



**Information and Privacy  
Commissioner/Ontario**

**Commissaire à l'information  
et à la protection de la vie privée/Ontario**

# **ORDER MO-1535**

**Appeal MA-010333-1**

**City of Toronto**



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## NATURE OF THE APPEAL:

The City of Toronto (the City) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for records in the requester's family residence file held by the City's shelter, housing and support division, and the daycare file for the requester's son held by the City's children's services division. The requester's son is under the age of 16 and at one time was in the custody of the Children's Aid Society of Toronto (the CAS), although it is not clear to me whether this is still the case.

The City provided full access to the daycare records, and partial access to the family residence records. The City withheld portions of the family residence records on the basis of sections 14 and 38(b) (invasion of privacy) of the *Act*. The requester, now the appellant, appealed the City's decision.

This appeal was not resolved through mediation and moved to the adjudication stage. I initially sent a Notice of Inquiry setting out the issues in this appeal to the City, which made both confidential and non-confidential representations in response. In its representations, the City agreed to disclose additional portions of the withheld records, but declined to disclose the remainder.

I then sent a Notice together with the City's non-confidential representations to the appellant. The appellant requested and I granted an opportunity to provide her submissions to me orally.

## RECORDS:

The records at issue and the City's decision on those records are described as follows:

<b>Record number</b>	<b>Description of record</b>	<b>City's decision</b>
1-4	Client information form	Disclosed in part; son's health card number withheld under sections 14 and 38(b)
1-5	Client information form	Disclosed in part; son's health card number withheld under sections 14 and 38(b)
1-15	Photocopies of health cards and social insurance card	Disclosed in part; son's health card withheld under sections 14 and 38(b)
1-19	Parent's consent to medical treatment form	Disclosed in part; son's health card number withheld under sections 14 and 38(b)
2-15	Client information form	Disclosed in part; son's health card number withheld under sections 14 and 38(b)
2-20 2-21	Photocopies of health cards and social insurance card	Disclosed in part; son's health card withheld under sections 14 and 38(b)
2-25	Client information form	Disclosed in part; son's health card number withheld under sections 14 and 38(b)
2-44	Report of client complaint made to the City by the appellant	Disclosed in part; names and other personal information of affected persons withheld under sections 14 and 38(b)

<b>Record number</b>	<b>Description of record</b>	<b>City's decision</b>
2-45	Report of client complaint made to the City by affected persons	Withheld in full under sections 14 and 38(b)
2-48	City authorization for payment of prescription form	Disclosed in part; prescription details withheld under sections 14 and 38(b)
2-49	Prescription	Withheld in full under sections 14 and 38(b)

## **DISCUSSION:**

### **CUSTODIAL PARENT**

Section 54(c) reads:

Any right or power conferred on an individual by this *Act* may be exercised, if the individual is less than sixteen years of age, by a person who has lawful custody of the individual.

Where this section applies, the custodial parent may “stand in the shoes” of his or her child. An institution considering a request for access by the parent for information about the child must apply the standards under the *Act* as though it were the child requesting his or her own personal information (see, for instance, Order M-927).

In this case, although it is not clear if the CAS still has custody of the child in question, it appears that he is not in the lawful custody of the appellant. Accordingly, the appellant cannot rely on the provisions of section 54(c) in this appeal.

I will therefore turn to consider her right to have access to the information in the record under other provisions of the *Act*.

### **PERSONAL INFORMATION**

Under section 2(1) of the *Act*, “personal information” is defined, in part, to mean recorded information about an identifiable individual, including information relating to the medical history of the individual [paragraph (b)], any identifying number, symbol or other particular assigned to the individual [paragraph (c)], the views or opinions of another individual about the individual [paragraph (g)], and 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 [paragraph (h)].

The City submits that:

The information at issue includes the health card number of the appellant’s son; medical information in an authorization note to a local pharmacist together with a

doctor's prescription [concerning the appellant's son]; residents' complaints about the appellant; and the appellant's complaints against other named individuals.

. . . this information meets the requirements of . . . the definition of personal information in section 2(1) of the *Act*.

I agree with the City's description of the type of information contained in the record. All of the records at issue (except Records 48 and 49) contain information about the appellant, including her name, date of birth, health card number, social insurance number, and other information relating to her interactions with other individuals. In addition, all of the records contain personal information of the appellant's son, including his name, date of birth, health card number and information relating to a prescription. Finally, Records 2-44 and 2-45 contain personal information of affected persons, including information about their interactions with the appellant and her son. Therefore, all of the records at issue contain personal information as that term is defined in section 2(1) of the *Act*.

