny access to the requested information. She again questions the adequacy of the Municipality's search for responsive records and whether the head properly undertook her obligations under the Act. She also questions the head's exercise of discretion in the manner in which she dealt with the appellant's request under the Act.

The appellant summarizes her position by stating that:

The availability of redress of harms through a hearing in open court is a fundamental principle of natural justice. This is the only option available to me to determine the circumstance of the death of [my dog]....

The Commissioner's office has adopted a policy to apply when a request for the reconsideration of an order is received. This policy states that an order should be reconsidered only when there is a fundamental defect in the adjudication process, some other jurisdictional defect in the order or where the order contains a typographical or other clerical error which has a bearing on the decision. The Reconsideration Notices sent to the parties in response to the appellant's request for reconsideration of Order M-666 set out the grounds for reconsideration. In the Notices, I indicated that I would take into account the parties' representations on whether the request for reconsideration fit within these grounds, as well as all the circumstances of this case.

I have set out above the appellant's reasons as to why she has requested that I reconsider my decision in Order M-666. The appellant has not overtly characterized her submissions in terms of the circumstances in which the Commissioner's office will reconsider a decision. However, it appears that the appellant is alleging that there was either a fundamental defect in the adjudication process and/or a jurisdictional defect in the order.

The Municipality submits that there was neither a fundamental defect in the adjudication process nor a jurisdictional error in Order M-666. The Municipality submits that the information provided to the appellant on page 6 of the Manual does not raise any new issues of fact or law. Nor does this information confirm that the Animal Control Officer was not engaged in an investigation of a possible violation of law.

The Municipality further submits that Order M-666 addressed the arguments raised by the appellant to support her assertion that there was a compelling public interest in the disclosure of the personal information of the affected person. The Municipality did not address the first issue raised by the appellant, that of the specific and limited exemptions.

The Municipality summarizes its position on this issue as follows:

In Order M-666 the Inquiry Officer fully and fairly considered the evidence and submissions. Order M-666 should finally dispose of the appeal. The Appellant's submissions in support of her request for reconsideration either were or could have been made to the Inquiry Officer before Order M-666 was made. In the circumstances of this case, therefore it is submitted that the request for reconsideration should be denied.

I have carefully reviewed Order M-666, the records at issue and all the documentation submitted by the appellant and the Municipality throughout the entire course of this appeal. While the matter is not entirely without doubt, I am persuaded by the appellant's submissions that during the initial inquiry process she was not afforded full disclosure by the Municipality so as to have the opportunity to make representations on the basis of all relevant information. In particular, the information contained on page 6 of the Manual, which the Municipality should have released to the appellant at first instance, would have provided her with relevant information on which to make her submissions in this appeal. I am of the view that this was a significant defect.

The other matters raised by the appellant, namely those of "specific and limited exemptions", my decision on the application of section 16, the alleged conflict of interest, the adequacy of the Municipality's search for responsive records and the manner in which the Municipality processed this appeal would not, on their own, justify a reconsideration, since the appellant had ample opportunity to raise these concerns before. However, as the first two matters were included in the Reconsideration Notices, and directly relate to the issues dealt with in Order M-666, I will review these matters in this reconsideration.

The Municipality has not, however, had the opportunity to respond to the appellant's additional objections as they were raised for the first time in her response to the Reconsideration Notice. Moreover, the issues of the alleged conflict of interest, the adequacy of the Municipality's search for responsive records and the manner in which the Municipality processed this appeal could have been raised by the appellant prior to this time. In fact, in Order M-666, I considered the adequacy of the Municipality's search for responsive records. In these circumstances, and in an effort to bring some finality to this appeal, this reconsideration order will discuss only those matters which all the parties have had the opportunity to consider.

The appellant's concerns which I have described as "specific and limited exemptions" relate to my findings under section 38(b) of the Act and I will consider it in the section which follows. The application of section 16 will be considered in the last section of this order.

