



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

# **ORDER MO-1175**

**Appeal MA-980156-1**

**Regional Municipality of York**



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## **NATURE OF THE APPEAL:**

The Regional Municipality of York (the Municipality) received a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act). The request was for access to the requester's social services file, as well as the file maintained by the Municipality's Eligibility Review Officer (the ERO). The requester is receiving benefits under the General Welfare Assistance Act (the GWA) and had been assessed an overpayment following an investigation by the Municipality into her situation.

The Municipality identified 74 records as responsive to the request and granted access to some of them, in their entirety. The Municipality denied access to the remaining responsive records, claiming the application of the following exemptions contained in the Act:

- law enforcement - sections 8(1)(b) and (d) and 8(2)(a)
- invasion of privacy - section 14(1)

The requester, now the appellant, appealed the Municipality's decision.

During the mediation of the appeal, the Municipality agreed to disclose Records 12, 24-27, 32-37, 59, 70, 73 and 74. The appellant also advised that while she continues to seek access to the records for which the section 14(1) exemption has been claimed, she is no longer interested in obtaining access to the personal information of any other identifiable individuals which may be included in the records.

A Notice of Inquiry was provided to the appellant and the Municipality. Because the records appeared to contain the personal information of the appellant and other identifiable individuals, the parties were also asked to address the possible application of sections 38(a) (discretion to refuse requester's own information) and (b) (invasion of privacy) to the records. Representations were received from both parties.

The records at issue in this appeal consist of a one-page ERO Case Review sheet from the appellant's social services file and 59 documents from the ERO's file. This file includes Welfare Fraud Database Control forms, ERO Reports and review sheets, caseworker narratives and referrals, various Declarations and Caution forms, a residential tenancy agreement, various computer printouts, notes of meetings and correspondence.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

Under section 2(1) of the Act, "personal information" is defined, in part, to mean recorded information about an identifiable individual, including any identifying number assigned to the individual and 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.

Having reviewed the information contained in the records, I find that all of them contain information relating to the ERO's investigation to determine whether an overpayment of benefits had been made to the appellant. On that basis, I find that all of the records contain the personal information of the appellant. I

further find that some of the records also contain personal information which relates to other identifiable individuals, including the appellant's children, her alleged co-resident, the parents and grandparents of the appellant and the alleged co-resident, as well as some of the neighbours and the landlords of both the appellant and the alleged co-resident (the affected persons).

In addition, some of the records contain references to certain individuals by virtue of their employment functions or duties, including the ERO and a number of social workers employed by the Municipality. However, in the circumstances of this appeal, because these references are made to these individuals in their professional or employment capacity, I find that the information does not constitute their personal information.

### **DISCRETION TO REFUSE REQUESTER'S OWN INFORMATION/LAW ENFORCEMENT**

Under section 38(a) of the Act, the Municipality has the discretion to deny access to an individual's own personal information in instances where certain exemptions would otherwise apply to that information. The Municipality submits that sections 8(1)(b) and 38(a) apply to exempt all of the records from disclosure as the information was compiled in the course of a law enforcement investigation into whether the appellant had received an improper overpayment. The Municipality also argues that Records 42 and 44 contain information which was supplied by a confidential source in respect of a law enforcement matter and that these documents are, accordingly, exempt under sections 8(1)(d) and 38(a). Finally, the Municipality claims that Records SS1, 4, 9 to 11, 23 and 50 constitute law enforcement "reports" and are, therefore, exempt under sections 8(2)(a) and 38(a).

Sections 8(1)(b) and (d) and 8(2)(a) states as follows:

- (1) A head may refuse to disclose a record if the disclosure could reasonably be expected to,
  - (b) interfere with an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;
  - (d) disclose the identity of a confidential source of information in respect of a law enforcement matter, or disclose information furnished only by the confidential source;
- (2) A head may refuse to disclose a record,

- (a) that is a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law;

In order for a record to qualify for exemption under these sections, the investigation which generated the records must first satisfy the definition of the term “law enforcement” as found in section 2(1) of the Act. This definition reads as follows:

