



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

ORDER MO-1453

Appeal MA_000360_1

Township of Terrace Bay



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NATURE OF THE APPEAL:

The appellant submitted a request to the Township of Terrace Bay (the Township) under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for access to a copy of a complaint letter written to the Town Councillors by a local business owner (the affected person). The letter concerned an incident involving the appellant which occurred at the affected person's place of business. The Town Council received the letter at its regular meeting of council on Monday, October 23, 2000.

The Township notified the affected person pursuant to section 21(1) and asked for her views regarding disclosure of the letter to the appellant. In refusing to consent to disclosure of her personal information to the appellant the affected person indicated that the incident was a private matter and that she did not wish for it to go any further. She expressed concern that disclosure might result in a confrontation with the appellant.

After considering the affected person's views, the Township denied access to the letter on the basis of the discretionary exemption in section 38(b) (invasion of privacy) of the *Act*.

The appellant appealed this decision, stating:

The letter that I am requesting was written to my employer about me demanding that I be disciplined for actions that had no bearing on my work as a municipal employee. Besides being a personal issue between the complainant and myself the entire letter is grossly exaggerated and borders on slander. I have read the letter myself, my supervisor ... showed it to me. My employer replied to the complainant (as attached) and did not act on her request. However, I feel that if this person has the right to lie and embarrass me to my employer then I should at least be entitled to have a copy of it ... This whole situation has been blown out of proportion. I was just stating my opinion as a customer about the service provided ... I have a right as a customer to state my opinion about service provided. Just because I am a Municipal employee in a small town, this person feels she has the right to complain about my behaviour outside of my job. My employer should never have even seen that letter and they wouldn't have if I was employed anywhere else.

Mediation was not successful and this appeal was moved into inquiry. I decided to seek submissions from the Township and the affected person, initially. I sent a Notice of Inquiry setting out the facts and issues in this appeal to both of these parties.

The affected person submitted representations in response. The Township wrote to this office indicating that it wishes to rely on the information it provided to the mediator, and that it would not be submitting any further representations. After reviewing all of the information provided by both the affected person and the Township, I contacted the Township for further information relating to the meeting of the council on October 23, 2000.

I then sent a Notice of Inquiry to the appellant in which I summarized the representations submitted by the affected person and the results of my queries to the Township. The appellant

submitted representations which I subsequently sent, in their entirety, to the affected person for reply. The affected person submitted representations in reply.

RECORD:

The record at issue is a one-page letter dated October 12, 2000 to the attention of the Town Councillors signed by the affected person.

DISCUSSION:

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1), "personal information" is defined, in part, to mean recorded information about an identifiable individual, including the individual's name where it appears with other personal information relating to the individual or where disclosure of the name would reveal other personal information about the individual [paragraph (h)]. Personal information also includes:

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

In the letter the affected person sent to the Township Councillors, she describes a situation that occurred at her place of business involving the appellant and one of her employees. She states her views about the appellant's actions, her views and expectations regarding the level of acceptable behaviour of municipal employees (and the appellant in particular) and her perception of the impact of this incident on her personally and on her business. It is apparent that the record contains primarily the affected person's views and opinions regarding the appellant and, in accordance with paragraphs (e) and (g) of the definition of personal information, this should qualify as only the personal information of the appellant. However, in the context in which the letter is written, I find that it also contains the affected person's views and opinions regarding the impact of the incident on herself, and as such, contains her personal information. The letter also contains a small amount of information about one of the affected person's employees in that it refers to her as being involved in an accident at her place of business. In the circumstances, I find that this qualifies as the employee's personal information as well. In my view, much of the information in the record pertaining to the affected person is not reasonably severable from that pertaining only to the appellant. On the other hand, once the name of the employee is removed from the record, the remaining portions do not identify her in any way. Therefore, I find that the balance of the letter does not contain the personal information of the employee. I will consider below, whether the disclosure of the employee's name would constitute an unjustified invasion of her privacy.

Section 36(1) of the *Act* gives individuals 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.

Under section 38(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals and the institution determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy, the institution has the discretion to deny the requester access to that information.

