



**Information and Privacy
Commissioner/Ontario**

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

ORDER MO-1478-F

Appeal MA-010044-1

The New City of Hamilton



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NATURE OF THE APPEAL:

The City of Hamilton and Regional Municipality of Hamilton-Wentworth (now the New City of Hamilton - the "City") received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) for a copy of an audiotape recording of a telephone call placed by an individual to the City's Fire Department on October 31, 2000.

The City located the responsive audiotape and before responding to the request, the City notified the individual who made the telephone call, pursuant to section 21 of the *Act*. The individual advised the City that he objected to disclosure of the audiotape, and the City subsequently responded to the requester denying access on the basis of section 14(1) of the *Act* (invasion of privacy). The City relied on the factors identified in sections 14(2)(e), (f) and (h) in support of the exemption claim.

The requester (now the appellant) appealed the City's decision.

In his letter of appeal, the appellant raised the possible application of the public interest override contained in section 16 of the *Act*.

Mediation was not successful in resolving the issues, so the appeal was transferred to the Adjudication stage. I sent a Notice of Inquiry initially to the City and to the individual who made the telephone call (the affected person). Both the City and the affected person provided representations in response. After issuing Interim Order MO-1461-I, which dealt with issues regarding the sharing of representations with the appellant, I provided a copy of the Notice to the appellant, together with the non-confidential portions of the representations received from the City and the affected person. The appellant did not submit representations.

RECORD

The record is an audiotape of a telephone call placed by the affected person to the City's Fire Department on October 31, 2000.

DISCUSSION

PERSONAL INFORMATION/INVASION OF PRIVACY

Under section 2(1) of the *Act*, "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 the disclosure of the name would reveal other personal information about the individual.

Previous decisions of this office have drawn a distinction between an individual's personal, and professional capacity, and found that in some circumstances, information associated with a person in his or her professional capacity will not be considered to be "about the individual" within the meaning of the section 2(1) definition of "personal information" (e.g. Orders P-257, P-427, P-1412, P-1621).

The following passage from a decision of the Supreme Court of Canada in *Dagg v. Canada (Minister of Finance)* (1997), 148 D.L.R. (4th) 385 at 413, 415, in the context of the federal *Privacy Act*, captures the essence of the distinction which this office has drawn between an individual's personal, and professional or official government capacity:

The purpose of these provisions is clearly to exempt [i.e., from the definition of "personal information"] only information attaching to positions and not that which relates to specific individuals. Information relating to the position is thus not "personal information", even though it may incidentally reveal something about named persons. Conversely, information relating primarily to individuals themselves or to the manner in which they choose to carry out the tasks assigned to them is "personal information".

In Reconsideration Order R-980015, Adjudicator Donald Hale reviewed the jurisprudence relating to the definition of the term "personal information" as it relates to individuals associated with organizations:

... the information associated with the names of the affected persons which is contained in the records at issue relates to them only in their capacities as officials with the organizations which employ them. Their involvement in the issues addressed in the correspondence with the Ministry is not personal to them but, rather, relates to their employment or association with the organizations whose interests they are representing. This information is not personal in nature but may be more appropriately described as being related to the employment or professional responsibilities of each of the individuals who are identified therein. Essentially, the information is not about these individuals and, therefore, does not qualify as their "personal information" within the meaning of the opening words of the definition.

In order for an organization, public or private, to give voice to its views on a subject of interest to it, individuals must be given responsibility for speaking on its behalf. Individuals expressing the position of an organization act simply as a conduit between the intended recipient of the message and the organization. The voice is that of the organization rather than that of the individual delivering the message. In the usual case, the views expressed are those of the organization, as opposed to the personal opinions or views of the individual within the meaning of section 2(1)(e) of the *Act*. Further, this information will not be considered to be "about" the individual, for the reasons set out above [emphasis in original].

In its representations, the City changes its position on the "personal information" issue. Although continuing to maintain that the affected person's home address and telephone number contained on the audiotape qualify as his personal information, the City now submits that the rest of the information does not:

The affected person is a member of the safety committee at his place of work ..., and in fact his title is "Chairman of the Health and Safety Committee". This is confirmed on the

audiotape, as the affected person clearly identifies himself as such. His call to the fire department was prompted by a telephone call from [a fellow union official]. It appears that the affected person was acting on behalf of the Committee in the capacity of “Chairman of the Health and Safety Committee”, and thus the audiotape contents cannot be considered to be personal information.

The affected person disagrees. He states that the audiotape contains his name, address and telephone number, as well as his personal views, and goes on to submit:

... the contents of the telephone call do not fall into the category of information associated with [the affected person] in his professional capacity. It is true that [the affected person] is Union Chair of the joint Health and Safety Committee in his workplace. However, this is an elected position. [The affected person] is an employee of [a named company] only. He is not an employee of the Union nor is he an employee of the Health and Safety Committee.

[The affected person] was not calling the fire department on behalf of, or with the authorization of the Union or the Health and Safety Committee. Rather, he was making a personal call to report a workplace situation which had been reported to him by a co-worker. It was a personal call made out of concern for the safety of his co-workers. [The affected person] has the right to expect that the contents of this personal call are not made public.

Having reviewed the contents of the audiotaped telephone call, I do not accept the position put forward by the affected person. It is clear from the content of the tape that the call was made by the affected person to the Fire Department in his capacity as Chair of the Health and Safety Committee, and it is reasonable to conclude that he was contacted by the co-worker because of his role in representing the union on workplace health and safety issues. Although the affected person is correct in stating that he is neither employed by his union nor the Committee itself, I do not find this distinction to assist his argument. His role as Chair of the Committee is exclusively associated with his professional responsibilities as an employee and representative of his union on issues relating solely to the workplace setting. There is no personal component to this role, and the information provided by the affected person to the fire department regarding the fire at his workplace is not “about” him in any personal sense. Rather, it is “about” his work-related responsibilities to deal with health and safety issues, and I find that this information is professional not personal, and does not fall within the scope of the definition of “personal information” in section 2(1) of the *Act*.

I accept the position of both the City and the affected person that his home address and telephone number qualify as “personal information” under paragraph (d) of the definition in section 2(1).

Section 14 of the *Act* is a mandatory exemption claim. If information meets the definition of “personal information” in section 2(1), and none of the exceptions listed in section 14(1) of the *Act* apply, the City is precluded from disclosing this information to the appellant.

The appellant provided no representations in response to the Notice of Inquiry. I have reviewed the various exceptions in section 14(1) and, absent any evidence to the contrary, I find that none of them apply to the affected person's home address and telephone number. I also find that the requirements of section 16 are not present as it relates to this information.

Accordingly, I find that disclosure of the affected person's home and address would constitute an unjustified invasion of his privacy, and that the portions of the audiotape containing this information qualify for exemption under section 14 of the *Act*. I find that the rest of the audiotape, including the affected person's name which is known to the parties, does not include the affected person's personal information and does not qualify for exemption and should be disclosed.

ORDER

1. I uphold the City's decision to deny access to the home address and telephone number of the affected person contained on the audiotape.
2. I order the City to disclose the remaining information on the audiotape to the appellant by **November 21, 2001** but not before **November 16, 2001**.
3. In order to verify compliance with provision 2 of this order, I reserve the right to require the City to provide me with a copy of the audiotape disclosed to the appellant.

Original signed by: _____
Tom Mitchinson
Assistant Commissioner

October 17, 2001