



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

ORDER M-1043

Appeal M-9700201

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 Regional Municipality of Haldimand Norfolk (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for the name of the individual who made a complaint about a possible violation of the Municipality's zoning by-laws. The requester is the owner of the property which was the subject of the complaint.

The Municipality located the requested information and denied access to it, claiming the application of the following exemption contained in the Act:

- law enforcement - sections 8(1)(a) and (b)

The requester (now the appellant) appealed the Municipality's decision. A Notice of Inquiry was provided to the appellant and the Municipality. Because the record appeared to contain personal information, the following sections of the Act were raised in the Notice of Inquiry:

- discretion to refuse requester's own information - section 38(a)
- invasion of privacy - section 38(b)

Representations were received from both 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.

The record contains the name of the complainant and reveals that this individual 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 Municipality determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the Municipality 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 Municipality 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.

Section 14(3)(b) of the Act 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;

The record indicates that the complaint was filed with respect to a possible breach of the Municipality's zoning by-laws. The complainant asked the Municipality to investigate.

The Municipality states that complaint callers are asked to identify themselves to law enforcement officers but are assured of confidentiality. The Municipality claims that failing to maintain confidentiality would hurt the credibility of officers who need the cooperation of complainants to successfully resolve investigations.

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.

I am of the view that the complainant's name is included in a record which is identifiable as part of the Municipality's investigation into a possible violation of its by-laws. Accordingly, the section 14(3)(b) presumption applies to this information. This presumption applies whether or not legal proceedings were initiated (Order M-1002).

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.

Because I have found that the information is exempt under section 14(3)(b), I need not consider section 8(1)(a) and (b) of the Act.

ORDER:

I dismiss the appeal.

Original signed by: _____
Marianne Miller
Inquiry Officer

_____ November 25, 1997