Sections 14(2) and (3) 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 institution to consider in making this determination. Section 14(3) lists the types of information the disclosure of which is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information the disclosure of which does not constitute an unjustified invasion of personal privacy.

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

A section 14(3) presumption can be overcome if the personal information at issue falls under section 14(4) of the *Act* or if a finding is made under section 16 of the *Act* that a compelling public interest exists in the disclosure of the record in which the personal information is contained which clearly outweighs the purpose of the section 14 exemption [Order PO_1764].

The Township did not refer to any particular provision in section 14 as a basis for withholding the record from disclosure. In the Notice of Inquiry, I invited the parties to address all of the provisions in section 14. In order to assist the parties in directing their minds to the issues to be determined in this appeal, I commented in the Notice that:

Many orders of this office have addressed issues concerning complaint letters in circumstances where a presumption against disclosure applies (for example, Orders PO-1706, PO-1856, M-1022 and M-1109) and in cases where a presumption does not apply (for example, Orders M-780, MO-1132, MO-1278 and PO-1641). In the latter cases, the decision whether or not to disclose the personal information of the complainant was based on the particular circumstances of each case and involved a weighing of the factors and circumstances in section 14(2) (or its provincial equivalent in section 21(2)). I have attached Orders M-780, MO-1132, MO-1278 and PO-1641 to this Notice for your perusal.

The affected person's representations

The affected person states that she did not demand that the appellant be disciplined, but rather, that the council take the matter seriously and speak to her. The affected person describes an

accident that occurred at her place of business (which formed the basis for the subsequent incident) and states:

This accident was the reason I laid my employee off for a period of 3 months. This was the reason [the appellant] felt she should "state" her opinion. No where in my letter have I grossly exaggerated or lied about the incident with her. She stated to me herself that she knows ... Please tell me how she would know this ... [the appellant] should feel embarrassed for trying to slander myself and an innocent girl with something she knew nothing about.

The affected person states that she is attempting to run a profitable business and that she believes that the appellant is trying to ruin her name and indicates that she is "still very shocked to see someone who represents our community behave in this manner".

The Township's position

During mediation, the Township indicated that the letter had not been placed in the appellant's personnel file and that, as far as it is concerned, it does not affect her employment with the Township in any way. The Township provided a copy of a letter that was sent to the affected person by the Township's Treasurer on behalf of council which indicates that, to the best of its knowledge, the appellant was not acting in her capacity as a municipal employee at the time of the incident and that it would not take any disciplinary action against her. I note that the appellant has a copy of this letter as she attached a copy to her letter of appeal.

I contacted the Township in order to determine the circumstances under which the affected person's letter was provided to council. The Township indicated that the letter was mailed to its offices to the attention of the "Town Councillors". The Township stated that the Administrator took the letter to the council meeting at which time the council passed a resolution to move *in camera* in order to review and discuss it. The Township provided a copy of the resolution to this office which indicates that the council proceeded *in camera* to address a matter pertaining to "personal matters about an identifiable individual, including municipal local board employees".

The appellant's position

The appellant describes the incident that occurred at the affected person's place of business from her perspective. She notes that when she went to the shop, the affected

person was not there, nor were there any customers present. She also describes the actions that the affected person has taken in response to her discussions with her employee. She states:

[The affected person] called my home on the following Saturday but I was out when she called. I tried to call her back but there was no answer. Then on Monday she came to the Municipal Office where I work and asked to speak with me. I was out of the office at the time so she said she would come back. She did come back, waited until I was finished with a customer and then proceeded to yell at me for harassing her employee. She ranted and raved at me for a good three

minutes. She had no business coming to my place of employment to discuss a personal issue with me and I reported this to my department head ...

[The affected person] has tried to involve my employer twice in this personal problem and she only did it to get me in trouble. In her representation she refers

to me as a representative of the community. I am neither a representative of the community nor of the Township. I am an employee who works 7.5 hours per day, 5 days per week. What I do on my own time is my own business and of no concern or interest to my employer. If I worked for any other employer she would never had attempted to involve them. I don't understand how she can expect to have her privacy protected when [the] issue was not a municipal issue in the first place.

