



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

ORDER M-1002

Appeal M-9700141

Municipality of Metropolitan Toronto



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NATURE OF THE APPEAL:

The Municipality of Metropolitan Toronto (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to all of the requester's information on file with the Municipality.

The Municipality granted partial access to the records responsive to the request. Access was denied to the severed portions of the remaining records pursuant to the following sections of the Act.

- invasion of privacy - sections 38(b), 14(2)(f) and (h), 14(3)(b) and (c)
- law enforcement - section 8(1)(b)
- deny requester's own information - section 38(a)

The requester (now the appellant) appealed this decision. This office sent a Notice of Inquiry to the Municipality, the appellant and an affected person. Representations were received from the Municipality and the appellant. The Appeals Officer raised section 54(c) of the Act with respect to any information relating to individuals who are less than 16 years of age.

In response to the Notice of Inquiry, the appellant stated that he is not interested in any information concerning his children. Therefore, Records 58, 60, 61 and 118 and the information contained in other records relating to the appellant's children is no longer at issue. Accordingly, I need not consider section 54(c) of the Act.

The information at issue in this appeal is consists of severances made to the following records: Income Maintenance/Eligibility Record, Client profile, Special Assistance/ Supplementary Aid and facsimile transmission sheets.

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. The Municipality states that the records contain personal information of the appellant and the affected person. Having reviewed the records, I am satisfied that all the records contain the personal information of the appellant. Each of the records to which section 38(b) has been applied also contain the personal information of the affected person.

Section 36(1) of the Act allows individuals access to their own personal information held by an 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 Municipality 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 Municipality 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 Municipality must consider the factors listed in section 14(2), as well as any/all other relevant circumstances.

In support of its claim that section 38(b) applies to the records, the Municipality argues that the presumptions found in section 14(3)(b) and/or section 14(3)(c) apply to Records 7, 8-12, 16-18, 77-88, 119 and 121-122.

Section 14(3)(c) states that a disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information relates to eligibility for social service or welfare benefits or to the determination of benefit levels.

In my view, all the information severed from Records 7, 8-12, 16-18, 77-88, 119 and 121-122 relates to the "eligibility for social service or welfare benefits" of the affected person, as described in section 14(3)(c).

Section 4(2) of the Act obliges the institution to disclose as much of any responsive record as can reasonably be severed without disclosing material which is exempt. In this appeal, I find that the personal information of the appellant is so closely interwoven with that of the affected person in the undisclosed portions of the record that it is impossible to separate it. Accordingly, in my view, the presumption of an unjustified invasion under section 14(3)(c) applies to all of the severed information.

Having considered all the circumstances of this case, I find that disclosure of this information would constitute an unjustified invasion of the personal privacy of an individual other than the appellant. Therefore, the exemption in section 38(b) applies to Records 7, 8-12, 16-18, 77-88, 119 and 121-122.

The Municipality makes only a general reference to section 14 in support of its claim that section 38(b) applies to Records 4 and 51. However, the information relating to the affected person in Records 4 and 51 has clearly been supplied by the appellant to the Municipality. Numerous orders have stated that to deny information about another individual which was originally supplied by the requester/appellant would lead to an "absurd result" (Orders M-993, M-976, M-966 and M-444). This principle applies to the severed information found in Records 4 and 51. As no other exemptions have been claimed for this information, it should be disclosed to the appellant.

ORDER:

[IPC Order M-1002/September 18, 1997]

1. I order the Municipality to disclose the information severed from Records 4 and 51 by sending the appellant a copy on or before **October 22, 1997** but not earlier than **October 17, 1997**.
2. I uphold the decision of the Municipality with respect to Records 7, 8-12, 16-18, 77-88, 119 and 121-122.

Original signed by: _____
Marianne Miller
Inquiry Officer

_____ September 18, 1997