## **INVASION OF PRIVACY**

### **Introduction**

Section 36(1) of the *Act* gives individuals a right of access to their own personal information held by an institution. Section 38, however, creates certain exceptions to that right of access. Under section 38(b) of the *Act*, where a record contains the personal information of both the appellant and other individuals, the City has the discretion to deny the appellant access to that information if it determines that the disclosure of the information would constitute an unjustified invasion of another individual's personal privacy. On appeal, I must be satisfied that disclosure of the record to the appellant would constitute an unjustified invasion of another individual's personal privacy (see Order M-1146).

Section 38(b) of the *Act* introduces a balancing principle. The City must weigh the requester's right of access to her own personal information against other individuals' right to the protection of their privacy. If the City determines that release of the information would constitute an unjustified invasion of the other individuals' personal privacy, then section 38(b) gives the City the discretion to deny access to the personal information of the requester.

However, if the record contains only the personal information of other individuals and not of the appellant, section 14(1) of the *Act* prohibits an institution from releasing the information unless one of the exceptions set out in that section applies.

In both situations, 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. Those sections are relevant to the issues under both section 14(1) and section 38(b). Section 14(2) provides some criteria for the head to consider 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(3) lists the types of information disclosure of which are presumed to constitute an unjustified

invasion of personal privacy. Section 14(4) refers to certain types of information disclosure of which does not constitute an unjustified invasion of personal privacy.

With respect to section 14(3), the Divisional Court has held that once a presumption against disclosure has been established, it cannot be rebutted by one or more of the factors set out in 14(2) [*John Doe v. Ontario (Information and Privacy Commissioner)* (1993), 13 O.R. (3d) 767]. In other words, if section 14(3) is found to apply, the factors in section 14(2) cannot be resorted to in favour of disclosure.

**Records 1-4, 1-5, 1-15, 1-19, 2-15, 2-20, 2-21, 2-25, 2-48, 2-49**

Records 1-4, 1-5, 1-15, 1-19, 2-15, 2-20, 2-21, 2-25 contain both the appellant's and the appellant's son's personal information. The information withheld from these records consists of the appellant's son's health card number and copies of his health card. Records 2-48 and 2-49 contain personal information of the appellant's son only. The information withheld from these records consists of details about a prescription for the appellant's son.

The City submits:

. . . [T]he severed information contained in the note and the doctor's prescription is information that relates to the son's medical condition and/or treatment.

With respect to the son's health card number, in IPC Order P-867 (a reconsideration of Order P-590), Inquiry Officer, Anita Fineberg referred to the Ministry of Health's database "Claims Reference File" (CREF). The CREF is described, as containing, amongst other things, a patient's health number, name, date of birth and medical service history.

It is further stated that to access information in the CREF, the identity of the individual requesting the information "must be verified by comparing the information provided by the requester with the personal information held on the databank. The requesting individual is asked to provide his or her health card number . . ."

Ms. Fineberg acknowledged that on the face of it, a health card number and a version code (an addition to a health number) do not appear to be the type of information listed in the presumption in section 21(3)(a) [the provincial equivalent to section 14(3)(a)] of the *Act*. However, she went on to conclude that when considered in the light of the ruling of the [Divisional] Court, the fact that a version code (and a health card number) "allows one to obtain access to the information described in section 21(3)(a) is sufficient to establish the application of the presumption."

. . . [T]herefore, . . . in the circumstances of this appeal, the appellant's son's health card number and the severed portion of the note together with the doctor's prescription would fall within the type of information set out in section 14(3)(a)

of the *Act*. The disclosure of this personal information would thus constitute an unjustified invasion of personal privacy.

I accept that, under normal circumstances, where a person is requesting an affected person's health card number and prescription information, the disclosure of that information would be considered an unjustified invasion of the affected person's privacy and therefore section 38(b) would apply.

However, in these circumstances, and given the very young age of the appellant's son at the time the records were created, I find that the information in these records was either supplied to the City by the appellant herself (in the case of the health card information), or was clearly known to the appellant because the City gave it to the appellant on behalf of the son (in the case of the prescription information). Prior orders of this office have found that non-disclosure of personal information which was originally provided to the institution by a requester, or personal information of other individuals which would clearly have been known to a requester, would contradict one of the primary purposes of the *Act*, which is to allow individuals to have access to records containing their own personal information unless there is a compelling reason for non-disclosure. In these orders, it has been found that a denial of access would constitute, according to the rules of statutory interpretation, an "absurd" result. Accordingly, disclosure has been ordered where an absurd result is found.

This principle has been applied so as to support access to information that might otherwise be exempt from disclosure under sections 38(b) and 14 (see, for example, Order PO-1819 under the provincial equivalent to sections 38(b) and 14).

