



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER M-1146**

## **Appeal M-9800044**

### **Haliburton, Kawartha, Pine Ridge District Health Unit**



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## **NATURE OF THE APPEAL:**

The appellant submitted a request to the Haliburton Kawartha Pine Ridge District Health Unit (the Health Unit) under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to the complete Health Unit Report pertaining to an incident in which a dog allegedly bit the appellant, causing her injury. In particular, the appellant indicated that she was seeking access to the name and address of the dog owner.

The Health Unit located records responsive to the request, and granted access to the majority of the information in them. In doing so, the Health Unit provided access to the name of the dog owner but refused to disclose this person's address and telephone number on the basis of section 14 of the Act (invasion of privacy).

The appellant appealed the Health Unit's decision to deny access to the dog owner's address.

In her letter of appeal, the appellant indicates that she intends to commence a civil action for damages as a result of the incident. She states that a defendant's (the dog owner) name is only one half of the information needed to commence an action against a person in Ontario. According to the appellant, the other mandatory piece of information is the defendant's address. The appellant also submits that without the address of the dog owner, a statement of claim cannot be served on the defendant and this, in turn, will allow the defendant to ignore the statement of claim and avoid having to deliver a statement of defence to the claim. The appellant further points out that the inability to serve the statement of claim in accordance with the rules of the court will prevent the appellant from successfully obtaining any default judgment against the dog owner.

In support of this submission, the appellant referred to the relevant provisions of the Ontario Rules Of Civil Procedure regarding preparation of the statement of claim, service, delivery of the statement of defence, application for default judgment, and dismissal for delay (rules 14, 16, 18, 19 and 24).

This office sent a Notice of Inquiry to the appellant, the Health Unit and the dog owner. As the record at issue appears to contain the personal information of both the requester and the dog owner, the Notice raised the possible application of section 38(b) of the Act (invasion of privacy).

Moreover, in view of the appellant's submissions regarding preparation and service of the statement of claim, the parties were requested to address the following three questions:

- (1) Is there another way in which the appellant can determine the address of the dog owner?
- (2) Is the appellant [plaintiff] required to personally serve the statement of claim on the dog owner [defendant] in order to initiate the action or is there some other method of service available to her?
- (3) How are the circumstances in this appeal different from those in Orders M-39, M-114 and M-746 which have held that disclosure of the address of a potential defendant would constitute an unjustified invasion of personal privacy?

Representations were received from the appellant and the Health Unit. The appellant's representations are in addition to those provided in her letter of appeal.

## **RECORD:**

The record at issue is a one-page document entitled: Rabies Report. The only information at issue is the address of the dog owner.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined to mean, in part, recorded information about an identifiable individual. I have reviewed the record and find that it contains the personal information of the appellant, as well as the dog owner.

### **INVASION OF PRIVACY**

#### **The statute**

Where a record contains the personal information of both the appellant and another individual, section 38(b) allows the Health Unit 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.

This is distinguishable from the case where the record only contains the personal information of another individual. In such a case, section 14(1) of the Act prohibits the institution from disclosing it except in the circumstances listed in sections 14(1)(a) through (f). In particular, section 14(1)(f) permits disclosure if it "does not constitute an unjustified invasion of personal privacy." Accordingly, in such a case, I must be satisfied that disclosure **would not** constitute an unjustified invasion of another individual's personal privacy.

In both situations, sections 14(2) and (3) of the Act provide guidance in determining whether disclosure of personal information would result in an unjustified invasion of the personal privacy of the individual to whom the information relates. Section 14(2) provides some criteria for the head to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy.

The only way in which a section 14(3) presumption can be overcome is if the personal information at issue falls under section 14(4) of the Act or where a finding is made under section 16 of the Act that there is a compelling public interest in disclosure of the information which clearly outweighs the purpose of the section 14 exemption.

### **Health Unit's representations**

The Health Unit does not rely on any of the presumptions in section 14(3) of the Act. Nor does it specifically refer to any of the factors in section 14(2) which favour privacy protection. The Health Unit's representations focus on whether the appellant has established the relevancy of section 14(2)(d) (fair determination of rights).

