



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

ORDER M-884

Appeal M_9600276

Regional Municipality of Hamilton_Wentworth



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 Regional Municipality of Hamilton-Wentworth (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to a letter dated October 18, 1995 sent by a named individual to the Regional Chair of the Municipality. The Municipality notified the author of the letter (the affected person) of the request, pursuant to section 21(1) of the Act.

After considering the response of the affected person, the Municipality denied access to the letter. In its decision letter to the requester, the Municipality indicated that it had weighed the privacy rights of the affected person against the access rights of the requester (section 38(b) of the Act). The requester appealed the decision to deny access.

The record at issue consists of a two-page letter from the affected person to the Regional Chair of the Municipality.

This office provided a Notice of Inquiry to the appellant, the affected person and the Municipality. Representations were received from the appellant and the Municipality.

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. I have reviewed the record at issue and in my view, it contains the personal information of both the appellant and other identifiable individuals, including the affected person.

Section 36(1) of the Act gives individuals a general right of access to their own personal information held by a government body. However, this right of access is not absolute. Section 38 provides a number of exceptions to this general right of access. One such exemption is found in section 38(b), which reads as follows:

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

if the disclosure would constitute an unjustified invasion of another individual's personal privacy.

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

In my view, where the personal information relates to the requester, the onus should not be on the requester to prove that disclosure of the personal information **would not** constitute an unjustified invasion of the personal privacy of another individual. Since the requester 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 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. The Municipality submits that sections 14(3) and (4) do not apply in the circumstances of this appeal. I agree.

The Municipality states that the information in the record is highly sensitive and therefore, section 14(2)(f) is a relevant consideration.

I have carefully reviewed the record and I find that it contains information relating to the relationship between the appellant and the affected person. As I have indicated previously, the record also refers to other identifiable individuals. Following my review of the record, I would describe its contents as "highly sensitive" such that its disclosure would constitute an unjustified invasion of privacy of individuals other than the appellant. Accordingly, I find that section 14(2)(f) is a relevant consideration in the circumstances of this appeal.

In weighing the rights of the appellant against the rights of other individuals, I find that the privacy rights outweigh the right of access in the circumstances of this appeal. Therefore, I find that section 14(1) applies and the record is exempt from disclosure under section 38(b) of the Act.

I have also considered the application of section 4(2) of the Act. The key question raised by section 4(2) is one of reasonableness. It is not reasonable to require a head to sever information from a record if the end result is simply a series of disconnected words or phrases with no coherent meaning or value. A valid section 4(2) severance must provide a requester with information that is responsive to the request, while at the same time protecting the confidentiality of the portions of the record covered by the exemption. In reviewing the record, I find that the personal information of the appellant is intertwined with the personal information of other individuals such that a valid section 4(2) severance is not possible. In my view, it is not reasonable to sever the record.

ORDER:

I uphold the Municipality's decision.

Original signed by: _____

Mumtaz Jiwan
Inquiry Officer

January 3, 1997