



**Information and Privacy  
Commissioner/Ontario**

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

# **ORDER MO-1572**

**Appeal MA-010294-1**

**Corporation of the City of Kingston**



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## **NATURE OF THE APPEAL:**

The appellant, representing a community legal clinic, submitted a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*) to the Corporation of the City of Kingston (the City) for access to copies of any agreements between the City and a named not-for-profit agency (the agency) relating to the acceptance of “workfare” placements.

In response, the City refused to confirm or deny the existence of such a record. In doing so, the City did not refer to a particular section of the *Act* as the basis for this claim.

The appellant appealed this decision, in part, on the basis of the inadequacy of the City’s decision, and in part, because he takes the position that the “fact” that the named agency accepts workfare placements has been admitted by the agency itself. In support of this position, the appellant attached a copy of a letter he sent to the President of the agency in which he refers to a telephone conversation he had with the agency’s Regional Director regarding its decision to accept workfare placements.

During the mediation stage of the appeal, the City indicated that it was relying on section 14(5) of the *Act* as the basis for its decision to refuse to confirm or deny the existence of a record responsive to the request. As further mediation was not possible, the appeal was moved to the adjudication stage of the process.

The Commissioner’s office initially sought the representations of the City and the agency and provided them with a Notice of Inquiry setting out the facts and issues extant in this appeal. Submissions were received from the City and then shared, in part, with the appellant. The agency did not submit representations in response to the Notice. However, in responding to the City’s notification of the appellant’s request, the agency indicated that it believes that confirming or denying the existence of such a record may have a negative impact on the financial operations of its organization. The appellant did not make representations in response to the Notice provided to it, but in earlier correspondence to this office, he argued that the agency has publicly admitted to accepting workfare placements. The appellant relies on evidence of this fact derived from his own inquiries, which accompanied his letter of appeal.

For ease of discussion, I will state that the City has not established the requirements of section 14(5). A record responsive to the request exists, specifically, an agreement between a service provider agency and the City.

## **DISCUSSION:**

### **PERSONAL INFORMATION**

In order to establish the application of section 14(5) of the *Act*, the City must demonstrate that the disclosure of the record, if it exists, would constitute an unjustified invasion of personal privacy. An unjustified invasion of personal privacy can only result from the disclosure of personal information, which is defined in section 2(1) of the *Act* to mean “recorded information about an identifiable individual”.

The City acknowledges that the record requested, if it existed, does not contain information which is “personal in nature”. However, it suggests that “the disclosure of the information requested, if it exists, would inevitably lead to the identification of individual recipients of social assistance benefits who are participating in Workfare placements”.

The City goes on to argue that:

The information which is sought to be released, if it exists, would identify an agency which participates in the Ontario Works program through the acceptance of Workfare placements. Because of the size of Kingston as a community, because of the nature of the community placements, and because of anticipated protests, picketing and concurrent media coverage, the release of the information would lead to the identification of individual recipients of social assistance benefits in the Workfare placements.

The City has provided me with evidence which it claims demonstrates that certain labour groups and social activists in the Kingston area have undertaken to disrupt and, in some cases, withdraw their support for, organizations which employ the services of Workfare placements. It submits that the City has been the subject of picketing, leafleting and protests from individuals who oppose the Workfare program and that similar actions will be undertaken against agencies which are identified as taking part in the program. As a result, the City submits that the individuals engaged in placements through the Workfare program will be identified.

In Order MO-1415, I made certain findings with respect to a similar request made for access to a record containing a list of agencies which participated in the Workfare program by employing social assistance recipients. In that decision, I made a distinction between those agencies which “employ or engage as volunteers more than five persons.” The rationale behind that distinction was stated as follows:

I find that where more than five individuals are employed or otherwise associated with an organization as working volunteers, it is not reasonable to expect that an individual can be identified as a workfare participant, particularly given the wide range of job categories in which they are engaged. Accordingly, I make a distinction between those organizations contained in the record which employ or engage as volunteers more than five persons. I find that it is reasonable to expect that the release of the names of those agencies which employ or engage five or fewer persons would disclose information about identifiable individuals. This information would qualify as the personal information of those individuals. This is not the case however, with those agencies which employ or engage more than five persons. In this situation, the disclosure of the names of these organizations would not disclose information about identifiable individuals.

As a result of these findings, I will only address the application of the mandatory personal privacy exemption in section 14(1) to the names of those agencies which employ or engage fewer than five individuals.

The City takes the position that Order MO-1415 differentiates between larger and smaller organizations who are engaging Workfare placements and that, while a significant number of individuals have been employed as a result of the execution of the agreement at issue, they are employed in small numbers, in many locations and in a select few categories of positions. I note that the City has misinterpreted my findings in Order MO-1415 when it suggests that I drew a line at 5 *placements* by a particular agency. In fact, I differentiated between agencies which “employ or engage as volunteers fewer than five individuals”. The difference in interpretation is important in the present case as the agency which entered into the agreement that is the subject of this request is comparatively large, employing many more than five individuals, and has engaged a significant number of Workfare participants over the past few years.

In keeping with my findings in Order MO-1415, I find that the disclosure of the information contained in the record at issue in this appeal would not reveal the personal information of any identifiable individuals; nor would its disclosure reveal information which could then be used to establish the identity of the social assistance recipients whose engagement by the agency in question is established by the subject Workfare agreement. In addition, the Agreement itself does not contain any “personal information” as that term is defined in section 2(1). As only information which qualifies as “personal information” can be the subject of the section 14 exemption, I find that the record is not subject to this exemption and ought to be disclosed to the appellant.

## **ORDER:**

1. I order the City to provide the appellant with a copy of the subject record by **October 30, 2002 but not before October 25, 2002.**
2. I do not uphold the City’s decision to deny access to the records under section 14(5) of the *Act*.
3. In this order, I have confirmed the existence of a responsive record. I have released this order to the City in advance of the appellant in order to provide the City with an opportunity to review the order and determine whether to apply for judicial review of the decision or request a reconsideration under the provisions of Article 18 of the *Code of Procedure*.
4. If I have not been served with a Notice of Application for Judicial Review or a request for a reconsideration of the decision by **October 10, 2002**, I will release this order to the appellant by **October 15, 2002.**

5. I reserve the right to require the City to provide me with a copy of the record which is disclosed to the appellant pursuant to Provision 1.

Original signed by \_\_\_\_\_  
Donald Hale  
Adjudicator

September 25, 2002 \_\_\_\_\_