“law enforcement” means,

- (a) policing,
- (b) investigations or inspections that lead or could lead to proceedings in a court or tribunal if a penalty or sanction could be imposed in those proceedings, and
- (c) the conduct of proceedings referred to in clause (b);

**Was the investigation which gave rise to compilation of the records a “law enforcement” investigation for the purposes of sections 8(1)(b), (d) and 8(2)(a)?**

In Order P-1624, I adjudicated an appeal involving the denial of access to records compiled by an ERO on behalf of the Ministry of Community and Social Services. In that decision, I found that the investigation which resulted in the compilation of the records sought to determine first whether the recipient of family benefits was in fact entitled to them; and second, whether an overpayment of benefits had been made. I distinguished the facts in that case from the facts in Investigation Report I95-031M where then-Assistant Commissioner Ann Cavoukian made the following finding:

In our view, an investigation conducted solely with a view to recovering an overpayment under section 17 of the Family Benefits Act does not qualify as “law enforcement” since, by definition, recovery of money to which a recipient is not entitled does not qualify as a “penalty or sanction” imposed by a “court or tribunal”, under paragraph (b) of section 2(1) of the Act.

In Order P-1624, the focus of the investigation was not solely to determine whether there was an overpayment, it also included a determination as to the appellant’s entitlement to benefits. In the present appeal, as was the case in the ERO investigation which gave rise to Investigation Report I95-031M, the ERO investigation was conducted to determine whether an overpayment had been made to the appellant.

I adopt the findings of Commissioner Cavoukian with respect to whether an investigation conducted solely with a view to recovering an overpayment under section 17 of the Family Benefits Act (the FBA) qualifies as a “law enforcement” investigation for the purposes of section 2(1) of the Act. In the present appeal, the appellant is presently collecting benefits under the GWA. I find that an ERO’s investigation which is conducted solely with a view to determining the amount of an overpayment under the GWA should not be treated differently than a similar investigation under the FBA.

In accordance with the findings of Commissioner Cavoukian in Investigation Report I95-031M, I find that an investigation under the GWA which is undertaken solely with a view to determining the amount of an overpayment does not meet the definition of a “law enforcement” investigation under section 2(1). Accordingly, the records do not qualify for exemption under sections 8(1)(b) and (d) or 8(2)(a) and are not exempt under section 38(a).

### **INVASION OF PRIVACY**

In my discussion of personal information, I found that because the records relate to an investigation into an overpayment of benefits to the appellant, the information contained in all of the records constitutes her personal information for the purposes of section 2(1). Accordingly, the issue of access to all of the records must be determined under the discretionary exemption in section 38(b), as opposed to the mandatory exemption in section 14(1) which applies only to records which do not contain the personal information of the requester/appellant.

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, section 38(b) provides the Municipality with the discretion to deny the requester access to that information.

Sections 14(2), (3) and (4) of the Act provide guidance in determining whether 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.

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.

As noted above, the appellant indicates that she is not seeking access to any personal information which relates to individuals other than herself. As a result, the appellant submits that the release of the remaining

information contained in the records, which relates only to her, would not result in an unjustified invasion of the personal privacy of any of the affected persons.

I find that the disclosure to the appellant of only that information which relates to her would not result in an unjustified invasion of the personal privacy of any other identifiable individual. The appellant's personal information is severable from that of the affected persons and its disclosure would not reveal the personal information of any other identifiable individuals.

The personal information which relates solely to the appellant is not, therefore, exempt from disclosure under section 38(b). I have provided the Municipality's Freedom of Information and Privacy Protection Co-ordinator with a copy of the records in which I have highlighted those portions containing the personal information of the affected persons. The highlighted information is **not** to be disclosed.

**ORDER:**

1. I order the Municipality to provide the appellant with a copy of the severed records in accordance with the highlighted version which I have provided to the Municipality's Freedom of Information and Privacy Protection Co-ordinator by **January 19, 1999** but not before **January 14, 1999**.
2. In order to verify compliance with the terms of this order, I reserve the right to require the Municipality to provide me with a copy of the records which are disclosed to the appellant pursuant to Provision 1.

Original signed by: \_\_\_\_\_  
Donald Hale  
Adjudicator

\_\_\_\_\_ December 11, 1998