I agree with these orders, and in applying this principle here, I am satisfied that the exemptions under section 14 and 38(b) of the *Act* cannot apply so as to deny the appellant access to the withheld information in Records 1-4, 1-5, 1-15, 1-19, 2-15, 2-20, 2-21, 2-25, 2-48, 2-49.

#### **Records 2-44, 2-45**

These records consist of a complaint report filled out by a City staff member when taking a complaint from the appellant (Record 2-44), and a similar report regarding a complaint from affected persons. The only information remaining at issue in Record 2-44 is a statement by the author that consists of the personal information of affected persons. The City withheld all of Record 2-45.

The City submits:

With respect to Record 44, with the exception of the following sentence . . . , the severances constitute information that was provided by the appellant herself in her statement of complaint. The City is, therefore, no longer applying sections 38(b) and 14(1) to these severances.

With respect to the sentence in Record 44 and the personal information in Record 45, the City submits that sections 14(2)(f) and [14(2)(h)] of the *Act* apply. These sections state respectively:

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,

- (f) the personal information is highly sensitive;
- (h) the personal information has been supplied by the individual to whom it relates in confidence;

. . . . .

. . . [A]lthough the matters complained about took place in 1999, if this information were to be disclosed to the appellant . . . the disclosure could reasonably cause the complainants anxiety and undue distress and therefore the personal information at issue is highly sensitive within the meaning of section 14(2)(f) of the *Act*.

In addition, . . . this information was supplied by the complainants in confidence within the meaning of section 14(2)(h) . . . . At no time, did the complainants sit down with the appellant to discuss their differences nor does it appear that this matter was further pursued by housing staff. The complainants, therefore, have the reasonable expectation that their complaints have remained confidential since that time.

. . . [I]t would not be possible to simply sever the names of the complainants from the record at issue and to provide the remaining information to the appellant. The appellant would nevertheless be able to determine from the contents of the record the identities of the complainants.

. . . . .

In summary, the City submits that disclosure of the one severance in Record 44 and Record 45 in its entirety would constitute an unjustified invasion of the privacy of individuals other than the appellant. Further, the factors favouring privacy protection outweigh the appellant's rights to her own information. Therefore, access to the appellant's personal information has been appropriately denied pursuant to sections 14(2)(f), [14(2)(h)] and 38(b) of the *Act*.

In her representations, the appellant describes events at the family residence that caused her personal distress and that led her to file her complaint (Record 44). She also indicates that she is experiencing great distress over her inability to obtain the information at issue, which she feels a strong personal need to obtain. However, she does not make specific reference to any of the section 14(2) factors in favour of disclosure.

Regarding the report of the appellant's complaint (Record 44), I accept the City's submission that the sentence severed in the complaint form filed by the appellant reveals the identities of the individuals who filed a complaint against the appellant and that disclosure to the appellant of the allegations contained in the complaint filed by these individuals would cause them extreme personal stress. Therefore, the section 14(2)(f) "highly sensitive" factor weighing against disclosure applies to the severed sentence in Record 44. I also find that no factors weighing in favour of disclosure apply to this sentence. In the circumstances, I conclude that disclosure of this information would constitute an unjustified invasion of the affected persons' privacy and therefore section 38(b) applies. I also find that although most of the information in the record was supplied by the appellant, the withheld information was provided by the author of the report, not the appellant and, therefore, the absurd result principle does not apply.

Regarding Record 45, I similarly find that disclosure of this report, in these circumstances, would cause the affected persons extreme personal stress and, therefore, the section 14(2)(f) factor applies. I also find that no factors weighing in favour of disclosure apply to this record. In the circumstances, I conclude that disclosure of Record 45 would constitute an unjustified invasion of the affected persons' privacy and therefore section 38(b) applies. I also find that the appellant's personal information is so intertwined with that of the affected persons that it would not be reasonable to sever this record.

Finally, I am satisfied that the City properly took into account the relevant circumstances of this case and exercised its discretion appropriately under section 38(b) of the *Act*.

## **ORDER:**

1. I uphold the City's decision to withhold one sentence in Record 44 and all of Record 45.
2. I do not uphold the City's decision to withhold portions of the remaining records, and I order the City to disclose Records 1-4, 1-5, 1-15, 1-19, 2-15, 2-20, 2-21, 2-25, 2-48 and 2-49 in their entirety to the appellant no later than **May 17, 2002**.

Original signed by: \_\_\_\_\_  
Dawn Maruno  
Adjudicator

\_\_\_\_\_  
May 3, 2002