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

ORDER MO-1238

Appeal MA-990037-1

City of Mississauga

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NATURE OF THE APPEAL:

The appellant submitted a request to the City of Mississauga (the City) under the Municipal Freedom of Information and Protection of Privacy Act (the Act) for access to:

1. House Drawings Plan regarding the appellant's property;
2. Investigation Report and any other information relating to an accident which occurred at the appellant's property;
3. Inspection Reports from March 18, 1998 to date done by [named building inspector]; and
4. Inspection Reports of grading done by [named grading inspector].

The City granted access to the records responsive to parts 1 and 4 of the request and denied access to records responsive to part 3 of the request pursuant to section 8(2)(a) of the Act. The City did not address part 2 of the request in its response.

The appellant appealed the City's decision.

During the mediation stage of the appeal, the City responded to part 2 of the request by advising the appellant that no records exist which are responsive to that part of the request. The appellant accepted the City's response and indicated that he was not seeking to appeal this part of the City's decision.

Also during the mediation stage of the appeal, the mediator raised the possible application of section 10 (third party information) of the Act to information contained in the records at issue.

I sent a Notice of Inquiry setting out the issues in the appeal to the City, the appellant and an affected person referred to in the records. I received representations from the City, the appellant and the affected person.

THE RECORDS:

The two records at issue in this appeal each consist of one page, and are described as follows:

Record 1	Field Inspection Report with a number of entries dated from November 25, 1996 to December 17, 1997
Record 2	Inspection Record with a number of entries dated from August 27, 1997 to October 2, 1998

DISCUSSION:

THIRD PARTY INFORMATION

For a record to qualify for exemption under section 10(1) each part of the following three-part test must be satisfied:

1. the record must reveal information that is a trade secret or scientific, technical, commercial, financial or labour relations information; **and**

2. the information must have been supplied to the institution in confidence, either implicitly or explicitly; **and**

3. the prospect of disclosure of the record must give rise to a reasonable expectation that one of the harms specified in (a), (b), (c) or (d) of subsection 10(1) will occur [Orders 36, M-29, M-37, P-373]

The Court of Appeal for Ontario recently overturned the Divisional Court's decision quashing Order P-373 and restored Order P-373. In that decision the Court stated as follows:

> With respect to Part 1 of the test for exemption, the Commissioner adopted a meaning of the terms which is consistent with his previous orders, previous court decisions and dictionary meanings. His interpretation cannot be said to be unreasonable. With respect to Part 2, the records themselves do not reveal any information supplied by the employers on the various forms provided to the WCB. The records had been generated by the WCB based on data supplied by the employers. The Commissioner acted reasonably and in accordance with the language of the statute in determining that disclosure of the records would not reveal information supplied in confidence to the WCB by the employers. Lastly, as to Part 3, the use of the words "detailed and convincing" do not modify the interpretation of the exemption or change the standard of proof. These words simply describe the quality and cogency of the evidence required to satisfy the onus of establishing reasonable expectation of harm. Similar expressions have been used by the Supreme Court of Canada to describe the quality of evidence required to satisfy the burden of proof in civil cases. If the evidence lacks detail and is unconvincing, it fails to satisfy the onus and the information would have to be disclosed. It was the Commissioner's function to weigh the material. Again, it cannot be said that the Commissioner acted unreasonably. Nor was it unreasonable for him to conclude that the submissions amounted, at most, to speculation of possible harm [Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner) (1998), 41 O.R. (3d) 464 at 476 (C.A.)].

The City submits that section 10(1) does not apply to the records. The affected person states simply that it "strongly" concurs with the City's decision not to disclose the records at issue. The affected person makes no representations on this issue.

The records contain two references to discussions the City's property inspector had with a representative of the affected person. Neither the records themselves nor the representations are sufficient to establish that this information would qualify as a trade secret or scientific, technical, commercial, financial or labour relations information, or that it was supplied to the City in confidence. Further, the material before me does not contain "detailed and convincing evidence" on

which to base a finding that disclosure could reasonably be expected to result in one of the harms listed under section 10(1)(a), (b), (c) or (d). Accordingly, I conclude that none of the information in the records qualifies for exemption under section 10(1) of the Act.

