



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

ORDER MO-1441

Appeal MA-000266-1

Township of Russell



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NATURE OF THE APPEAL:

The United Counties of Prescott and Russell received a request under the *Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to a copy of a letter of complaint together with the related investigation file, and a copy of the complete file on his residence. Pursuant to section 18(1) of the *Act*, the request was forwarded to the Township of Russell (the Township) which had custody of the records.

The Township located two records as responsive to the request. Access was denied in their entirety on the basis that they would disclose the identity of a confidential source of information in respect of a law enforcement matter, pursuant to section 8(1)(d) of the *Act*. In its decision letter, the Township asked the requester to clarify what he meant when he asked for the “complete file on his residence”.

The requester, now the appellant, appealed the Township’s decision. In the appeal letter, the appellant provided further details on “the complete file on his residence”, but did not forward the information to the Township. The Township sent out a second request for clarification. As the appellant did not respond to either of the Township’s requests, this office notified him that the appeal was proceeding to mediation on the basis of the complaint letter and the investigation file only. The appellant agreed.

Mediation of this appeal was not successful. I sent a Notice of Inquiry summarizing the facts and issues of this appeal to the Township and to an affected person, initially. In this Notice, I raised the possible application of sections 38(a) and (b), as it appeared that Record 1 contained the appellant’s personal information. Representations were received from the affected person only, a summary of which was shared with the appellant. The Township indicated that it would not be submitting representations as it had nothing further to add to the materials which it had already submitted.

RECORDS:

The records at issue consist of one page of a by-law enforcement officer’s investigation notes and a cover sheet (Record 1), and a two-page letter (Record 2).

DISCUSSION:

PERSONAL INFORMATION

The first issue to be determined is whether the record contains personal information and if so, to whom that personal information relates.

Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including:

- (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;

Record 1 consists of investigation notes of a by-law enforcement officer, detailing actions between the appellant, the Township and the affected person, and includes the addresses of both the appellant and the affected person. This information, therefore, qualifies as "personal information" under section 2(1)(d) and (h). Record 1 also contains several references to Township employees in their professional capacity, which do not qualify as "personal information" (Orders P-257, P-427, P-1412 and P-1621).

Record 2 is a two-page letter concerning the application of a municipal by-law. It contains the name and address of the affected person, and other personal information about the individual, which qualify as "personal information" under section 2(1)(d) and (h).

DISCRETION TO REFUSE ACCESS TO ONE'S OWN PERSONAL INFORMATION / LAW ENFORCEMENT

Section 36(1) of the *Act* provides individuals with a general right of access to their own personal information held by a government body. Section 38 provides a number of exceptions to this general right of access, including section 38(a), which reads;

A head may refuse to disclose to the individual to whom the information relates personal information,

- (a) if section 6, 7, **8**, 9, 10, 11, 12, 13 or 15 would apply to the disclosure of that personal information; (emphasis added)

In denying access to the withheld information in Records 1 and 2, the Township claimed the application of section 8(1)(d) of the *Act*, which reads:

A head may refuse to disclose a record if the disclosure could reasonably be expected to,

- (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;

For Records 1 and 2 to be considered exempt under this section, the matter which generated it 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);

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). As I noted earlier, the Township provided no response to the Notice. In the covering letter accompanying the documents that it forwarded to this office initially, the Township simply stated that “it is in the best interests of the public not to release the information.”

The affected party in his/her representations indicates that the by-law complaint process has always guaranteed the confidentiality of complainants’ identities. The affected party states that in order to ensure that members of the public will continue to assist the Township, on whom the Township relies to identify by-law infractions, it is necessary to maintain confidentiality. The appellant provided no representations in response to this assertion.

Previous orders of this office have established that a municipality’s by-law enforcement process qualifies as a “law enforcement” matter under section 2(1) of the *Act* (Orders M-16 and M-582). I agree with the reasoning in these orders and adopt their findings for the purposes of this appeal.

Record 1

In the circumstances, I accept the affected person’s submission that s/he provided the information contained in this record on a confidential basis. As a result, I find that disclosure of Record 1 would disclose the identity of a confidential source, the affected person, in respect of a by-law enforcement matter. Therefore, section 8(1)(d) applies.

Exercise of Discretion

I am satisfied that the Township appropriately exercised its discretion in denying access to the records on the basis of section 38(a), in conjunction with section 8(1)(d).

Record 2

The Township referred to Record 2 as a “letter of complaint”. It is the same matter that gave rise to an investigation by the by-law enforcement officer which is recorded in Record 1. The affected person, however, asserts that the letter was intended as an inquiry about the application of a specific by-law. The appellant’s name does not appear in the document.

As with Record 1, granting access to Record 2 would mean disclosing the identity of a confidential source of information in respect of a law enforcement matter. Therefore, I find that Record 2 is exempt under section 8(1)(d).

SEVERANCE

Where a record contains information, section 4(2) requires a head to disclose as much of the record as can reasonably be severed without disclosing the exempted information.

In his appeal letter, the appellant stated that he is more interested in the content of Record 2, than with the identity of the complainant, and suggested that the name and address of the confidential source be removed.

Previous orders have established that “personal information”, such as the names, addresses and telephone numbers of affected persons which appear in municipal by-law complaints, may be severed to grant partial access to the records (Order M-26, M-582 and M-652). Having said this, there are factors in this appeal that do not favour severing the affected person’s personal information for the purpose of disclosure. During mediation of this appeal, and in its appeal letter, the Township asked me to consider, in arriving at my decision, that the records involve incidents and individuals of a small community.

In Order PO-1874, Adjudicator Laurel Cropley noted the circumstances in which severing the name and address would assure confidentiality:

This would be the case, for example, where the parties are complete strangers and there is nothing in the remaining portions of the record or in the circumstances that could reasonably allow the reader to infer the person’s identity.

Further, former Commissioner Tom Wright stated in Order P-230:

I believe that provisions of the *Act* relating to protection of personal privacy should not be read in a restrictive manner. If there is a reasonable expectation that the individual can be identified from the information, then such information qualifies under section 2(1) as personal information.

Having considered the circumstances of this appeal. I am satisfied that it is reasonable to expect that even if the name and address of the affected person were removed, from either record, s/he could still be identified from the remaining information. Therefore, I find that the severance provisions of section 4(1) do not apply here.

In the circumstances, it is not necessary for me to consider the application of the personal privacy provisions at sections 38(b) and 14.

ORDER:

I uphold the decision of the Township.

Original Signed By: _____ June 18, 2001
Dora Nipp
Adjudicator