



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

ORDER M-959

Appeal M_9700117

City of Toronto



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NATURE OF THE APPEAL:

The appellant submitted a request to the City of Toronto (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to all files in which his name appears. The City located 15 pages of records responsive to this request and granted partial access to them. The City denied access to portions of the records on the basis of sections 14(1) and 38(b) of the Act (invasion of privacy). The appellant appealed this decision.

During mediation, the appellant narrowed the records at issue to the withheld portions of pages 11 through 15.

This office sent a Notice of Inquiry to the City and the appellant. Despite efforts to locate one individual who is referred to in the records (the affected person), this office was unable to notify this person of the appeal. Representations were received from the City and the appellant.

The records at issue consist of three pages of handwritten notes and a two-page form which outlines allegations made by the affected person against the appellant. The records were all created as part of a case file held by the counselling staff at a centre (the Centre) which provides confidential counselling services to victims of violence.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 21(1) of the Act, personal information is defined as recorded information about an identifiable individual.

The appellant states that he is not interested in personal information of the affected person which relates to this individual before or after their relationship. He believes, however, that any comments or observations regarding their relationship would be his personal information. I agree that this information constitutes the appellant's personal information. However, it is also the personal information of the affected person. Accordingly, I find all of the information at issue to be the personal information of both.

Section 36(1) of the Act allows individuals access to their own personal information held by a government institution. However, section 38 sets out exceptions to this general right of access.

Where a record contains the personal information of both the appellant and other individuals, section 38(b) of the Act allows the City to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of personal privacy. On appeal, I must be satisfied that disclosure **would** constitute an unjustified invasion of another individual's personal privacy. The appellant is not required to prove the contrary.

Sections 14(2), (3) and (4) provide guidance in determining whether disclosure of personal information would constitute an unjustified invasion of personal privacy. Disclosing the types of

personal information listed in section 14(3) is presumed to be an unjustified invasion of personal privacy. If one of the presumptions applies, the City can disclose the personal information only if it falls under section 14(4) or if section 16 applies to it. If none of the presumptions in section 14(3) apply, the City must consider the factors listed in section 14(2), as well as any/all other relevant circumstances.

The City claims that the presumptions in sections 14(3)(a) (medical, psychiatric or psychological condition) and 14(3)(h) (racial or ethnic origin, sexual orientation or religious or political belief or associations) apply to exempt the information at issue.

In addition, the City claims the relevance of the following factors in section 14(2):

- the individual to whom the information relates will be exposed unfairly to pecuniary or other harm - section 14(2)(e);
- the information is highly sensitive - section 14(2)(f);
- the information was provided in confidence - section 14(2)(h);
- disclosure may unfairly damage the reputation of any person referred to in the record - section 14(2)(i).

The appellant expresses concern about the nature of the allegations regarding his behaviour and how knowledge of these allegations might affect his family. The appellant provided extensive representations primarily relating to his relationship with the affected person and both of their actions. He acknowledges that this information is highly sensitive (with respect to both himself and the affected person). He also implies that the information contained in the record is unlikely to be accurate or reliable, and thus raises the application of section 14(2)(g).

I have considered the representations of the parties and the information at issue in the records. Although I accept that disclosure may damage the reputations of both individuals, I am not persuaded that this damage would be **unfair**. Similarly, I am not persuaded that any individual referred to in the record will be exposed **unfairly** to pecuniary or other harm. Accordingly, these factors (sections 14(2)(e) and (i)) are not relevant in the circumstances.

Given the nature of the situation between the appellant and the affected person, I accept the possibility that the information contained in the record is unlikely to be accurate or reliable. Section 14(2)(g) is, therefore, relevant. However, although argued by the appellant in favour of disclosure, this factor, in my view, weighs against disclosure.

I find that, given the nature of the counselling services provided by the Centre, the information is highly sensitive and was supplied by the affected person in confidence. Accordingly, I find that sections 14(2)(f) and (h) are relevant in the circumstances.

Having considered the foregoing, in balancing the interests of the appellant and the affected person, I conclude that disclosure of the information at issue would constitute an unjustified invasion of the affected person's privacy.

The appellant has not raised the public interest override in section 16 of the Act, and I find that section 14(4) does not apply. Therefore, the personal information in the records is properly exempt under section 38(b) of the Act.

ORDER:

I uphold the City's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ July 8, 1997