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

ORDER MO-1643

Appeal MA-020186-1

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NATURE OF THE APPEAL:

The Toronto Community Housing Corporation (the TCHC) received a request under the *Municipal Freedom of Information and Protection of Privacy Act* (the *Act*). The requester sought access to records compiled during a specified time period relating to the rented premises which she occupies. The requester indicated that she was seeking access to security reports, occurrence reports and daily log notes including the dates, times and notes relating to complaints made against her by another tenant.

Initially, the TCHC located a number of records responsive to the request and granted access to the majority of them with severances made to certain information relating to other individuals. Access to the undisclosed portions of the records was denied on the basis that they were exempt from disclosure under section 38(b) of the *Act* (invasion of privacy).

The requester, now the appellant, appealed the decision of the TCHC.

A further search for records was conducted by the TCHC at the request of the appellant and partial access to an additional record was provided to her.

During the mediation stage of the appeal, the TCHC agreed to disclose the names of the security staff which were severed from the records originally located. The TCHC also conducted a further search of its record-holdings and located a number of additional documents. In a supplementary decision letter dated October 22, 2002, the TCHC agreed to disclose the majority of this second group of records, with severances made to information relating to other individuals. Again, the TCHC denied access to portions of the identified records on the basis that they contained personal information relating to other identifiable individuals and that this disclosure would constitute an unjustified invasion of the personal privacy of these individuals under section 38(b).

In addition, the TCHC provided the appellant with a fee estimate of $600.00 for the cost of searching certain notebooks maintained by its security officers as it appeared that these may also contain information which is responsive to the appellant's request.

The appellant advised that she wished to continue her appeal of the TCHC's decision to apply section 38(b) to the information not disclosed to her. In addition, she maintained her contention that additional records responsive to the request ought to exist and indicated that she wished to appeal the fee estimate.

As further mediation was not possible, the matter was moved into the adjudication stage of the appeal process. I initially sought the representations of the TCHC and provided it with a Notice of Inquiry. The TCHC made representations, which were shared, in part, with the appellant. The appellant advised that she would not be making submissions in response to the Notice.

RECORDS:

The records at issue in this appeal consist of the undisclosed portions of various occurrence reports, incident reports, a summary of incident reports and daily logs (transcribed from the security officers' notebooks). The TCHC has yet to render a decision regarding access to the

actual security officers' notebooks pending the resolution of the fee estimate issue. The records have been compiled into two groups by the TCHC, those compiled prior to the issuance of its October 22, 2002 decision (Group A) and those compiled after (Group B).

DISCUSSION:

REASONABLENESS OF SEARCH

In appeals involving a claim that further responsive records exist, as is the case in this appeal, the issue to be decided is whether the TCHC has conducted a reasonable search for the records as required by section 17 of the *Act*. If I am satisfied that the search carried out was reasonable in the circumstances, the decision of the TCHC will be upheld. If I am not satisfied, further searches may be ordered.

Where a requester provides sufficient detail about the records which he/she is seeking and the TCHC indicate that further records do not exist, it is my responsibility to ensure that the TCHC has made a reasonable search to identify any records which are responsive to the request. The *Act* does not require the TCHC to prove with absolute certainty that further records do not exist. However, in my view, in order to properly discharge its obligations under the *Act*, the TCHC must provide me with sufficient evidence to show that it has made a **reasonable** effort to identify and locate records responsive to the request.

Although an appellant will rarely be in a position to indicate precisely which records have not been identified in the TCHC's response to a request, the appellant must, nevertheless, provide a reasonable basis for concluding that such records exist.

Representations and Findings

The TCHC has provided me with extremely detailed submissions setting out the nature of its record-keeping systems and the types of records maintained by it with respect to incidents involving tenants at its properties. The TCHC has also provided a lengthy explanation of the searches it has undertaken for records responsive to the appellant's request, as clarified both before and during the mediation stage of the appeal.

