



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

ORDER M-889

Appeal M_9600317

Township of Pittsburgh



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NATURE OF THE APPEAL:

The Township of Pittsburgh (the Township) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The requester sought access to copies of any documents or correspondence between the Township and two named individuals relating to a specified property which is owned by the requester.

The Township located a number of responsive records and notified the named individuals (the affected persons) of the request. The affected persons refused to consent to the disclosure of the responsive records. The Township then denied the requester access to the records, relying on the invasion of privacy exemption (section 14) contained in the Act. The requester (now the appellant) appealed the Township's decision.

A Notice of Inquiry was provided by this office to the Township, the appellant and the affected persons. Because the record appeared to contain the personal information of the appellant, as well as that of the affected persons, the parties were asked to address the possible application of section 38(b) of the Act. Representations were received from the appellant and the affected persons only.

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 each of the 33 records which remain at issue in this appeal and find that all of them contain the personal information of the appellant and her husband, as well as the affected persons.

INVASION OF PRIVACY

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 of exceptions to this general right of access.

Under section 38(b) of the Act, where a record contains the personal information of both the appellant and another individual and the Township determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Township has the discretion to deny the appellant access to that information. In this situation, the appellant is not required to prove that the disclosure of the personal information **would not** constitute an unjustified invasion of personal privacy of another person. Since the appellant has a right of access to his own personal information, the only situation under section 38(b) in which he 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 in section 14(3) applies to the personal information found in a record, the only way such a 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 that section 16 of the Act applies to the personal information.

If none of the presumptions contained in section 14(3) apply, the Township 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 affected persons submit that the information was compiled and can be identified as part of an investigation by the Township into a possible violation of its zoning by-law by the appellant and her husband. Accordingly, they argue that the records fall within the presumption in section 14(3)(b) of the Act. The affected persons also submit that they provided the requested information to the Township in confidence (section 14(2)(h)) and that the disclosure of this information will expose them unfairly to pecuniary or other harm (section 14(2)(e)).

The appellant submits that because the affected persons were able to obtain access to certain information about the property in question through earlier requests under the Act, as well as the federal Access to Information Act, she should similarly be entitled to do so. In addition, the appellant points out that the by-law prosecution undertaken by the Township was unsuccessful and that she has a right to know what has been said and written about her and her husband by the affected persons.

I have reviewed the records and the representations of the appellant and affected persons and make the following findings:

1. The records describe the on-going efforts by the affected persons to remedy what they perceive to be a lack of compliance with the zoning by-law by the appellant. I find that the information contained in the records relates primarily to the opinions of the affected persons about the activities taking place on the appellant's property. In my view, this information was not compiled, nor is it identifiable, as part of an investigation into a possible violation of law. Therefore, I find that section 14(3)(b) has no application in these circumstances.
2. I accept that the affected persons submitted their correspondence to the Township with an expectation of confidentiality, as contemplated by section 14(2)(h). I find that this is a relevant factor favouring the non-disclosure of the records. I do not, however, accept that the disclosure of the records **will** expose the affected persons **unfairly** to pecuniary or other harm within the meaning of section 14(2)(e).
3. The appellant's arguments appear to raise the possible application of section 14(2)(d), although they do not specifically make reference to this section. In my view, the disclosure of the information may be relevant to a fair determination of the appellant's rights with respect to the Township and, particularly, the affected persons.

4. Balancing the factors weighing in favour of disclosure against the considerations which favour the protection of the affected persons' privacy, I find that the privacy interests of the affected persons are adequately protected through the severing of any information in the records which may tend to identify them. The information which remains relates exclusively to the appellant and her husband. Accordingly, I find that the appellant's right of access to the remaining information outweighs any privacy considerations relating to the affected persons which may exist in the severed information.

In my view, once the personal information of the affected persons is removed from the records, the disclosure of the remaining information to the appellant would not result in an unjustified invasion of the personal privacy of the affected persons. I have provided the Township's Freedom of Information and Privacy Protection Co-ordinator with a highlighted copy of the records with a copy of this order. The highlighted portions are **not** to be disclosed.

ORDER:

1. I uphold the Township's decision to deny access to those portions of the records which I have highlighted on the copy provided to the Township's Freedom of Information and Privacy Protection Co-ordinator.
2. I order the Township to disclose to the appellant those portions of the records which are not highlighted by **February 19, 1997** but not before **February 14, 1997**.
3. In order to verify compliance with the terms of this order, I reserve the right to require the Township to provide me with a copy of the records which are disclosed in accordance with Provision 2.

Original signed by: _____
Donald Hale
Inquiry Officer

January 15, 1997