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

ORDER MO-1309

Appeal MA-990202-1

City of Toronto

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NATURE OF THE APPEAL:

The appellant 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 information relating to applications by a named corporation for licences as a food store and public banquet hall at a specific address.

The City granted partial access to the records it identified as responsive to the request, claiming the exemptions found in sections 7(1), 10(1)(a) and (c), and 14(1) of the Act to deny access to the remainder.

The appellant appealed the City's decision.

In his letter of appeal, the appellant stated that he was not appealing the denial of access to information contained in the nine records relating to the application for a licence as a food store. Accordingly, these records are not at issue in this appeal.

I initially provided a Notice of Inquiry to the City and the individuals representing the corporation (the applicants), in response to which only the City provided representations. After reviewing the City's representations, I sent the Notice of Inquiry to the appellant, together with the non-confidential portions of the City's representations. The appellant submitted representations which were then provided to the City and the applicants for reply. Reply representations were received from the City and the applicants. Additional material was subsequently filed by the appellant.

RECORDS:

There are 52 pages of records which relate to the application for a licence to operate a public banquet hall. During mediation, the City disclosed the following to the appellant:

- the questions that appear on Record 2
- the introduction to the petition contained in Records 17-30 and the number of petitioners
- Record 50, which was previously withheld under section 7

During the inquiry stage of the appeal, the City obtained the consent of the applicants to disclose Records 15 and 16 to the appellant, and these records were disclosed. Because these records were the only records in respect of which section 10 of the Act was claimed, the application of this exemption is no longer at issue in this appeal.

Because Record 50 was the only page for which section 7(1) was claimed and it was disclosed at mediation, section 7(1) is not longer at issue in this appeal.

In his representations, the appellant indicated that a letter from his neighbours was included with his request letter, but the City claims that this correspondence was not attached to the copy of his letter forwarded to the City's Access and Privacy office. The City subsequently identified this correspondence as Records 41 and 46, which were disclosed to the appellant with the names and addresses severed. Based on the appellant's information, the City indicates that it is prepared to disclose the information severed from

Records 41 and 46 to the appellant, and I will include an order provision requiring them to do so. Accordingly, Records 41 and 46 are no longer at issue in this appeal.

The appellant also submits that the City's identification of the records at issue in the appeal is correct, except in one respect. He indicates that although the City did not identify Record 12 as having been withheld, it was not included with the documents provided in response to his request. The City confirms that copy of Record 12 was sent to the appellant with the City's decision letter, however it indicates that it is prepared to provide the appellant with another copy of Record 12. Accordingly, I will include a provision in this order requiring the City to do so.

The records remaining at issue are parts or all of Records 2, 5 - 11, 13, 14, 17 - 30, 35-38, 47 - 48.

The appellant confirms that he is not seeking disclosure of birth date, social insurance number, home telephone number or drivers' licence number of either applicant. Accordingly, this information is no longer at issue in this appeal.

The information which has been severed from Record 5 is identical to the information severed from Records 6 and 7. Similarly, the information severed from Record 38 is identical to the information severed from Record 48, accordingly, any decision I reach with respect to Records 5 and 38 should be applied equally to their duplicates.

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:

> ...
>
> (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
>
> (d) the address, telephone number, fingerprints or blood type of the individual,
>
> (e) the personal opinions or views of the individual except if they relate to another 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;

The information which remains at issue is:

- the residential address of the applicants (Records 2, 5, 8, 9)
- the applicants answers to the questions about criminal offences and previous licences (Record 2)
- whether the applicants are residents of Canada (Record 8)
- an authorization by one of applicants to disclosure any information relating to conviction of criminal offences to the Toronto Licensing Commission (Record 10)
- the results of the criminal record search on one of the applicants (Record 11)
- a letter from an area resident objecting to the licence application (Records 13-14)
- the name, residential address, occupation and signature of three other individuals who wrote letters objecting to the licence application (Records 35-37, 38 and 47)
- the name, address, and signature of individuals who signed a petition provided to the City by the applicants which purportedly supports their licence application, and the date each individual signed the petition (Records 17-30).

The City submits that all of the information it has refused to disclose is personal information. The appellant submits that this is not the case with respect to the licence applicant because it is a corporation. The appellant points out that the address of the corporation was disclosed on Record 8. The appellant also submits that the other information of the applicants should not be considered personal information because it was submitted in their professional capacities.