LAW ENFORCEMENT

Introduction

In order for a record to qualify for exemption under section 8(2)(a) of the Act, the City must satisfy each part of the following three-part test:

1. The record must be a report; **and**

2. The report must have been prepared in the course of law enforcement, inspections or investigations; **and**

3. The report must have been prepared by an agency which has the function of enforcing and regulating compliance with a law [Orders 200 and P-324].

"Report"

The word "report" is not defined in the Act. However, previous orders have found that in order to qualify as a report, a record must consist of a formal statement or account of the results of the collation and consideration of information. Generally speaking, results would not include mere observations or recordings of fact [Order 200].

In Order M-364 Inquiry Officer Mumtaz Jiwan stated:

> The records for which this exemption has been claimed consist of inspection reports (Records 1.1, 3.3 and 3.5), deficiency notices (Records 3.4 and 3.6), a letter (Record 3.2), handwritten notes (Record 3.7), plans and technical drawings (Record 2.2) and a building permit (Record 2.1).
>
> The inspection reports consist of a series of entries on pre-printed forms. These entries are individually dated and consist of observations and recordings of fact on the work completed and the remedial work required to be done.
>
> The deficiency notices are also pre-printed forms which list the deficiencies observed and the remedial work required. The handwritten notes also list the deficiencies and note the work yet to be completed. The letter contains factual information and the plans and technical drawings contain specifications of the garage. The building permit shows the names and addresses of the owner and architect, and the legal and municipal address of the

> property. Page 2 of the building permit lists the stages to be completed prior to final inspection and contains observations made during Stages 1 and 11 of the process.
>
> I have carefully reviewed all of these records and, in my view, none of them contain a formal statement or account of the result of the collation and consideration of the information by the individuals who prepared them. The records do not qualify as "reports" for the purposes of section 8(2)(a) of the Act.
>
> As all three parts of the section 8(2)(a) test must be satisfied in order for the exemption to apply, the records do not qualify for exemption under section 8(2)(a) of the Act. Therefore, the records must be disclosed to the appellant.

Based on the above, and having reviewed the records at issue, it is clear that they would not qualify as "reports" under section 8(2)(a) as this office has interpreted that section. The records at issue in this case consist of a series of entries containing dates and observations and recordings of fact as a result of property inspections, and thus are very similar in nature to those in Order M-364. As a result, section 8(2)(a) would not apply to the records.

The City takes issue with the Commissioner's interpretation of "report" described above. The City submits:

> … no statutory basis exists within [the Act] which would provide the basis for the statement that a report, consisting entirely of a recounting of factual information, does not qualify as a report under [the Act].
>
> The courts have adopted what is presently described as the "golden rule" of statutory interpretation. This rule was originally stated by Lord Wensleydale in Grey v. Pearson (1857), 6 H.L. Cas. 61, at 106, as follows:
>
> > In construing wills, and, indeed, statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity, or some repugnance or inconsistency with the rest of the instrument; in which case the grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no farther.
>
> This statement requires that if the words of a statute are clear, they must be followed even though they may lead to a manifest absurdity. If, however, the words are capable of two interpretations, one of which leads to an absurdity and the other which does not, the Court will conclude that the legislature did not intend to lead to an absurdity and will adopt the other interpretation. [CED "statutes" par. 63]. There is no provision in [the Act] that would permit an [Adjudicator], dealing with an appeal, or the Commissioner for that matter, to develop definitions for the terms contained in the legislation.

> … "the grammatical and ordinary sense of the …" word "report" in … section 8(2)(a) would create no inconsistency or repugnance with the rest of the statute. As a consequence … it is this grammatical and ordinary sense of the word which should be applied in the interpretation of that section of [the Act].