(2) WHETHER THE MUNICIPALITY PROPERLY WITHHELD THE INFORMATION ABOUT THE IDENTITY OF THE FARMER UNDER SECTIONS 8(1)(D), 38(A) AND/OR (B) OF THE ACT

(A) "Specific and Limited Exemptions" - Section 14(3)(f) as applied to the Receipt

The appellant has referred to the purpose of the Act, as set out in section 1(a)(ii) to object to my finding that section 14(3)(f) applied to the personal information of the farmer found in the receipt. In my view, the purposes of the Act as set out in section 1 must be considered in their entirety. The section reads as follows:

1. The purposes of this Act are,
 - (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
 - (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Thus, the Act has a dual purpose, one related to general information under the control of institutions, the other related to the personal information of individuals held by institutions. In addition, it is important to note that the majority of the exemptions in the Act which apply to general information are discretionary. With the exception of information dealing with other governments (section 9) and third party information (section 10), a government institution has the discretion to disclose such information in response to a request under the Act.

The situation with respect to personal information is different. An institution must not disclose personal information to any person other than the individual to whom it relates except in certain defined circumstances (section 14). It is true that where, as in this case, the records at issue contain both the personal information of the appellant and an affected person, the institution has the discretion to disclose even if such a disclosure would result in an unjustified invasion of the personal privacy of the affected person (section 38(b)). This recognizes the right of individuals to access their own personal information. In such cases, regard is still made to the provisions of section 14 to determine if such disclosure would constitute an unjustified invasion of another individual's privacy.

Initially, I confirm my finding in Order M-666 that the records at issue contain the personal information of both the appellant and the farmer.

I will now consider the appellant's particular concerns in this case.

The Ministry's actual decision letter referred to section 14(3) of the Act. Attached to the letter was a memorandum written by the clerk of the Municipality in which she indicated that a Policy Advisor with the Freedom of Information and Privacy Branch at Management Board indicated that the requested information did not have to be released because of the exemptions in sections 8(1)(d) and **14(3)(b)** of the Act. The Notice of Inquiry sent to all the parties indicated that "Access was denied to the remaining information on the basis of sections 8(1)(d) and 14(3) of the Act". The Notice also raised the possible application of sections 38(a) and (b) of the Act as the records appeared to contain the personal information of the appellant.

Attached to the Notice was Appendix A, the Statutory Provisions Referred to in the Notice of Inquiry. This appendix included a copy of section 14(3) in its entirety, including section 14(3)(f).

I agree with the appellant that the Municipality had a statutory obligation under section 22(b) of the Act to set out the specific provision under which access was being refused. However, in my view, the appellant's rights were not compromised by the fact that the Municipality did not specifically refer to section 14(3)(f) which formed the basis of my decision with respect to the receipt.

Previous orders of the Commissioner's office have determined that the Information and Privacy Commissioner has an inherent obligation to ensure the integrity of Ontario's access and privacy scheme (see for example Orders P-257, M-10 and M-1137). One of the situations in which this can occur is where it becomes evident that disclosure of a record would affect the rights of an individual, or where the institution's actions would be clearly inconsistent with the application of a mandatory exemption provided by the Act. In these situations, the Commissioner's office has undertaken an independent review of the records at issue to determine if they contain personal information and, if so, whether disclosure of them would constitute an unjustified invasion of personal privacy (e.g. Order P-304). This review takes place even if an institution has not claimed the application of the invasion of privacy exemptions in sections 14(1) and/or 38(b) at first instance.

The matter was put very succinctly by former Inquiry Officer Asfaw Seife in Order M-110 in which he commented as follows:

The Police have not claimed any other discretionary or mandatory exemption that might apply to the record. In such cases, it is my responsibility in keeping with the inherent obligation of this office to ensure the integrity of Ontario's access and privacy protection scheme, to conduct an independent review of the record to determine whether it is necessary to consider the application of the provisions of the Act relating to protection of personal privacy. In the circumstances of this case, having reviewed the record, I feel that the provisions of the Act relating to a requester's right of access to his/her own personal information and those relating to the protection of personal privacy of other individuals should be considered. In my view, the information contained in the record is sufficient to trigger the consideration of these provisions.

In the case before me, it was clear that the disclosure of the receipt could affect the rights of the farmer. Therefore, there was an inherent obligation on this office to consider whether **any** of the circumstances set out in sections 14(2) or (3) applied to the receipt. This situation is analogous to that which occurred in Order M-718. In that case, the Police did not refer to any specific provisions in section 14(2) or (3) as providing the basis for their decision under section 14(1) to deny access to the personal information of the affected person. I stated as follows:

Section 14(1) is a mandatory exemption. As part of the inherent obligation of the Office of the Information and Privacy Commissioner to ensure the integrity of

Ontario's access and privacy scheme, I must consider whether any of these sections apply. In addition, I must consider all the relevant circumstances of this case.