The address which was disclosed on Record 8 is not the same as the addresses that have been severed from Records 2, 5, 8 and 9. Although the license applicant is a corporation, the representatives of the corporation have provided their residential addresses on the application and this information, in my view, qualifies as their personal information. Further, although the applicants were pursuing a business licence, I find that fact does not change the personal nature of the information provided.

In my view, it is clear that all of the remaining information at issue qualifies as personal information of the individual to whom it relates. None of the records contain the personal information of the appellant.

Invasion of Privacy

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.
The Divisional Court has stated that once a presumption against disclosure has been established, it cannot be rebutted by either one or a combination of the factors set out in 14(2) [John Doe v. Ontario (Information and Privacy Commissioner) (1993), 13 O.R. (3d) 767].

The applicants object to the disclosure of their addresses and the results of a criminal records search. The City submits that the considerations in sections 14(2)(f) and (h) are relevant in the circumstances of this appeal. The appellant relies on section 14(2)(d) and other unlisted factors. These sections state:

> A head, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy, shall consider all the relevant circumstances, including whether,
>
> (d) the personal information is relevant to a fair determination of rights affecting the person who made the request;
>
> (f) the personal information is highly sensitive;
>
> (h) the personal information has been supplied by the individual to whom the information relates in confidence; and

Personal information of the applicants

Section 14(2)(d)

The appellant states that the licence application was refused, and that the applicants have appealed the refusal. He indicates that he was considering seeking status as a party on the appeal. He indicates that the information he is seeking is necessary to assist him in connection with this appeal.

In order for section 14(2)(d) 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 apposed 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

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

[Order P-312]

With respect to the fourth part of the test, the appellant has not provided sufficient information to satisfy me that the personal information he is seeking access to is required in order to prepare for the proceeding before the licencing tribunal or is necessary to ensure an impartial hearing. Accordingly, while I find the appellants submissions on this factor relevant, I assign it little weight.

Section 14(2)(f)

The City submits that the applicants have stated on several occasions to the City that they are particularly apprehensive about the request for access to their home addresses, since this information has no direct bearing on their application for a licence or any relevance to the hearing scheduled by the Licensing Tribunal. Further, the City indicates that the fact that there appears to be a strong difference of opinion in the community with respect to their application for a licence as a banquet hall has some bearing on the apprehension of the applicants. The City submits that disclosure of the home addresses of the applicants could cause the applicants "excessive personal distress" and therefore this personal information is highly sensitive within the meaning of section 14(2)(f) (Order P-606).

The appellant submits that no evidence has been presented by the City of personal sensitivity of any person or of any potential misuse of their addresses. He argues that there is no basis for characterizing the home address of the applicants as highly sensitive merely because there is an apparent difference of views concerning the applicants' licence application.

He also argues:

> ... [the applicants] can have no reasonable expectation that their home addresses will not be disclosed on an access request under the Act. When they incorporated [the business], they disclosed this information on its articles of incorporation which is a public document; see Business Corporations Act, R.S.O. 1990, c. B.16 ("OBCA"), ss. 4 and 5(1) and Form 1. Form 1 under the OBCA requires the residence address of the incorporators and directors of every corporation, and this information is available to the public; OBCA, s. 270. This information must also be disclosed under the Corporations Information Act, R.S.O. 1990, c. C.39; see ss. 2(1) and 4 (initial return and updating changes), and is also available to the public under it (s.10); see also R.R.O. 1990, Reg. 182, ss. 1a(1)4 and (1)7.

Records 8 and 9 are a copy of the articles of incorporation of the applicants' business. The City responded to the appellant's arguments by explaining that it does not require that articles of incorporation be provided and that it does not make such information accessible to the public. However, I agree with the appellant that because the personal information which appears on Records 8 and 9 is available to the public, this information is not highly sensitive. Further, in my view, disclosure would not constitute an unjustified invasion of personal privacy in these circumstances.

With respect to the information which relates to the criminal record check, the appellant submits that Record 10, which is an authorization by one of applicants to the disclosure of any information relating to conviction

for criminal offences to the Toronto Licensing Commission, likely does not contain any information the disclosure of which would constitute an unjustified invasion of his privacy. It is a standard form that otherwise contains the name, occupation and address of the individual who signs it.

