



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

ORDER M-1059

Appeal M-9700254

City of Scarborough



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NATURE OF THE APPEAL:

The City of Scarborough (the City) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to records relating to a dog attack which occurred at a specified address. The requester was the victim of the attack. The City located a number of responsive records and granted access to them, in their entirety, with the exception of the names and telephone numbers of the dog owners (the affected persons). Access to this information was denied under section 14(1) of the Act.

The requester (now the appellant) appealed the City's decision. A Notice of Inquiry was sent to the City, the dog owners (the affected persons) and the appellant. Representations were received from the City and the appellant. Notices sent to two of the affected persons were returned to this office as undeliverable.

DISCUSSION:

PERSONAL INFORMATION

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual. I have reviewed the records at issue and find that they contain the names and telephone numbers of the affected persons. This information qualifies as the personal information of these individuals.

Those portions of the records which were disclosed to the appellant also contain his own personal information. Because the responsive records in their unsevered state contain the personal information of both the appellant and the affected persons, I will determine whether the undisclosed portions of the records are exempt under section 38(b) of the Act, and not section 14(1).

INVASION OF PRIVACY

Section 36(1) of the Act allows individuals access to their own personal information held by a government 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 City to withhold information from the record if it determines that disclosing that information would constitute an unjustified invasion of another individual's 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 City can disclose the personal information only if it also falls under section 14(4) or if section 16 applies to it. If none of the presumptions in section 14(3) apply, the City must

consider the factors listed in section 14(2), as well as all other relevant circumstances. In the present appeal, I find that the personal information of the affected persons is not subject to any of the presumptions in section 14(3).

The City submits that the disclosure of the names and telephone numbers of the affected persons would result in an unjustified invasion of their personal privacy. It argues that, following my decision in Order M-876, this information is “highly sensitive” within the meaning of section 14(2)(f) and that this consideration outweighs any factors which may exist favouring the disclosure of the information to the appellant.

In Order M-876, again in the context of a complaint following an attack by a dog, I found that the owners’ names and telephone numbers could properly be described as “highly sensitive” for the purposes of section 14(2)(f) of the Act. I adopt that finding for the purposes of the present appeal and find that the names and telephone numbers of the affected persons is “highly sensitive” within the meaning of section 14(2)(f). This consideration favours the protection of the affected persons’ privacy.

The appellant submits that he requires the names and telephone numbers of the affected persons in order to commence a legal action against them for the damages which he suffered as a result of the attack. This submission is referable to section 14(2)(d) of the Act, which favours the disclosure of the information. In the circumstances of this appeal, I find that the appellant has established that section 14(2)(d) is a relevant consideration, but only with respect to the names of the affected persons. The appellant may have a cause of action with respect to the actions of the affected persons but he requires only their names in order to commence a lawsuit.

In my view, the disclosure of the affected persons’ telephone numbers to the appellant is not necessary to allow the appellant to pursue his civil action. I find that the disclosure of the telephone numbers would, accordingly, be an unjustified invasion of their personal privacy under section 38(b) and they ought not to be disclosed.

Balancing the appellant’s right of access against the affected persons’ privacy rights, I find that the disclosure of the names of the affected persons would not result in an unjustified invasion of their personal privacy. In my view, the appellant’s right of access to this information outweighs any right which the affected persons may have in the non-disclosure of their names alone. The affected person’s names are, accordingly, not exempt from disclosure under section 38(b) of the Act and should be disclosed to the appellant.

ORDER:

1. I order the City to disclose the names of the affected persons to the appellant by February 11, 1998, but not before February 6, 1998.

2. In order to verify compliance with this order, I reserve the right to require the City to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: _____

_____ January 7, 1998

Donald Hale
Inquiry Officer