



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

ORDER M-1022

Appeal M-9700210

The Corporation of the Town of Milton



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NATURE OF THE APPEAL:

The Corporation of the Town of Milton (the Town) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for the name of the complainant which was included in an occurrence report created by the Town's Municipal Law Enforcement Officer in the course of his investigation of a possible violation of the Town's Property Standards by-law. The appellant is the owner of the property which was the subject of the complaint.

The Town located the requested information in the occurrence report and denied access to it, claiming the application of the following exemptions contained in the Act:

- law enforcement - section 8(1)(d)
- discretion to refuse requester's own information - section 38(a)
- invasion of privacy - section 38(b)

The appellant appealed the Town's decision. A Notice of Inquiry was provided to the appellant, the Town and to the individual whose name appears on the occurrence report (the complainant). Representations were received from all three parties.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

I have reviewed the occurrence report which contains the requested information to determine if it contains personal information and, if so, to whom the information relates.

The occurrence report contains the name of the complainant, and reveals that this individual may have filed a complaint against the appellant. In my view, this constitutes the personal information of both the complainant and the appellant.

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 other individuals and the Town determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Town has the discretion to deny the appellant access to that information.

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 found 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 where 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 (Order M-170).

If none of the presumptions contained in section 14(3) apply, the Town must consider the application of the factors listed in section 14(2) of the Act, as well as all other considerations that are relevant in the circumstances of the case.

The Town submits that the name of the complainant is exempt under section 14(3)(b) of the Act which states:

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

was compiled and is identifiable as part of an investigation into a possible violation of law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;

As noted above, the name of the complainant is recorded on a document entitled "Occurrence Report." The Town indicates that the complaint was filed with reference to a possible breach of the Town's Property Standards by-law. As a result of the complaint, the Town's Municipal Law Enforcement Officer conducted an inspection of the appellant's property.

I am of the view that the complainant's name is included in a record which is identifiable as part of the Town's investigation into a possible violation of its Property Standards by-law. Accordingly, the section 14(3)(b) presumption applies to this information. The fact that no legal proceedings were initiated does not negate the applicability of this presumption (Orders P-223 and P-237).

The appellant maintains that the name of the complainant should be disclosed because an individual who is complained about should know the identity of the person who filed the complaint.

As previously noted, the only way in which a presumption under section 14(3) of the Act may be rebutted is where the information falls within section 14(4) of the Act or where the public interest override is found to apply.

I find that the information does not fall within section 14(4) of the Act. Nor has the appellant argued the application of section 16 of the Act. In these circumstances, the presumption in section 14(3)(b) has not been rebutted. The disclosure of the name of the complainant would thus constitute an unjustified invasion of this individual's personal privacy under section 38(b) of the Act and should not be disclosed.

ORDER:

I uphold the Town's decision.

Original signed by: _____
Donald Hale
Inquiry Officer

_____ October 10, 1997