With respect to Record 11, the appellant argues that if this record contains information concerning a conviction, it should be disclosed if it relates in any manner to the issues raised by the licence application. If, however, it contains information indicating that there has been no conviction, the appellant states it is difficult to see how that information would be "highly sensitive." The appellant also submits that whether the result of the criminal record search constitutes "highly sensitive" personal information must depend on the nature of the offence for which the individual was convicted, and relies on Order P-679 in support of his position. The appellant also argues that disclosure of a conviction record should not automatically constitute an unjustified invasion of personal privacy, as such records are public documents and that one purpose of maintaining them is to enable those who deal with an individual to be aware of his past criminal conduct.

The relevant passage from Order P-679 states:

> I have carefully reviewed these representations in conjunction with the records at issue. Based on the facts of this case, I find that the excerpts in the records which describe the offence which the father committed represent highly sensitive personal information. I find, however, that the information contained in the documents which relates to the father's personal characteristics (e.g. his sex, eye colour, marital status, complexion) and to his place of residence cannot be characterized in this fashion.

In my view, Order P-679 does not support the appellant's position.

In Order M-68, Assistant Commissioner Tom Mitchinson considered a similar request and stated:

> As far as section 14(2)(f) is concerned, I agree with the submission of the Police, and find that the existence of a criminal record is properly considered as "highly sensitive," and that section 14(2)(f) is a relevant consideration. Accordingly, I find that disclosure of the criminal record of an individual, if it exists, would constitute an unjustified invasion of the personal privacy of the persons to whom the information relates, in the circumstances of this appeal.
>
> In reaching this decision, I am aware of the fact that the existence of a particular criminal conviction is a matter of public record, and that this fact would have been disclosed to the public during a trial or plea taken in open court. However, in my view, it does not necessarily follow that this information should be freely and routinely available to anyone who asks.
>
> Commissioner Tom Wright, considered this issue in Order 180. Although that appeal involved a request for a list of the names of lottery winners, I feel that some of his comments are equally applicable to the request made in this appeal. At page 11 of Order 180, Commissioner Wright stated:

> ... In the recent decision in United States Department of Justice, et al., v. Reporters' Committee for Freedom of the Press et al. 109 S.Ct. 1468(1989), the Supreme Court of the United States considered the question of access to criminal identification records or "rap sheets" which contain descriptive information as well as history of arrest, charges, convictions and incarcerations. Much of the rap sheet information is a matter of public record. ... In considering whether or not the disclosure of the rap sheet would constitute an "unwarranted invasion" of the subject of the sheet, Justice Stevens, speaking for the majority, made the following statements which I feel are relevant to the issues that arise in this appeal. At page 1476, Justice Stevens stated that:
>
> > To begin with, both the common law and the literal understandings of privacy encompass the individual's control of information concerning his or her person. In an organized society, there are few facts that are not at one time or another divulged to another. Thus the extent of the protection accorded a privacy right at common law rested in part on the degree of dissemination of the allegedly private fact and the extent to which the passage of time rendered it private.
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> Further, at page 1477, Justice Stevens stated:
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> > But the issue here is whether the compilation of otherwise hard-to-obtain information alters the privacy interest implicated by disclosure of that information. Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives and local police stations throughout the country and a computerized summary located in a single clearing house of information.
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> Finally, at page 1480, Justice Stevens referred to an earlier decision of the Supreme Court in Whalen v. Roe 97 S.Ct 869 at page 872 where the Court stated:
>
> > In sum, the fact that 'an event is not wholly private' does not mean that an individual has no interest in limiting disclosure or dissemination of the information.

I agree with Assistant Commissioner Mitchinson and find that the information related to the criminal record search is highly sensitive personal information, and section 14(2)(f) is a relevant consideration. This factor weighs in favour of privacy protection.

Section 14(2)(h)

The City also argues that the personal information provided by the applicants was provided to the City in confidence (section 14(2)(h)). The City indicates that applicants for a licence are informed by the Municipal Licensing Standards Division that personal information collected on the application is required in order to

process, issue, monitor and regulate the various licences issued and that the personal information will be held in confidence. The City indicates that, as a general rule, the City does not routinely release personal information of individuals who have applied for a licence or permit (either on their own behalf or on behalf of a business) and that this is a practice that is generally known and expected when applications are made. The City submits that applicants, therefore, have the expectation that their personal information will be used only by the City for the purposes stated and will not be disclosed to outside parties.

The appellant submits that the documents provided to him by the City do not indicate that the personal information will be held in confidence. He states that there is no such indication on the licence application (Record 2), or on the City's standard for the collection of information, which refers to the Act (Record 3), or on the City's information sheet concerning applications by corporations for a business licence (Record 4). None of these records refers to information being received in confidence. He argues that the information relating to prior licensing experience is highly relevant in the circumstances of this matter, and relates to the conduct of a business, which has significant public aspects.