The City goes on to recite definitions of the word "report" contained in two dictionaries, the New Shorter Oxford Dictionary, 3rd ed., and the Longman Dictionary of Contemporary English, 3rd. ed. As recited, the first dictionary extract includes five main definitions, the first two of which contain four and six sub-definitions. The second dictionary extract includes six main definitions.

The City submits:

> As a consequence, the [Adjudicator] must deal with the terms found in [the Act] as they exist. The [Adjudicator] would be capable, in dealing with the term, of relying upon the aforementioned rule to avoid absurdities in the legislation, such as would result if a party attempted to suggest that the term meant a "sudden loud noise of an explosion" in the context of this section. However … no such absurdity exists in [the Act] if the word "report" is given its generally accepted meaning as an "account given or opinion expressed on some particular matter, esp. after investigation or consideration" or a "… written or spoken description of a situation or event, giving people the information they need."

On the basis of the above, the City submits that the records are "reports" within the meaning of section 8(2)(a) of the Act.

The appellant made no specific representations on the meaning of word "report" or its application in this case.

The modern rule of statutory interpretation is articulated by R. Sullivan in Driedger on the Construction of Statutes, 3rd ed. (Toronto: Butterworths, 1994) at p. 131:

> There is only one rule in modern interpretation, namely, courts are obliged to determine the meaning of legislation in its total context, having regard to the purpose of the legislation, the consequences of proposed interpretations, the presumptions and special rules of interpretation, as well as admissible external aids. In other words, the courts must consider and take into account all relevant and admissible indicators of legislative meaning. After taking these into account, the court must then adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text; (b) its efficacy, that is, its promotion of the legislative purpose; and (c) its acceptability, that is, the outcome is reasonable and just.

With respect to the "golden rule" and the concept of absurdity cited by the City, Driedger states (at p. 83):

> Not everyone has read Lord Wensleydale's words in this way. In River Wear Commissioners v. Adamson [(1877), 2 App. Cas. 743 at 281 (H.L.)], Lord Blackburn said:
>
> > … I believe that is it not disputed that what Lord Wensleydale used to call the golden rule is right, vis, that we are to take the whole statute together, and construe it all together, giving the words their ordinary signification, unless when so applied they produce an inconsistency, or an absurdity or inconvenience so great as to convince the Court that the intention could not have been to use them in their ordinary signification, which though less proper, is one which the Court thinks the words will bear.
>
> In practice … most modern courts work with a broad conception of absurdity, one that appeals to modern standards of reason, justice and morality as well as to logic and internal coherence.

This office therefore should adopt an interpretation of the word "report" that is plausible in the context of the Act, promotes its purposes and leads to a reasonable and just outcome.

Driedger states (at p. 101) that to be plausible, an interpretation "must be one that the text of the legislation is reasonably capable of bearing". This suggests that more than one definition may be considered plausible. One way of ascertaining the "range" of plausible definitions is to refer to dictionary definitions. As Driedger states (at p. 12):

> The chief virtue of dictionary definition is that it fixes the outer limits of ordinary meaning. It offers a more or less complete characterization of the conventional ways in which a word or expression is used by literate and informed persons within a linguistic community. It thus indicates the possible range of meanings that the word or expression is capable of bearing. This is valuable information because, generally speaking, the courts prefer meanings that are plausible, that is, meanings that the words are reasonably capable of bearing.

In my view, dictionary definitions, including those cited by the City, indicate that the word "report" could be interpreted very broadly in the context of section 8(2)(a). For example, "report" could include:

> A statement made by a person [Shorter Oxford English Dictionary, p. 1799].
>
> Something that gives information [Webster's Third New International Dictionary, p. 1925].