To summarize, while it certainly would have been preferable for the Municipality to specify in its decision letter the specific sections of 14 on which it relied to exempt the information in each particular record, because all of the records contained the personal information of the farmer, I was obliged to consider whether **any** of the circumstances outlined in either of sections 14(2) and/or (3) applied to the personal information as it appeared in the records. In addition, as I indicated, the appellant was provided with copies of all the relevant legislation in the Appendix to the Notice of Inquiry.

Accordingly, I reject the appellant's submission that her rights were compromised in any way by my finding that section 14(3)(f) of the Act applied to the personal information as found in the receipt, in circumstances where the Municipality had not specifically applied this section to the information. I, therefore, confirm my decision in Order M-666 that the personal information of the farmer found in the receipt is exempt under section 38(b) of the Act, based on the presumption in section 14(3)(f).

(B) By-law Enforcement - Section 14(3)(b) as Applied to the Balance of the Records

In Order M-666, I found that the presumption in section 14(3)(b) of the Act (compiled as part of an investigation into a possible violation of law) applied to the personal information of the farmer as it appeared in all of the records with the exception of the receipt.

The appellant submits that the ACO's were not performing any investigatory functions pursuant to the Animal Control By-laws in this matter and that therefore the personal information contained in the records created as a result of this incident could not be subject to the presumption. She indicates that this position is confirmed by the information on page 6 of the Manual and the pages of the Pound Log Book which were provided to her as a result of my order.

More specifically, the appellant maintains that the Animal Control Officer responded to a call to pick up an injured animal and that this service falls under section 11.1 b of the Municipality's By-law 87-156 dealing with the licencing and regulating of the keeping of dogs. The original submissions of the Municipality explain that the code, "8:50", which appears in the DOB related to this incident, indicates that a report of an injured animal was received by the Officer. The Municipality's formal public report on the shooting, Report CS-11-95, states that Animal Control received a call to pick up an injured dog.

The appellant maintains that this service falls within section 11 of the manual "Calls for Service and Emergency Response" as opposed to section 12 dealing with By-law enforcement. She states that the activities of the ACO were restricted to retrieving the dogs and recording the allegations of the farmer. Other than a reference to the "Honeybee Act" in the supervisor's notes, the appellant states that none of the records contain any references to any legislative authority under which an investigation could be said to have been conducted. In Order M-666, I

found that the personal information was not compiled as part of an investigation into a possible violation of the Livestock Act as the procedures set out in that legislation were not carried out. Pursuant to section 4 of the Livestock Act, where the owner of livestock or poultry discovers that any of it has been killed or injured and believes that it was done by a dog or a wolf, a valuer appointed by the municipality is required to “make a full investigation” and to provide, within 10 days, a written report to the Municipality with a copy to the livestock owner. The report is to set out the extent and amount of the damages as well as his award therefore. The owner of the livestock or poultry is required to file an affidavit with the municipality that, to the best of his knowledge and belief, the livestock or poultry were killed or injured by a dog or a wolf. The Livestock Act contains additional provisions dealing with disputes over the valuer’s award as well as the manner in which a finding that the damage was not caused by a dog or wolf is to be dealt with.

None of the records at issue indicate that such investigatory matters were pursued. In fact, the ACO’s notes confirm that although the valuer was contacted by the farmer, the matter proceeded privately among the Municipality, the appellant and the farmer. The records do not contain references to the ACO conducting an investigation to compile information related to a possible violation of the Livestock Act.

The Municipality states that, in addition to being responsible for the enforcement of the Animal Control By-law and the Livestock Act, ACO’s are also responsible for the enforcement of the Dog Owner’s Liability Act (the DOL Act). Under section 5 of the DOL Act, it is an offence for the owner of a dog to fail to exercise reasonable precautions to prevent the dog from biting or attacking a person or a domestic animal.