Although explicit evidence of confidentiality assurances by the City is not present, I accept that it is not the City's practice to routinely release personal information of individuals who have applied for a licence or permit. However, it would not be reasonable, in my view, for an applicant to expect that information about his prior licensing history would remain confidential should the matter proceed to a hearing, as this one did.

Accordingly, I do not assign any weight to section 14(2)(h) with respect to the criminal and licensing history of the applicants.

Findings

Section 14 is a mandatory exemption which requires institutions to refuse to disclose personal information unless one of the exceptions in section 14(1) applies. The only exception which is relevant in these circumstances is section 14(1)(f), which states:

> A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
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> (f) if the disclosure does not constitute an unjustified invasion of personal privacy.

Having balanced the competing interests of the appellant and the applicants, and having considered the relevant circumstances and the provisions of sections 14(2) and 14(1)(f), I find that disclosure of the home addresses of the applicants and whether they were residents of Canada would not constitute an unjustified invasion of personal privacy, and section 14(1)(f) applies. I am not convinced that this exception applies to the disclosure of the criminal and licensing history information, and I uphold the City's decision not to disclose these parts of the records to the appellant.

Personal information of other individuals

Records 13, 14, 17-30, 35-38 and 47 contain the personal information of other individuals. The City submits that sections 14(2)(f) and (h) are relevant considerations. The appellant's relies on section 14(2)(d).

As discussed above, I am not convinced that the appellant requires this information in order to prepare for the hearing or to ensure an impartial hearing, and I assign little weight to section 14(2)(d).

The City submits that there are polarized views within the community where the banquet hall was proposed and the disagreement may continue until such time as the Licensing Tribunal renders its final decision. The City submits that in such circumstances, the personal information of both those who object and those who support the application is highly sensitive within the meaning of section 14(2)(f).

The City also submits that the letters and the petition deal with a local issue, of more interest to the immediate community than the public at large. The City submits that in such circumstances it is not unusual for the signatories to have a reasonable expectation that the disclosure of their personal information would be limited, and section 14(2)(h) should be considered. The City notes that there is no indication that the signatories reasonably expected or consented to a disclosure of their names and addresses for any other purpose.

Having reviewed the records, while I do not assign significant weight to the factors raised by the appellant or the City, I find that I am not convinced that the section 14(1)(f) exception applies to the information at issue in Records 13, 14, 17-30, 35-38 and 47. In my view, the individuals named in the severed parts of the record cannot be deemed to have consented to the disclosure of the personal information which relates to them to the appellant. Further, there is no indication in any of these records that the signatories knew that their personal information would be made public, or even what use the City might make of the information.

Accordingly, I uphold the City's application of section 14 to Records 13 and 14 and the information severed from Records 17-30, 35-38 and 47.

Other matters

In the material sent to me by the appellant subsequent to the City's reply to his representations, he has attached a complete copy of Records 2 and 17-30. He indicates that these records were attached to a report to the Toronto Licensing Tribunal, filed on January 20, 2000, at the hearing to set a date for the appeal by the affected persons of the City's decision to reject its application for a public hall licence.

The appellant submits that the proceeding before the Toronto Licensing Tribunal is a public proceeding subject to the requirements of the Statutory Powers Procedure Act (SPPA). He argues that as the City has presented these documents in a public proceeding, without requesting confidential treatment under the SPPA, it should not be entitled to withhold copies of them in response to an application under the Act. He also indicates that the affected persons have sent a copy of Records 17-30 to the City councillor for the area, without any request for confidential treatment, and that the councillor has provided a copy to him.

The disclosure to the appellant through other means, legitimate or otherwise, does not affect my finding that the information at issue is personal information. With the exception of the information which appears on the articles of incorporation, I am not convinced that the information is publicly available, and reiterate that I am not satisfied that the section 14(1)(f) exception applies.

ORDER:

1. I order the City to disclose Records 5, 8, 9, 12, 41 and 46 and the address information on Record 2 to the appellant by sending him a copy of the records by July 17, 2000 but not before July 10, 2000.

2. I uphold the City's decision to withhold the remaining parts of Record 2.

3. I uphold the City's decision not to disclose Records 10, 11, 13, 14 and the severed parts of Records 17-30, 35-38 and 47.

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

Original signed by: June 9, 2000
Holly Big Canoe
Adjudicator