The appellant states that it is her belief that the letter was considered at an *in camera* meeting of council in order to protect her privacy as an employee because it related to a "complaint" about her. She acknowledges that the letter has not been placed in her personnel file but states:

[I]t still remains on file under council correspondence. Management and Council members may change and years down the road no one may know the outcome of how that letter was handled and that it 'did not affect my employment with the Township'.

Because Council did not feel it was an issue involving my employment they did not want to become 'involved' by letting me clarify the statements made ...

It is my feeling that the administrator should have not brought this letter for discussion to council because it clearly had nothing to do with my employment with the Township. Because it was dealt with by council it must remain on file in the office.

The appellant believes that the letter is “far more damaging to me sitting in the files of the municipal office than it is damaging to her if I get a copy of it for my own personal records.” The appellant reiterates that the letter was shown to her and discussed with her “after it had been dealt with by council”. In this regard, she notes that:

[N]o where did it ask that it be kept confidential and as far as I’m concerned when [the affected person] sent the letter addressed to council she expected and hoped that it would be read out at a council meeting in order to embarrass me.

The appellant states further:

If this letter is allowed to stand as is then any member of the community can write anything they want about an employee of the Municipality to council and even though it may not be placed in their personnel file it will be on file at the office

and council will be hearing derogatory things about employees that could affect their opinions of employees even if they do not act upon it. [The affected person] needs to understand that as a business person she will be subjected to criticism from unsatisfied customers and she can’t use anyone’s employer to get back at them for this personal issue.

...

That letter should have never been written to my employer or dealt with by my employer. Now that it is on file in their office I feel that I have a right to a copy. I think that if individuals can complain about what employees do on their own time knowing that our (employees) course of action is nil, then they will continue to do so to anyone who slights them. If, however, they realize that the employee will receive a copy of the letter they are writing, they may not be so quick to exact revenge at the time and expense of the municipality.

The affected person’s reply

In responding to the appellant’s representations, the affected person writes:

I would like to say that I would not have a problem with [the appellant] receiving a copy of the original letter I wrote to the Town Council if I thought it would end there. It seems to me that this woman is quick to temper and also quick to criticism. She feels that she does not represent our community or township because she is only an employee. As far as I am concerned any employee of any company is a representation of that employer...all that I was seeking was for an apology or simply for her to realize that she shouldn't be interfering in this serious matter. I assure you it was not to embarrass her. I just wanted her to stop the accusations ... [The appellant] felt I should not have spoke of this matter in her place of employment. I'm wondering why she felt it was appropriate to upset my employee ... about this matter in her place of employment when it had nothing to do with either one of them.

Discussion and Findings

The issues between the appellant and the affected person, while obviously personal, have resulted in a record coming into the custody of an institution under the *Act*. Once there, and once a request is made for it under the *Act*, the *Act* governs the decision of whether or not it is disclosed.

The purposes of the *Act* are set out in section 1:

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,
 - (i) information should be available to the public,
 - (ii) necessary exemptions from the right of access should be limited and specific, and
 - (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
- (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

Section 36(1)(b) of the *Act* provides:

Every individual has a right of access to,

- (b) any other personal information about the individual in the custody or under the control of an institution with respect to which the individual is able to provide sufficiently specific information to render it reasonably retrievable by the institution.

Section 38(b) of the *Act* states:

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

if the disclosure would constitute an unjustified invasion of another individual's personal privacy;

As I noted above, sections 14(2) and (3) 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.

Upon review of the record and the circumstances under which it came into the custody of the Township, I find that none of the presumptions in section 14(3) applies in the circumstances.

In their representations, the appellant and the affected person have alluded to a number of factors and considerations under section 14(2). I will address each one in turn below.

Factors favouring non-disclosure

Section 14(2)(h) - the information was supplied in confidence

In order to find this factor relevant, the evidence must demonstrate that the supplier of the information, in this case the affected person, provided it to the Township in confidence. Further, this expectation of confidentiality must be reasonable (Order M-780). In considering the manner in which the letter was sent to the Town Councillors, I do not accept that the affected person had any expectation of confidentiality with respect to it. The letter does not indicate that it was being submitted in confidence. The affected person in her representations states: “[i]f one sends a letter to council it would only be assumed that council would discuss it. The fact that it was discussed *in camera* is clearly to protect all parties involved.” I accept that the council moved *in camera* to discuss the matter because it related to personal matters. However, I do not interpret the council’s decision to proceed in this manner as an indicator that she had any expectation that it would do so. Moreover, the affected person attended at the appellant’s office and raised the matter publicly, apparently not concerned about who else was listening. I agree with the appellant that it is more likely than not that the affected person was unconcerned about her complaint being aired in public. This is inconsistent with an expectation of confidentiality and I find that this factor is not relevant in the circumstances.