In this regard, the Health Unit addressed the three questions posed in the Notice of Inquiry. With respect to question three, the Health Unit is of the view that it should be able to rely on the rulings of previous orders of this office in similar fact situations. In particular, the Health Unit notes that in Orders M-39 and M-746, it was found that release of an individual's address was not required in order for the appellant to proceed with the civil action. The Health Unit recognizes that Order M-114 was decided in the absence of evidence on the issue and that it is distinguishable on that account.

In regard to question one, the Health Unit believes that the appellant can determine the address of the dog owner by other means, including telephone listings, both in telephone directories and electronic format through the internet. Further, the Health Unit argues that if there is some legal requirement for access to the dog owner's address, then the appellant should be in a position to use normal court processes rather than the Act to obtain this information.

The Health Unit indicates that it is unable to respond to question two as this information is not known to it.

### **Appellant's representations**

In response to the three questions referred to above, the appellant outlines the steps already taken by her in an attempt to locate the dog owner. She indicates that she was given both the first and last name of the dog owner, but that the first name is a shortened version of a name, and that it is a name that could be used by either gender. The appellant states that she does not know if the dog owner is a man or a woman, or if this person resides in the community where the attack occurred or in a surrounding community. The appellant also points out that the Kawartha Lakes Region is a vacation destination and that individuals visiting the area can reside a considerable distance away from the location of the attack.

The appellant details her efforts to locate the dog owner by way of the Bell Telephone listings and suggests that the listing may not even be in the telephone book if, for example, the dog owner is a woman who uses her husband's name or a young person.

The appellant indicates that although it is sometimes possible to locate a person by conducting a driver licence search with the Ministry of Transportation, this is not possible as the name alone is insufficient for such a search to be carried out.

With respect to question two, the appellant refers to the Rules of Civil Procedure. The appellant does not indicate whether it is open to her to bring a motion before a court to obtain this information.

Regarding question three, the appellant points out that the orders referred to above were all decided in the absence of sufficient evidence on the issue. She also disagrees with the conclusions of former Commissioner Tom Wright in Order M-39 where he states “In my view, the home address of the vendor is not required in order for the appellant’s client to proceed with a civil action, should he decide to do so.” The appellant indicates that the Rules of Civil Procedure require the following in order to commence and advance a civil action:

In order to commence and advance a civil action, [the appellant], must issue a Statement of Claim in the Ontario Court (General Division). The format of the Statement of Claim, as prescribed in the Ontario Civil Practice 1998 (Form 14A) requires that [the appellant] state in the claim the name **and address** of each defendant in the lawsuit. [emphasis added]

#### **Application of section 14(2)(d)**

Section 14(2)(d), a factor weighing in favour of disclosure, reads:

A judge, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,

the personal information is relevant to a fair determination of rights affecting the person who made the request.

Assistant Commissioner Tom Mitchinson developed a test for the application of section 14(2)(d) in Order P-312. In that order, he stated:

In my view, in order for section 21(2)(d) [section 14(2)(d) of the municipal Act] to be regarded as a relevant consideration, the appellant must establish that:

- (1) the right in question is a legal right which is drawn from the concepts of common law or statute law, as opposed to a non-legal right based solely on moral or ethical grounds; **and**
- (2) the right is related to a proceeding which is either existing or contemplated, not one which has already been completed; **and**
- (3) the personal information which the appellant is seeking access to has some bearing on or is significant to the determination of the right in question; **and**

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- (4) the personal information is required in order to prepare for the proceeding or to ensure an impartial hearing.

In the circumstances of this case, the appellant intends to seek from the court a determination of the dog owner's liability (pursuant to the Dog Owners' Liability Act) and her right to recover damages from the dog owner. Thus, the appellant is seeking a determination of legal rights, based in statute and common law. Further, I am satisfied that the proposed action, although it does not yet exist, is reasonably contemplated.