The TCHC submitted a detailed explanation of the searches undertaken by its Security Information Analyst in response to the request. The first search of its database was made in May 2002, initially through the use of the appellant's address. This search yielded a number of incidents which were then exported into a readable format that includes all of the information contained in the original incident reports. The Analyst then took the identifying numbers for each occurrence and incident report and conducted a search of the TCHC's paper record-holdings for the hard copies of these documents that are still available. Hard copies of many of the identified incident reports were destroyed in accordance with the TCHC's records retention schedules, though the information they contained was included in the incident report database spreadsheet which was created and provided to the appellant.

The Analyst performed a second search for responsive records in June 2002. This search was conducted using both the appellant's address and her name. This search resulted in the same records being discovered, with one additional incident report located.

A third search was conducted by the Analyst in October 2002 in response to a query from the TCHC's Freedom of Information Co-ordinator for information about the appellant which may be contained in the notebooks maintained by security officers. A representative sample of notebook entries was provided to the Co-ordinator for a specified date.

The appellant has not provided me with any basis for her belief that additional records exist.

Based on my review of the representations of the TCHC and the records themselves, I am satisfied that the TCHC made reasonable efforts to identify and locate all records relating to the appellant for the time period set out in her request. I have not been provided with any basis for concluding otherwise. Accordingly, I dismiss this part of the appeal.

FEE ESTIMATE

Introduction

Sections 37(1)(c) and 45(1) of the *Act* require an institution to charge fees for requests under the *Act*. Other provisions regarding fees and fee waiver are found in sections 6 through 9 of R.R.O. 1990, Regulation 823. Specifically, section 6.1 of Regulation 823 provides an institution with the ability to charge fees only for photocopies and computer costs when a request is made for personal information which relates to the individual making the request. This section clearly indicates that when a request is made for one's own personal information, institutions are not able to recover the costs of searching for and preparing records for disclosure. Section 6 of Regulation 823 sets out the recoverable costs in situations where a requester seeks access to information other than their own personal information.

Representations and Findings

The TCHC states that, in order for it to locate all of the security officers' notebooks which might contain information which is responsive to the request, it will be required to undertake extensive searches. It estimates that the time to conduct these searches and the time required to prepare the identified records for disclosure is 20 hours. The cost of undertaking this work is estimated to be $600, calculated as 20 hours at $30 per hour. These notebook entries correspond to the incident and occurrence reports which were identified by the Analyst in the course of her database searches. The remaining records, and parts of records, disclosed to the appellant were provided without charge, except for photocopying fees.

The TCHC indicates that there are 23 security officer notebooks which contain information relating to the appellant for the specified time period. The notebooks are kept in a chronological fashion, with entries made as required by each officer. They are not cross-referenced by unit number or tenant name. A representative sample of one of the notebooks was undertaken and it

was determined by the TCHC that severances would be required to the information to exclude references to other individuals under sections 14(1) and 38(b) of the *Act* and information subject to the law enforcement exemptions in section 8 of the *Act*.

As a result of the operation of section 6.1 of Regulation 823, I find that the TCHC is limited in the costs it can recover from the appellant. Accordingly, I find that the TCHC is only able to recover the costs of photocopying or computer charges incurred in responding to the request. The TCHC is not entitled to recover its costs for search or preparation time because the request is limited to personal information "about the individual making the request".

Accordingly, I will order the TCHC to provide the appellant with a decision letter respecting access to responsive information contained in the security officers' notebooks.

PERSONAL INFORMATION/INVASION OF PRIVACY

The personal privacy exemption in section 38(b) applies only to information which qualifies as "personal information", as defined in section 2(1) of the *Act*. "Personal information" is defined, in part, to mean recorded information about an identifiable individual, including the age or sex of the individual [paragraph (a)], the address or telephone number of the individual [paragraph (d)] 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 TCHC submits that the occurrence reports which comprise the undisclosed records designated as Group A contain the personal information of individuals other than the appellant, as well as information relating to her. It states that this information includes the name, sex, age, telephone number and address of individuals other than the appellant and that this information falls within the ambit of the definition of the term "personal information" in section 2(1)(a), (d) and (h). Similarly, it submits that the undisclosed information in the incident reports listed in the Group B records also contain personal information relating to both the appellant and other identifiable individuals.