Sections 14(2)(e) and (i) - unfair exposure to pecuniary or other harm/damage to reputation

In her representations the affected person indicates that the appellant has “slandered” her. She suggests that the appellant is “trying to ruin my name”. She states several times that she wants the “accusations to stop”. From all of the evidence before me, it appears that the incident which sparked the dispute between these two individuals was a statement made by the appellant to the affected person’s employee. According to the appellant, there were no customers present when she spoke to the employee. The appellant’s version of the incident was provided to the affected person, and was not disputed. The appellant may have made comments outside of this conversation. However, the affected person does not provide any examples of the appellant’s efforts to “ruin her name”. There is no evidence before me that the appellant has made any “accusations” against the affected person as far as the incident is concerned in any event. The appellant’s submissions, which were shared in their entirety with the affected person, suggest rather that any escalation of the incident has occurred as a result of the affected person’s own actions.

However, the affected person is also concerned that the appellant will not let the matter drop once she receives a copy of the letter and that it will continue to haunt her. That may well happen. On the other hand, once this appeal has been resolved the entire matter may fade away. Either way, any further action taken by the appellant relating to this matter is a result of the affected person sending the letter to the appellant’s employer in the first place. In my view, there is nothing “unfair” to the affected person in the possible consequences of her own actions in this regard. Accordingly, I find that any possible consequences flowing from the disclosure of the record to the appellant, as contemplated by sections 14(2)(e) or (i), are not relevant in the circumstances.

Section 14(2)(f) - the information is highly sensitive

The affected person does not specifically refer to this factor as being relevant. The appellant takes the position that the information in the letter is highly sensitive, but only with respect to herself. It is apparent that the representations of both parties, when read in context, suggest that the parties consider this to be a sensitive matter. This factor is typically considered to be one which favours non-disclosure of the personal information contained in a record.

Because the letter refers to a private dispute, I accept that there is some sensitivity with respect to what was said and to who was involved, particularly where, as is the case with the employee named in the letter, the person is unwittingly associated with the dispute by one of the other parties. However, the contents of the letter are to a large degree about the appellant, not the affected person and any concern or distress relating to its disclosure would more likely be felt by the appellant.

In the circumstances, I find that, as a factor favouring privacy protection, section 14(2)(f) carries very little weight insofar as the affected person is concerned. The same cannot be said for her employee, however. It is not unreasonable to expect that identification of her in the context of this dispute may well cause her enough distress to bring her personal information within the scope of this provision. The information about her in the letter is minimal, however, and I therefore assign this factor only moderate weight in assessing her interests in non-disclosure against the appellant's interest in disclosure.

I have considered the other listed factors under section 14(2). In my view, none of the remaining factors favouring either privacy protection or disclosure are relevant.

Unlisted considerations favouring disclosure

My assessment of this issue is not restricted to only a consideration of the factors listed in section 14(2). The preamble to section 14(2) indicates that all relevant circumstances must be considered, including those listed, in determining whether a disclosure of personal information constitutes an unjustified invasion of personal privacy.

The appellant indicates that her employer now knows more about her than she would like and that she was embarrassed by the situation. Further, even though no action was taken by her employer, there essentially remains a cloud over her. Although speculative, she indicates that because the letter must remain on file, there is a possibility that it will come back on her at some future time. She indicates that she was not given an opportunity to address the issues raised in the letter because her employer took the position that it did not concern Township business. In essence, the appellant asserts that her reputation has been tarnished because of the letter. I accept that the receipt of such a letter by an employer would be embarrassing for the employee. I also accept that it is very likely that it would have some impact on the way her employer perceives her. In my view, these considerations, all of which favour disclosure, are relevant in the circumstances. It appears, however, that their impact is likely more a matter of perception than a matter of fact and for this reason, I find that these considerations are of low weight.