The Municipality submits that:

Contrary to the Appellant’s submission, Section 12 of the Policy and Procedure Manual for Animal Control (page 6) does not confirm that the Animal Control Officer was not engaged in an investigation into a possible violation of law. Although the Manual does not exclusively define the duties and responsibilities of the Municipality’s Animal Control Officers, it makes clear that they are responsible for the enforcement of the Municipality’s Animal Control By-laws.

One of the By-laws is No. 87-156 which relates to complaints of dogs running at large, as defined as being found in any place other than the property of the owner of the dog and not under the control of any person (By-law 88-42). While the submissions of the Municipality are not entirely clear on this point, they appear to suggest that the investigation was conducted pursuant to the enforcement of the By-laws under section 12 of the Manual (By-law 87-156) or the DOL Act. As noted previously, in Order M-666, I rejected the notion that an investigation was conducted pursuant to the Livestock Act. I did find that it was conducted into a possible violation of the By-law dealing with dogs running at large.

I have carefully reviewed the records and considered all of the submissions of the appellant and the Municipality. Based on the information contained on page 6 of the Manual, it is clear that ACO’s wear “two hats”. That is, they are responsible for responding to calls for services and emergency responses. These functions are set out in section 11 of the Manual and, in particular,

section 11.1(b) which refers to dealing with “seriously injured domestic animals where the owners are unknown”.

They are also responsible for the enforcement of the Animal Control By-laws of the Town. Section 12 of the Manual outlines these responsibilities and procedures. It is in the latter situation where the ACO’s perform investigatory functions into a possible violation of law, namely the Municipal By-laws. I also accept the Municipality’s submissions that the ACO’s perform this function in relation to the Livestock Act and the DOL Act. The issue is which “hat” the ACO’s were wearing when they dealt with the incident involving the appellant’s dogs.

Admittedly, the demarcation lines between these functions are not clear. However, I am of the view that the information contained in section 11.1(b) of the Manual and the Pound Log Book entries confirm that they were not engaged in investigating a situation of a “dog running at large” contrary to the By-laws. The Pound Log Book cards contain three options to be checked off : “straying at large”, “trespassing”, and “released by owner”. The cards for both of the appellant’s dogs are marked “trespassing”. It is true, as I stated in Order M-666, that Municipal By-law No. 88-42 deems a dog to be “running at large” when it is found in any place other than the property of the owner of the dog and not under the control of the owner. It is also true that the appellant’s dogs were picked up by the ACO on another individual’s property. However, all the records and supporting documentation appear to indicate that the ACO was responding to a call for an injured animal. The reference to the Livestock Act in the Supervisor’s notes indicates that the ACO’s appeared to think they were proceeding under this legislation but, as I indicated in Order M-666 and on page 10 of this reconsideration, the investigatory scheme of this legislation was not followed in this case, and, accordingly, I cannot conclude that the personal information of the farmer contained in the records was compiled for an investigatory purpose under this legislation.

In Order M-666, it initially appeared to me that the sole function of the ACO was an investigatory one into possible violations of the By-law, the Livestock Act and the DOL Act. This conclusion was based on the duties of the ACO’s as set out on page 7 of the Manual. However, I am now of the view that the information contained in the records and the supporting documentation is more consistent with the ACO functioning in a non-investigatory manner as set out in section 11 of the Manual. It will be recalled that this section is found on page 6 of the Manual, disclosed to the appellant as a result of Order M-666.

Accordingly, I conclude that the personal information of the farmer as found in the ACO’s notes, the Supervisor’s notes and the DOB excerpt was **not** compiled as part of an investigation into a possible violation of law. Thus, the presumption in section 14(3)(b) does not apply to this information.

(C) Section 14(2) and All Relevant Considerations as Applied to the Balance of the Records

I must now consider the factors in section 14(2) of the Act and all the circumstances of this case to determine if the disclosure of the personal information of the farmer would result in an unjustified invasion of this individual’s personal privacy. Both the appellant and the Municipality provided submissions on this issue in response to the original Notice of Inquiry in this appeal. As I found that the information was subject to the presumption in section 14(3)(b) of the Act, I did not have to consider these matters in Order M-666.

In its initial representations and in those provided in response to the Reconsideration Notice, the Municipality submits that the personal information of the farmer was provided in confidence (section 14(2)(h)). It also claims that the disclosure of such information is neither necessary nor desirable for the purposes of subjecting the activities of the Municipality to public scrutiny (section 14(2)(a)). In addition, it is the position of the Municipality that such disclosure is not relevant to a fair determination of the rights of the appellant (section 14(2)(d)).

