



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

ORDER MO-1416

Appeal MA_000267_1

Regional Municipality of Halton



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

NATURE OF THE APPEAL:

This is an appeal under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) from a decision of the Regional Municipality of Halton (the Region). The requester (now the appellant) sought access to a copy of all files and information regarding contact between the Children's Aid Society of Halton (the CAS) and his family. The appellant also requested a copy of the Region's policies regarding its employees who suspect abuse where a child is involved.

The Region located two records as responsive to the request and issued a decision letter. The Region agreed to provide the appellant partial access to a two-page report (Record 1) that was submitted to the CAS by a Region employee. The report describes a conversation between the employee and an affected party concerning the appellant's children. Parts of this report were withheld on the basis of the following exemptions in the *Act*: sections 8(1)(d) (confidential source) in conjunction with section 38(a), and section 14(1) (personal privacy) in conjunction with section 38(b).

The Region also provided the appellant with a copy of the segment of a report (Record 2) setting out the investigative protocol between the Region and the CAS in situations where a child may be in need of protection. The appellant received this report and it is no longer at issue.

The Region then issued a second decision letter claiming additional exemptions under sections 8(1)(a) (law enforcement matter), 8(1)(b) (law enforcement investigation), 8(1)(e) (danger to life or safety), 8(3) and 14(5) (refusal to confirm or deny). The exemptions claimed by the Region under sections 8(3) and 14(5) will not be considered in this order since the Region has disclosed to the appellant Record 2 in its entirety and Record 1 in part. The Region also relied on the exemption under section 13 (danger to safety or health) of the *Act*.

The appellant appealed the Region's decision to deny access to the two-page report (Record 1).

I sent a Notice of Inquiry setting out the issues in this appeal to the Region, two affected parties, and the appellant. I received representations from all parties.

RECORDS:

The record at issue is a two-page report entitled "Halton Regional Health Department, Community Health Services, Individual Referral" (Record 1).

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:

(e) the personal opinions or views of the individual except if they relate to another individual,

(g) the views or opinions of another individual about the individual, and

(h) 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;

I have examined the record and find that it contains personal information of the appellant, and the affected parties. These records contain an affected person's views or opinions of the appellant [paragraph (g)], an affected person's opinions or views about matters other than the appellant [paragraph (e)] and information about interactions between the affected parties and the appellant [paragraph (h)].

DISCRETION TO REFUSE ACCESS TO ONE'S OWN PERSONAL INFORMATION

Introduction

Section 36(1) of the *Act* provides individuals with a general right of access to their own personal information in the custody or under the control of an institution. Section 38 provides a number of exceptions to this general right of access. In particular, under section 38(a), a head may refuse to disclose to the individual to whom the information relates personal information where (among others) the exemption at section 8(1)(d) (confidential source) would apply to the disclosure of that personal information.

Law Enforcement

Confidential source of information: Section 8(1)(d)

Under section 8(1)(d), an institution may refuse to disclose a record or a part of a record where disclosure could reasonably be expected to "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". In order to establish that the particular harm in question "could reasonably be expected" to result from disclosure of a record, the party with the burden of proof must provide detailed and convincing evidence to establish a reasonable expectation of probable harm [see Order P-373, two court decisions on judicial review of that order in *Ontario (Workers' Compensation Board) v. Ontario (Assistant Information and Privacy Commissioner)* (1998), 41 O.R. (3d) 464 at 476 (C.A.), reversing (1995), 23 O.R. (3d) 31 at 40 (Div. Ct.), and *Ontario (Minister of Labour) v. Big Canoe*, [1999] O.J. No. 4560 (C.A.), affirming (June 2, 1998), Toronto Doc. 28/98 (Div. Ct.)].

The Region submits:

If the identity, or information leading to the identity, of the informant and the RA (author of the report) is disclosed, they will have a reasonable fear that the

appellant will threaten their safety or health, as well as the safety and health of the children.

..the RA's security could be violated if his/her name is disclosed, or alternatively, if any further information that might lead to the identification of the RA is disclosed.

In order to satisfy the requirements of section 8(1)(d) the institution must establish confidentiality by presenting evidence of the circumstances in which the information was provided to the institution by the informant (Order P-139).

In its representations, the Region states:

Section 75(5) of the CFSA [*Child and Family Services Act*] demonstrates that the CAS's [Children's Aid Societies] have a duty to maintain the confidentiality of their sources. This duty, in turn, provides sources with an expectation of privacy.

Section 75(5) of the *Child and Family Services Act* relates to the child abuse register and provides:

The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information reported to the Director under subsection (3), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 72 (2) or (3) and is not the subject of the report.

The sensitivity of the subject matter and the seriousness of the potential consequences arising from the report are compelling indications of the reasonable expectation of confidentiality held by the affected parties in providing the information. After reviewing previous orders of this Office, the submissions of the parties, and the surrounding circumstances, I find that the affected parties had a reasonable expectation that the information in the report was provided in confidence (Orders MO-1245, M-752, P-139).

In order for the record to be considered for exemption under this section, the matter which generated the record must satisfy the definition of the term "law enforcement" as found in section 2(1) of the *Act*. This definition reads:

"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);

The Region, in its representations, submits:

.... the CAS [Children's Aid Society] is to be considered a law enforcement agency, with powers to pursue sanctions in court; including removing children from harmful situations. It is the Region's position that the disclosure of this report could reasonably be expected to interfere with an ongoing investigation by the CAS. The CAS investigation will determine whether the children are in need of protection.

Section 40(1) of the *Child and Family Services Act* reads:

A [children's aid society] may apply to the court to determine whether a child is in need of protection.

The issue of whether a CAS investigation meets the definition of "law enforcement" has been addressed in previous orders. As former Inquiry Officer Anita Fineberg stated in Order M-328,

...any investigation which "could lead to proceedings in a court or tribunal" would have had to have been conducted by either the Children's Aid Society or the Police.

I adopt that conclusion here and find that a Children's Aid Society investigation "could lead to proceedings in a court or tribunal".

For a court proceeding to meet the definition of a "law enforcement" matter, the Court must have the authority to impose a penalty or sanction in the proceedings arising from the investigation. Under sections 57(1) and 80(1) of the *Child and Family Services Act*, where the Court finds a child is in need of protection, the Court can make an order placing the child in the custody of someone other than the parent or prohibit a parent from having access to the child.

In my opinion, based on the above statutory provisions, the Court can impose a sanction in a proceeding arising from a CAS investigation. Accordingly, I find that the matter which gave rise to the investigation meets the definition of "law enforcement" in section 2(1) of the *Act*.

To conclude, I find that disclosure of the record to the appellant could reasonably be expected to reveal the identity of a confidential source of information in respect of a law enforcement matter, that is, a CAS investigation of a possible violation of the *Child and Family Services Act*. Therefore, the record at issue qualifies for exemption under section 8(1)(d).

Because of the manner in which I have addressed the application of section 8(1)(d) to this record, it is not necessary for me to determine whether it is exempt from disclosure under the invasion of privacy exemption at section 14.

ORDER:

I uphold the decision of the Region to deny access to Record 1.

Original signed by: _____
Dawn Maruno
Adjudicator

_____ April 11, 2001