



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

ORDER M-1025

Appeal M-9700189

Regional Municipality of Haldimand-Norfolk



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/Téloc: 416-325-9195
TTY: 416-325-7539
<http://www.ipc.on.ca>

NATURE OF THE APPEAL:

The appellant made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the Regional Municipality of Haldimand-Norfolk (the Municipality). The request was for access to a record relating to a municipal by-law enforcement matter. The Municipality located a record responsive to the request and denied access to it based on the exemptions in section 8(1) (law enforcement) and section 12 (solicitor-client privilege) of the Act. The appellant appealed the Municipality's decision.

This office provided a Notice of Inquiry to the appellant, the Municipality and the individual to whom the record relates (the affected person). As the record at issue appears to contain personal information, the Appeals Officer raised the possible application of section 14 of the Act (invasion of privacy).

Representations were received from the Municipality only.

RECORD:

The record at issue in this appeal consists of a two page letter written to one of the Municipality's By-Law Enforcement Officers by counsel for the affected person regarding a by-law enforcement matter.

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 record relates to a by-law enforcement matter regarding the affected person's commercial use of his property. Many previous orders of this office have held that information about an individual in his or her professional or business capacity does not qualify as personal information. However, in the circumstances of this appeal, the information in the record pertains to the advice given to the affected person by his counsel, and I find that it concerns the affected person personally. Accordingly, I find that the record contains the personal information of the affected person only.

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.

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 disclosure of the letter would result in an unjustified invasion of personal privacy as the options available to the affected person which are referred to in the letter, if disclosed, could have a negative effect on his business plans. The Municipality argues that premature release of this information will prejudice the affected person's rights in considering his counsel's advice with respect to an Ontario Municipal Board re-hearing of the matter in contention.

The appellant did not submit representations in this appeal. In my view, I have not been provided with sufficient information for me to conclude that any of the factors which favour disclosure of the personal information apply in the circumstances of this appeal.

In the absence of any factors favouring disclosure, therefore, I find that the mandatory exemption provided by section 14(1) of the Act applies to the personal information contained in the record.

ORDER:

I uphold the Municipality's decision.

Original signed by: _____
Laurel Cropley
Inquiry Officer

_____ October 28, 1997