The appellant submits that the Municipality has adduced no evidence to demonstrate that the farmer requested confidentiality at that time at which s/he provided personal information to the Municipality, nor that the Municipality has claimed that such an expectation would be reasonably held on the basis of the established procedures of the Municipality.

In addition, the appellant submits that disclosure is necessary to subject the activities of the Municipality to public scrutiny. In this regard, she asserts that significant questions have been raised by her and others concerning the Municipality's handling of a number of important administrative matters relating to the shooting of her dogs. She also maintains that access to the information may promote public health and safety (section 14(2)(b)) in that, until all of the facts of the shooting are known, public safety is at risk until it can be determined if a gun was used with justification.

The appellant's position is that she requires the identity of the farmer in order to exercise her civil rights to pursue redress for the death and injury to her dogs. The requested information is thus relevant to a fair determination of her rights as she cannot establish liability until she can commence such proceedings. To support this position, the appellant has referred to Orders M_55, P-312, M-38 and P-434 of the Commissioner's office.

Order M-55 involved a request to a school board by counsel for the parents of a child who was hit by a stone allegedly thrown by another child. Counsel sought access to, inter alia, the name and address of the other child who had allegedly thrown the stone. The parents had already commenced a civil action and wished to add the alleged stone thrower to the proceedings. The school board had initially denied access to this information on the basis that it was highly sensitive, unlikely to be accurate or reliable, supplied in confidence and that its disclosure may unfairly damage the reputation of the alleged stone thrower (respectively sections 14(2)(f), (g), (h) and (i) of the Act).

Assistant Commissioner Tom Mitchinson found that none of these factors were relevant considerations in the circumstances, but that counsel had established the relevance of section 14(2)(d), i.e. that disclosure of the name of the child was relevant to the fair determination of his client's rights in pursuing legal action. In the result he ordered the name but not the address of the child disclosed.

I accept that Order M-55 is relevant to the facts before me in this case but, having reviewed Orders P-312, M-38 and P-434, I fail to see how they support the appellant's position in this appeal.

Finally, the appellant submits that the considerations in sections 14(2)(e), (f), (g), (h) and (i) are not relevant in the circumstances of this appeal. She asserts that the farmer will not be exposed

to pecuniary or other harm but only "... to the responsibility to answer in the Courts of law for his legal responsibilities." The farmer's name and address cannot be considered "highly sensitive". Because the information at issue contains a record of direct statements of the farmer it must be accurate. If disclosure of the information causes damage to the reputation of the farmer, such damage will not be unfairly sustained.

In addition to referring to the listed considerations under section 14(2), the appellant maintains that there are other relevant circumstances which favour disclosure of the personal information of the farmer in this case. In this regard, the appellant suggests that the farmer achieved pecuniary gain as a result of the payment facilitated by the Municipality in the absence of the investigation and evaluation provided for under the Livestock Act. The appellant also suggests that this situation may be seen as an abuse of the Act as the farmer may be said to be "avoiding scrutiny" for potential criminal acts. Finally, the appellant suggests that disclosure would benefit the public as it would tend to restore public confidence in the integrity of the Municipality.

I have carefully considered the submissions of both parties on the application of the listed considerations in section 14(2) of the Act as well as all the circumstances of this case and I make the following findings:

- 1) I have been provided with insufficient evidence to conclude that the personal information of the farmer was provided to the Municipality in confidence. There is nothing on the face of the records themselves that indicates that there were any assurances of confidentiality provided to the farmer. The Municipality's submissions on this issue focus on the concept of a "confidential source" in the context of the law enforcement exemption under section 8(1)(d) of the Act. I will address this issue in the next section of this order.
- 2) I have not been provided with any explanation as to how the personal information can be considered to be "inaccurate or unreliable", "highly sensitive" or that its disclosure would expose the affected person **unfairly** to pecuniary or other harm or that it may **unfairly** damage the reputation of this individual. In this regard, it would have been extremely useful to have received representations from the farmer at some time during the processing of this appeal. This is particularly so given that the records contain both the personal information of the appellant and the farmer and are thus subject to the discretionary exemption in section 38(b) of the Act, as opposed to the mandatory exemption in section 14(1).
- 3) I do not accept the appellant's submissions that disclosure of the personal information is desirable for the purpose of subjecting the activities of the Municipality to public scrutiny or for the promotion of public health and safety. The Municipality's actions are recorded in the records and in all the other documentation provided to the appellant. As far as public health and safety are concerned, the appellant has not provided any cogent arguments on the relationship between this consideration and disclosure of the personal information of the farmer.
- 4) I reject the appellant's submissions on the application of the unenumerated circumstances of this case. Disclosure of the personal information of the farmer would not confirm for

