



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

ORDER M-989

Appeal M_9700056

Municipality of Metropolitan Toronto



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NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Municipality of Metropolitan Toronto (the Municipality). The request was for access to records, including video or audio tapes, which relate to the grant application of the Anti-Racist Action organization. Also requested were the home addresses and home phone numbers of the principals of the organization.

The Municipality provided partial access to a large quantity of records and indicated that no audio recordings existed. The Municipality denied access in whole or in part to a number of records and a videotape under the following exemptions found in the Act:

- advice or recommendations - section 7
- danger to safety or health - section 13
- invasion of privacy - section 14

The appellant appealed the Municipality's decision to deny access to the records.

A Notice of Inquiry was sent to the appellant and the Municipality. Representations were received from the Municipality, and the appellant indicated that he wished to have letters he sent to the Appeals Officer considered as his representations.

The records at issue consist of a short videotape, briefing notes, letters and other correspondence, a transcript of a radio broadcast and a list of members of the Board of Directors.

DISCUSSION:

INVASION OF PRIVACY

Personal information is defined in section 2(1) of the Act, in part, as "recorded information about an identifiable individual." In my view, the home addresses and telephone numbers severed from the list of members of the Board of Directors (Records 76-78) qualify as personal information. As well, I am satisfied that the videotape, Records 30, 178-181, 192-196, 211-216 and the names, addresses, affiliations and telephone numbers severed from the Records 36, 68, 174, 176, 182-185, 190, 191, 197, 203-209, 277, 295, 296, 304 and 316 qualify as personal information.

Records 71-74 and 198-202 are letters written by individuals acting on behalf of an organization. Consistent with previous orders, I find that this information was provided by individuals in their professional capacity or the execution of employment responsibilities and, therefore, is not the personal information of these individuals (Orders 113, 149, 157, P-257 and P-326). As no other exemption has been claimed with respect to these letters, they should be disclosed to 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. One such circumstance is where disclosure does not constitute an unjustified invasion of personal privacy (section 14(1)(f)).

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.

If none of the presumptions in section 14(3) apply, the Municipality 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 Municipality submits that sections 14(3)(g) and (h) apply to the majority of the records. These sections read:

A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,

- (g) consists of personal recommendations or evaluations, character references or personnel evaluations; or
- (h) indicates the individual's racial or ethnic origin, sexual orientation or religious or political beliefs or associations.

The terms "personal evaluations" or "personnel evaluations" refer to assessments made according to measurable standards (Order P-447). The records contain views, opinions, comments and observations provided by the individuals which do not consist of personal or personnel evaluations. Neither can the information contained in the records be considered a personal recommendation or a character reference. Accordingly, I find that the presumption of unjustified invasion of personal privacy contained in section 14(3)(g) does not apply.

Having reviewed the records for which section 14(3)(h) has been claimed, I find that they contain information which indicates the political beliefs or associations of the individuals named therein. Accordingly, I find that the presumption of unjustified invasion of privacy contained in section 14(3)(h) applies.

The Municipality also claims that section 14(2)(f) applies to the records. This section reads:

A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is highly sensitive.

The Municipality submits that the records represent other individuals' fervent political views about a volatile issue, and express very real concerns about perceived violent acts of a public political organization. I am satisfied that disclosure of the records could cause the individuals named therein excessive personal distress and can, therefore, be considered highly sensitive. Accordingly, I find section 14(2)(f) applies.

Record 30 is a page of a briefing note, which contains a history of the organization which applied for the grant and description of two incidents. Once the names of individuals have been severed from the record, however, I find that disclosure of the remainder of the record would not constitute an unjustified invasion of personal privacy.

I find that neither section 14(4) nor section 16 (public interest override) apply to the information in the records.

In summary, I find that the videotape and Records 36, 68, 178-181, 192-196 and 211-216 and the withheld parts of Records 68, 76-78, 174, 176, 182-185, 190, 191, 197, 203-209, 277, 295, 296, 304 and 316 are properly exempt under section 14 of the Act. As well, I find that the names contained in Record 30 are properly exempt under section 14 of the Act, and that the remainder of the record is not.

ADVICE OR RECOMMENDATIONS

The Municipality claims that section 7(1) applies to Record 30. This section provides:

A head may refuse to disclose a record if the disclosure would reveal advice or recommendations of an officer or employee of an institution or a consultant retained by an institution.

To qualify as "advice" or "recommendations", the information contained in the records must relate to a suggested course of action, which will ultimately be accepted or rejected by its recipient during the deliberative process (Order 118).

The Municipality submits that Record 30 was created within the deliberative process, and I accept this submission. However, Record 30 contains information which can only be characterized as descriptive, as opposed to qualifying as advice or recommendations. Accordingly, I find that section 7(1) does not apply to Record 30.

DANGER TO SAFETY OR HEALTH

The Municipality claims that section 13 applies to Record 30. This section reads:

A head may refuse to disclose a record whose disclosure could reasonably be expected to seriously threaten the safety or health of an individual.

The Municipality submits that Record 30 contains highly sensitive personal information about identifiable individuals, and that disclosure could reasonably be expected to seriously harm or threaten the safety of individuals identified in the record.

In my discussion of the invasion of privacy exemption, I upheld the application of section 14 to the names of individuals in Record 30. Having reviewed a severed version of the record, I find I have not been provided with sufficient evidence to convince me that the disclosure of the remaining information could reasonably be expected to seriously threaten the safety or health of an individual. Accordingly, I find that section 13 does not apply.

ORDER:

1. I order the Municipality to disclose Record 30 with the exception of the names of individuals, and Records 71-74 and 198-202 to the appellant by sending him a by **September 26, 1997** but not before **September 22, 1997**.
2. I uphold the Municipality's decision not to disclose the remaining records or parts of records.
3. In order to verify compliance with the provisions of this order, I reserve the right to require the institution to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____
Holly Big Canoe
Inquiry Officer

_____ August 22, 1997