



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

# **ORDER MO-1211**

**Appeal MA-980333-1**

**City of Toronto**



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

## **NATURE OF THE APPEAL:**

The appellant, an insurance company, made a request under the Municipal Freedom of Information and Protection of Privacy Act (the Act) to the City of Toronto (the City). The request was for access to the fire report respecting a particular residential fire. The City granted partial access to the responsive records, claiming the exemption found in section 14 of the Act (invasion of privacy) to withhold parts of the records. The appellant appealed the denial of access.

During mediation of the appeal, the appellant indicated he was only pursuing access to the name of the property owner on page 1 of the records, and the information withheld on page 2 of the records. Accordingly, the other information is not at issue in this appeal.

I sent a Notice of Inquiry to the City, the appellant, and the named property owner (the affected person). Representations were received from the City and the appellant.

## **RECORDS:**

The records identified as responsive to the request consist of seven two-page Emergency Call Reports filed out by the Fire Department. The information remaining at issue is found on the first Emergency Call Report.

## **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, 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.

The information remaining at issue consists of names, contact telephone numbers, dates of birth and in one case, a contact address. In the City's view, this information qualifies as personal information under paragraphs (a), (d) and (h) of the definition, which read:

"personal information" means recorded information about an identifiable individual, including,

- (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
- (d) the address, telephone number, fingerprints or blood type of the individual,

- (h) the individual's name if 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;

I agree. I also find that the records do not contain any personal information of the appellant.

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. Specifically, section 14(1)(f) of the Act reads as follows:

A head shall refuse to disclose personal information to any person other than the individual to whom the information relates, except,

if the disclosure does not constitute an unjustified invasion of personal privacy.

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 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. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy. Once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in section 14(2).

The Ontario Court of Justice (General Division) (Divisional Court) determined in the case of John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767 that 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) 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.

The City submits that the records were compiled and are identifiable as part of an investigation into a possible violation of law (section 14(3)(b)). The City also indicates that the personal information is highly sensitive, which is a consideration which favours privacy protection (section 14(2)(f)).

As an additional consideration favouring privacy protection in this appeal, the City submits that typically insurance adjusters seek fire reports/emergency call reports to confirm the details of a fire, including the date, nature of the damage and cause, in order to determine whether a claim should be allowed. The City confirms that the appellant has been provided with nearly all of this information and that any further disclosure would not add appreciably to the detailed information already disclosed to the appellant.

The appellant submits that it has requested the information to determine its subrogation rights against third parties involved in the loss. In effect, it has claimed that disclosure of the information at issue is relevant to a fair determination of the rights of the insurance company (section 14(2)(d)).

Having reviewed the records and the representations, I have made the following findings:

- (1) I have been provided with no evidence to conclude that the records were compiled as part of an investigation into a possible violation of law. On its face, the document is a routine report, prepared by the fire department, of the location details of the fire, the equipment used, as well as observations about the fire itself. While it appears that such reports are prepared by firefighters for the purposes of determining the cause or "mechanics" of the fire, they may be distinguished from reports detailing investigations conducted by the police and/or the Fire Marshall who are responsible for determining if a fire resulted from criminal wrongdoing and, if so, for laying charges with respect to possible violations of the law. Accordingly, I conclude that the presumed unjustified invasion of personal privacy found in section 14(3)(b) does not apply.
- (2) The appellant claims that he requires access to the names on the fire report in order that they may be named in a civil action to be commenced by the insurance company. I am satisfied that the appellant is seeking the information to exercise its common law and statutory rights under the Insurance Act to pursue a legal claim against the individuals who were allegedly responsible for the fire.

I note that on the issue of alternative methods of gaining access to personal information of an unidentified individual for the purpose of commencing or maintaining a civil action against the individual, Adjudicator Laurel Cropley in her Order M-1146 made the following comments which the appellant may find useful:

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 . . .

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 . . .

These principles could apply where the name as well as the address of the potential defendant is unknown, by use of a pseudonym such as “John Doe” [see Randeno v. Standevan (1987), 61 O.R. (2d) 726 (H.C.), and Hogan v. Great Central Publishing Ltd. (1994), 16 O.R. (3d) 808 (Gen. Div.)].

So, while I am satisfied that section 14(2)(d) is a relevant consideration, I find that access to the names on the fire report are not crucial to the appellant’s pursuit of its subrogation rights.

- (3) The appellant’s representations, in my view, have a bearing on the sensitivity of the information at issue with respect to the individuals named on the report. In considering the nature of the personal information contained in the fire report, I find that it is highly sensitive within the meaning of the Act. Accordingly, I find that section 14(2)(f), which is a factor which favours privacy protection, is relevant in the circumstances of this appeal.
- (4) Having considered all the relevant circumstances of this appeal, I find that section 14(2)(f), which favours privacy protection, outweighs any disclosure interests of the appellant. Accordingly, I find that disclosure of the names would constitute an unjustified invasion of the personal privacy of these individuals and section 14 applies.

**ORDER:**

I uphold the City’s decision.

Original signed by: \_\_\_\_\_  
Holly Big Canoe  
Adjudicator

\_\_\_\_\_ May 11, 1999