I find that the records comprising Groups A and B include information which qualifies as the personal information of both the appellant and other identifiable individuals. Specifically, the records contain information as to the age, sex, address, telephone number and the individuals' names along with other personal information relating to these individuals. This information qualifies as the personal information of the appellant and of other identifiable individuals under sections 2(1)(a), (d) and (h).

Section 36(1) of the *Act* gives individuals a general right of access to their own personal information held by an institution. 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 requester 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.

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

In determining whether the exemption in section 38(b) applies, 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. Section 14(2) provides some criteria for the institution to consider in making this determination. Section 14(3) lists the types of information whose disclosure is presumed to constitute an unjustified invasion of personal privacy. Section 14(4) refers to certain types of information whose disclosure does not constitute an unjustified invasion of personal privacy.

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

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]

If none of the presumptions in section 14(3) applies, the institution must consider the application of the factors listed in section 14(2), as well as all other considerations that are relevant in the circumstances of the case.

The TCHC submits that the personal information relating to other identifiable individuals falls within the presumption in section 14(3)(c) of the *Act*. This section states:

> A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy if the personal information,
>
> > relates to eligibility for social service or welfare benefits or to the determination of benefit levels;

It argues that the TCHC provides socially assisted housing and that the release of information relating to those who reside in the buildings it operates "could serve to identify individuals in receipt of social assistance entitlement through their receipt of rent geared to income housing".

The TCHC also argues that the personal information in the records was supplied by the individuals to whom it relates in confidence, as contemplated by section 14(2)(h) of the *Act*. This is a consideration favouring the non-disclosure of personal information.

The building in which the appellant lives is a "rent geared to income" facility operated by the TCHC. As such, some, but not all, of the tenants who live there may be in receipt of "social service or welfare benefits". Accordingly, I cannot conclude that the disclosure of the names of other tenants in the building contained in the records would reveal information which "relates to eligibility for social service or welfare benefits", as contemplated by the presumption in section 14(3)(c). I find that the presumption in section 14(3)(c) has no application to the information at issue in the present appeal.

Based on my review of the contents of the records themselves and the circumstances surrounding their creation, I find it reasonable to assume that the personal information in these reports was "supplied by the individuals to whom it relates in confidence", within the meaning of section 14(2)(h). I find this to be a compelling factor weighing against the disclosure of the personal information in the records.

The appellant has not claimed the application of any considerations weighing in favour of the disclosure of the records and I find that none of the listed, or any other unlisted, factors from section 14(2) apply.

The sole relevant factor present in the circumstances of this appeal weighs against the disclosure of the personal information contained in the records. Therefore, I find that the undisclosed information contained in the records designated as Groups A and B is exempt from disclosure under section 38(b).

The TCHC has provided me with representations as to the manner in which it exercised its discretion not to disclose this information to the appellant. In the circumstances, I find that the TCHC has properly exercised its discretion and I will not disturb it on appeal.

ORDER:

1. I uphold the TCHC's decision to deny access to the undisclosed portions of the records designated as Groups A and B.

2. I find that the TCHC conducted a reasonable search for responsive records and I dismiss that part of the appeal.

3. I do not uphold the TCHC's decision to charge the appellant a fee other than for those items enumerated in section 6.1 of Regulation 823.

4. I order the TCHC to provide the appellant with a decision letter respecting access to the security officers' notebooks pursuant to section 19 of the *Act*, using the date of this order as the date of the request.

Original Signed By: May 2, 2003
Donald Hale
Adjudicator