The more difficult issue is the extent to which the dog owner's address is required for the purpose of the proposed action. In my view, as a general proposition, in order to obtain a fair determination of his or her rights in a contemplated civil action in the Ontario Court (General Division), a potential plaintiff must not only be able to identify a defendant by name in a statement of claim (rule 14.06(1)), but also must be able to personally serve that individual with the statement of claim (rules 14.08(1) and 16.01). Otherwise, the action either cannot be commenced or, if so, cannot be maintained, in the absence of specific court approval. This does not necessarily mean that a potential plaintiff, as a requester under the Act, requires a defendant's or potential defendant's name and address in all cases. The degree of disclosure necessary to allow a plaintiff to commence and maintain an action will depend on the circumstances of the case.

I have reviewed a number of orders issued by this office regarding requests for the name and address of an individual for the purpose of commencing legal action (Orders M-39, M-55 and M-746). In my view, Order M-114 is distinguishable as it does not relate to a similar fact situation, nor was it decided on the basis of any evidence on this issue. Both Orders M-39 and M-55 were decided in light of the four part test for section 14(2)(d) referred to above.

In Order M-39, former Commissioner Tom Wright found that:

In order for section 14(2)(d) of the Act to be a relevant consideration, all four of these conditions must be met. In response to the appellant's request, the MLC disclosed the vendor's name. In my view, the home address of the vendor is not required in order for the appellant's client to proceed with a civil action, should he decide to do so. Accordingly, I find that section 14(2)(d) is not a relevant consideration in the circumstances of this appeal.

Based on this test, Assistant Commissioner Mitchinson concluded in Order M-55 that:

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 name of the child who allegedly threw the stone. The appellant's clients have a legal right to add this child as a party to the existing civil action, and the child's name is required to do so. However, I find that the requirements of section 14(2)(d) have not been established with respect to the address of the child who allegedly threw the stone, or the names and addresses of the other children who were apparently witnesses to the incident.

This four part test was not referred to in Order M-746. In this order, I considered the overall circumstances of the appeal, and found:

The appellant has indicated that she has attempted to obtain the identity of the applicant by other means and has been unable to garner the co-operation of other attendees at the event. 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 name of the applicant. I am satisfied that, as a result of injuries suffered at the event, the appellant has a legal right to bring civil action against those involved, and the applicant's name is required to do so. The appellant's representations do not indicate, however, that similar considerations are relevant with respect to the applicant's address. Accordingly, I find that the requirements of section 14(2)(d) have not been established with respect to the applicant's address.

It is apparent that the rationale for determining that the defendant's home address should not be disclosed was not fully articulated in the above-noted orders. It is also apparent that, in at least one case, the evidence was insufficient to make such a determination. However, in examining the circumstances in each of these cases, I note that the defendants or potential defendants could be located and thus served with documents with relatively minimum effort once their names were known. In my view, this factor makes these cases distinguishable from the current appeal.

In this appeal, the circumstances are such that the dog owner could be a resident of the community in which the attack took place or any other community in Ontario or beyond. In my view, the appellant's fruitless efforts to pinpoint an address for the person indicate that it would be very difficult to locate the dog owner for the purpose of serving a statement of claim personally, given what little information the appellant now has. This is especially so, in light of the fact that the dog owner's gender is not clear from the name as disclosed by the Health Unit, and the name is relatively common.

In my view, wherever possible, the Act should be interpreted and applied such that it is not used as a shield to prevent individuals from seeking justice against those who may be involved in a "wrongful" action of any nature.

To conclude, it is my view that in these circumstances the appellant requires the dog owner's address in order to commence and maintain an action. Therefore, section 14(2)(d) is a relevant and highly substantial factor weighing in favour of disclosure.

### **Alternate methods of access**

I will now consider the extent to which the dog owner's address may be available by other means. First, with regard to the court, I have reviewed the relevant provisions of the Rules of Civil Procedure. I have

also taken into account court practices of the Ontario Court (General Division) with respect to the commencement of civil actions.

The appellant could commence an action against the dog owner by way of a statement of claim under rules 14.03 and 14.07, even in the absence of a defendant's address. While form 14A of the Rules of Civil Procedure indicates that a plaintiff should include the name and address of each defendant in the statement of claim, in practice, the registrar will issue a statement of claim without a defendant's address, or with an "address unknown" notation. In my view, and contrary to the appellant's assertions, the comments made by former Commissioner Wright in Order M-39 accurately reflect this practice.