On the other hand, dictionary definitions also support the plausibility of a more context specific definition consistent with that adopted by this office in previous orders:

> A formal statement of the results of an investigation, or of any matter on which definite information is required, made by some person or body instructed or required to do so [Shorter Oxford English Dictionary, p. 1799].
>
> … a usually formal account of the results of an investigation given by a person or group authorized or delegated to make the investigation …[Webster's Third New International Dictionary, p. 1925].
>
> An official or formal statement of facts or proceedings … A "report" of a public official is distinguished from a "return" of such official, in that "return" is typically considered with something done or observed by officer, while "report" embodies result of officer's investigation not originally occurring within his personal knowledge …[Black's Law Dictionary, 6th ed., p. 1300].

The plausibility of the more specific interpretation is supported by the case of Broda v. Law Society of Alberta, [1993] A.J. No. 90 (Q.B.). In that case, in the context of a proceeding under the Alberta Legal Profession Act the court stated (at p. 6):

> … The purpose of requiring a "report" is to give the Conduct Committee the benefit of the Secretary's considered, experienced and rational views as to what the facts are and why it may be argued that the member's conduct constitutes conduct deserving of sanction. Merely delivering the Society's file on the member does not constitute a "report"…

This interpretation is also supported by the purpose section of the Act. Section 1(a)(ii) states:

> The purposes of this Act are:
>
> (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
>
> (ii) necessary exemptions from the right of access should be limited and specific,

In my view, the interpretation of "report" in section 8(2)(a) of the Act adopted by this office is plausible.

Further, an overly broad interpretation of the word "report" could create an absurdity. If "report" means "a statement made by a person" or "something that gives information", all information prepared by a law enforcement agency would be exempt, rendering sections 8(1) and 8(2)(b) through (d) superfluous. The Legislature could not have intended that result. As stated in Public Government for Private People: The Report of the Commission on Freedom of Information and Individual Privacy 1980, vol. 2 (Toronto: Queen's Printer, 1980) (the "Williams Commission") (at p. 294):

> The need to exempt certain kinds of law enforcement information from public access is reflected in all of the existing and proposed freedom of information laws we have examined. This is not surprising; if they are to be effective, certain kinds of law enforcement activity must be conducted under conditions of secrecy and confidentiality. Neither is it surprising that none of these schemes simply exempts all information relating to law enforcement. The broad rationale of public accountability underlying freedom of information schemes also requires some degree of openness with respect to the conduct of law enforcement activity. Indeed, if law enforcement is construed broadly to include the enforcement of many regulatory schemes administered by the provincial government, an exemption of all information pertaining to law enforcement from the general right to access would severely undermine the fundamental objectives of a freedom of information law.

This office's interpretation of the word "report" in section 8(2)(a) is not only plausible, but also promotes the purposes of the legislation. The Commissioner's interpretation takes into account the public interest in protecting the integrity of law enforcement procedures which underlies the purpose of the exemption. To the extent that any harm could reasonably be expected to result from disclosure of law enforcement records, the various exemptions in sections 8(1) and 8(2)(b) to (d) may apply (for example, where disclosure could reasonably be expected to interfere with a law enforcement matter under section 8(1)(a), or deprive a person of the right to a fair trial under section 8(1)(f)). In addition, certain law enforcement records which consist of a formal statement or account of the results of the collation and consideration of information qualify for exemption under section 8(2)(a), regardless of the potential for harm from disclosure [see, for example, Order MO-1192]. At the same time, this interpretation takes into account the public interest in openness as articulated by the Williams Commission, since records which do not meet the specific definition of report, and which do not otherwise qualify for exemption under the remaining provisions of section 8, cannot be withheld under this exemption.

Accordingly, I adopt the interpretation of section 8(2)(a) developed in previous orders of this office. Applying this interpretation, I find that the records are not exempt under section 8(2)(a) of the Act, and I consider this to be a reasonable and just outcome in the circumstances.

ORDER:

1. I order the City to disclose the records to the appellant no later than **November 10, 1999**, but no earlier than **November 5, 1999**.

2. In order to verify compliance with provision 1, I reserve the right to require the City to provide me with a copy of the material provided to the appellant.

Original signed by: October 5, 1999
David Goodis
Senior Adjudicator