the appellant whether this individual perpetrated a "fraud" on the Municipality with regard to the payment of compensation. There is no evidence that the Act is being utilized in an attempt to shield the farmer from scrutiny. Nor does the appellant present any evidence to support her submission that disclosure of the information "might tend" to restore public confidence in the integrity of the Municipality.

- 5) I do find that disclosure of the personal information is relevant to a fair determination of the appellant's rights in that she requires the personal information of the farmer in order to file a civil suit. As was the case in Order M-55, I find that section 14(2)(d) is a relevant consideration but only insofar as the name of the farmer is concerned, and not the address or telephone number.
- 6) Based on all of the above, I find that disclosure of the name of the farmer would not constitute an unjustified invasion of the personal privacy of this individual pursuant to section 38(b) of the Act

(D) Section 8(1)(d) as Applied to the Balance of the Records

I must now consider the application of section 8(1)(d) of the Act to the personal information of the farmer as it appears in all the records with the exception of the receipt. This section reads as follows:

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;

In order for a record to qualify for exemption under this section, the matter to which the record relates must first satisfy the definition of the term "law enforcement" found in section 2(1) of the Act. This term is defined as follows:

"law enforcement" means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b).

I understand the Municipality's submissions on this issue to mirror those with respect to the application of section 14(3)(b). That is, that the records relate to a law enforcement investigation carried out to determine if a breach of the Livestock Act, the Municipal By-laws or the DOL Act had occurred. However, as I found in my discussion of the application of section 14(3)(b), the

activities of the ACO in dealing with this incident were not in furtherance of any matters that could lead to proceedings in a court or tribunal where a penalty or sanction could be imposed.

Thus, I find that the records do not relate to a "law enforcement matter" and the exemption in section 8(1)(d) cannot apply.

(3) WHETHER THERE EXISTS A COMPELLING PUBLIC INTEREST IN DISCLOSURE OF THE PERSONAL INFORMATION OF THE FARMER UNDER SECTION 16 OF THE ACT

As I indicated, one of the grounds on which the appellant sought reconsideration of Order M-666 was on the basis that the order did not provide any reasons for my decision that a compelling public interest, which overrides the personal privacy exemption, did not exist. In her response to the Reconsideration Notice, the appellant reiterated these concerns and provided extensive submissions on why there was such a compelling public interest in this case.

In this reconsideration, I have found that disclosure of the name of the farmer as it appears in the ACO's notes, the Supervisor's notes and the DOB excerpts would not result in an unjustified invasion of this individual's personal privacy. Given that this information will be ordered disclosed to the appellant, I see no purpose in considering whether section 16 applies to the name as it appears in the receipt. However, were I to address this matter, I would not have found that there exists a compelling public interest which clearly outweighs the purpose of the exemption.

Therefore, only the telephone number and address of the farmer remain at issue. All of the appellant's submissions on the application of section 16, the "public interest override" are directed towards disclosure of the name of this individual. There is no argument that there is a compelling public interest in disclosure of the address and telephone number which outweighs the purpose of the personal privacy exemption. Accordingly, I find that section 16 does not apply to this information.

ORDER:

1. I rescind Order Provision 1 of Order M-666 in part as far as it relates to the name of the farmer as it appears in the ACO's notes, the Supervisor's notes and the DOB excerpts. I order the Municipality to disclose these records in their entirety to the appellant by sending her the name of the farmer by **August 14, 1996** and not earlier than **August 9, 1996**.
2. I uphold the decision of the Municipality to deny access to the address and telephone number of the farmer and, in all other respects, confirm the order provisions of Order M_666.

Original signed by: _____ July 9, 1996

Anita Fineberg
Inquiry Officer