Finally, in Order PO-1910, Senior Adjudicator David Goodis commented on the privacy expectations of individuals who provide information to a government institution about another individual. He stated:

As I found above, the names of these individuals in the context of these records is personal information, because it reveals other personal information about these individuals, specifically that they provided information to the PGT about the appellant's guardianship application. In my view, on an objective assessment, neither the PGT nor the primary affected persons had a reasonable expectation that the names of the primary affected persons would be treated confidentially. This finding is supported by paragraphs (e) and (g) of the definition of personal information which read:

“personal information” means recorded information about an identifiable individual, including,

- (e) the personal opinions or views of the individual, except where they relate to another individual,
- (g) the views or opinions of another individual about the individual,

In my view, these provisions suggest that there is a diminished privacy interest in the identity of an individual who provides a view or opinion about another individual. If the views or opinions of an identifiable individual about another person are not the opinion-holder’s personal information, and can be disclosed, it is reasonable to expect that the opinion-holder’s identity, standing alone, could attract only a minimal privacy expectation at best, barring exceptional circumstances.

In that case, the Senior Adjudicator was only addressing the disclosure of the identities of individuals who had provided information. In my view, however, the principle he applies is similarly applicable in the circumstances of this appeal. In this case, the appellant knows the identity of the affected person and has, in fact, read the letter, thus she knows the views and opinions that were expressed. As I indicated above, although the letter contains some personal information of the affected person, it primarily consists of her views and opinions of the appellant. Pursuant to the *Act*, this information is only the personal information of the appellant. Although the personal information of the affected person is intertwined with her views and opinions of the appellant, I find that there are no exceptional circumstances that would support a finding that the affected person had a reasonably held privacy expectation with respect to her personal information contained in the letter. Given the history of this matter and the manner in which the record came into the custody of the Township, this consideration carries a higher degree of weight in the circumstances of this appeal than the other factors and considerations noted above.

The above discussion only applies to the information in the record about the appellant and the affected person. With respect to the name of the employee referred to in the letter, it is apparent that she is, in essence, a mere bystander to the dispute between the other two parties. In my view, none of the factors favouring disclosure referred to above are relevant to her identity.

Balancing the factors and considerations

In balancing the affected person’s right to privacy under the *Act* with the appellant’s right to access her own personal information, I found that the only factor favouring privacy

protection in the circumstances of this appeal is section 14(2)(f) (highly sensitive). In the circumstances of this appeal, however, I found that it carried very little weight vis-a-vis the affected person. There are, in contrast, a number of considerations carrying varying degrees of weight that favour disclosure. Of particular importance in balancing the competing interests in disclosure of the letter is the fact that I found that the affected person did not have an expectation of confidentiality when she sent the letter to the Township, combined with the fact that she had a diminished privacy interest with respect to her personal information in the letter. In balance, the considerations favouring disclosure outweigh any privacy interests the affected person has in the record. In the circumstances of this appeal, I find that the disclosure of the record at issue would not constitute an unjustified invasion of the affected person's personal privacy and section 38(b), therefore, does not apply.

On the other hand, I found that none of the factors or considerations favouring disclosure was relevant to the name of the employee referred to in the letter. I also found that, although of moderate weight, the factor in section 14(2)(f) favoured non-disclosure of this information. In the balance, I find that disclosing the name of the employee would constitute an unjustified invasion of privacy under section 38(b). I have highlighted this information on the copy of this record that I am sending to the Township's Freedom of Information and Privacy Co-ordinator with this order. The highlighted information should not be disclosed.

ORDER:

1. I order the Township to disclose the portions of the record at issue that have not been highlighted to the appellant by providing her a copy of it by August 14, 2001 but not before August 7, 2001.
2. I uphold the decision of the Township to withhold the highlighted portions of the record at issue.
3. In order to verify compliance with this order, I reserve the right to require the Township to provide me with a copy of the information provided to the appellant in accordance with provision 1.

Original signed by: _____
Laurel Cropley
Adjudicator

July 9, 2001 _____