Once the claim is issued, the appellant, as plaintiff, could bring a motion under rule 30(10) for the production of the record in question from the Health Unit, in order to obtain the address. Having said this, however, it must be recognized that the court may in its discretion decline any motion brought by the appellant under rule 30(10). Thus, it is by no means certain that the appellant will be able to obtain the address in this way. Moreover, in my view, the fact that a person may be able to obtain access to information through court processes, while relevant in the context of section 38(b), should not, in and of itself, be determinative of whether access should be granted under the Act. This is reinforced by sections 51(1) and (2), which provide respectively that the Act does not impose any limitation on the information otherwise available by law to a party to litigation, and does not affect the power of a court or a tribunal to compel a witness to testify or compel the production of a document. (See, for example, Orders 48, P-447 and P-689 which have interpreted these sections to mean that although the alternate means of obtaining information may be available to an appellant, its availability under the Act must be determined independently.)

Regarding other possible avenues to obtain the information at issue, as I indicated above, the appellant has described in detail the fruitless efforts she has made to locate the dog owner's address, based on the information available to her. In the circumstances, I am satisfied that it would be very difficult, if not impossible, for the appellant to ascertain the dog owner's address through other means, in light of the paucity of information available to her. I note that the name given to the appellant is relatively common, and that it is unclear whether the person was a resident of the area in which the incident took place, or some other area within or outside Ontario.

I find that the appellant *may* be able to obtain the requested information by using the court processes, but it is unlikely that she would be able to do so through other means. Overall, this is a relevant but not highly substantial factor weighing against disclosure.

### **Privacy concerns relating to address information**

I have considered the rationale for protecting the address of an individual. One of the fundamental purposes of the Act is to protect the privacy of individuals with respect to personal information about themselves held by institutions (section 1(b)).



In my view, there are significant privacy concerns which result from disclosure of an individual's name and address. Together, they provide sufficient information to enable a requester to identify and locate the individual, whether that person wants to be located or not. This, in turn, may have serious consequences for an individual's control of his or her own life, as well as his or her personal safety. This potential result of disclosure, in my view, weighs heavily in favour of privacy protection under the Act.

This is not to say that this kind of information should never be disclosed under the Act. However, before a decision is made to disclose an individual's name and address together to a requester, there must, in my view, exist cogent factors or circumstances to shift the balance in favour of disclosure.

### **Conclusion**

In the circumstances of this appeal, there do not exist any presumptions against disclosure under section 14(3) of the Act. Consequently, the issue of whether disclosure of the dog owner's address would constitute an unjustified invasion of privacy must be determined by balancing the factors in section 14(2) as well as any other relevant considerations.

The appellant may have other means of obtaining the requested information, and address information generally should not be disclosed in the absence of cogent factors weighing in favour of disclosure. These factors weigh against the appellant's position.

On the other hand, I have found that the section 14(2)(d) "fair determination of rights" factor weighs heavily in the appellant's favour.

It should be remembered that the analysis of this issue is being conducted under section 38(b) of the Act which recognizes that individuals have a greater right to records which contain their own personal information. As I indicated above, the onus is on the Health Unit and the dog owner to establish that disclosure of the dog owner's address **would** constitute an unjustified invasion of privacy.

In the circumstances, I find that the section 14(2)(d) factor outweighs the factors in favour of privacy protection. Therefore, I am not persuaded that disclosure of the dog owner's address to the appellant **would** constitute an unjustified invasion of personal privacy and the information. Accordingly, I find that the dog owner's address is not exempt under section 38(b).

### **ORDER:**

1. I order the Health Unit to disclose the address of the dog owner to the appellant by giving her a copy of this record by **October 9, 1998** but not earlier than **October 5, 1998**.
2. In order to verify compliance with the provisions of this order, I reserve the right to require the Health Unit to provide me with a copy of the record disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_

Laurel Cropley  
Adjudicator

\_\_\_\_\_ September 4, 1998